



Framework Agreement: ICT11448 IT Solutions

Date:

Framework Agreement for the supply of IT Solutions

between

Transport for London

and

Keytree Ltd

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

BETWEEN

- (1) **Transport for London** (the “**Contracting Authority**”) on its own behalf and for the benefit of the other TfL Group Members and Other Contracting Parties; and
- (2) **Keytree Ltd** (the “**Service Provider**”) registered in England and Wales with registration number 05744007 and whose registered office is at **2nd Floor, 114 St Martin’s Lane, London. WC2N 4BE.**

BACKGROUND

- (A) TfL, certain of its group companies and certain Other Contracting Parties associated to TfL, have a need for the supply of certain solutions and/or services and/or the supply of goods for such solutions and/or services, which are defined, together, as “**Deliverables**”
- (B) below).
- (C) TfL, as the Contracting Authority signing this Framework Agreement, wishes to establish a framework agreement with multiple service providers who can meet this requirement by providing Deliverables that are frequently requested on a call-off basis to TfL and to Other Contracting Parties (defined below as the Framework Agreement).
- (D) The Parties have agreed to enter into this Framework Agreement which will enable TfL and/or Other Contracting Parties from time to time to request the Service Provider and the other Framework Suppliers supply Deliverables and compete for the supply of certain Deliverables under the Call-Off Procedure by way of a Mini-Competition as further set out in **clauses 2.13 to 2.15** (inclusive) and **Schedule 2** below and to award contracts for the supply of Deliverables under such Call-Off Procedure by way of Call-Off Contracts.
- (E) The terms and conditions of this Framework Agreement and any and all Call-Off Contracts shall apply to the Deliverables to be provided by the Service Provider under any and all Call-Off Contracts.
- (F) The terms and conditions of this Framework Agreement provide that the Greater London Authority or any of its other functional bodies may contract with the Service Provider on the terms set out in this Framework Agreement.

OPERATIVE PROVISIONS

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

1. DEFINITIONS

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

“Agreed Equality	equality policy agreed between the Contracting Authority and the Service Provider as part of any
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"Policy"	Call-Off Contract, if any
"Agreement Reference Number"	ICT11448
"Bespoke Software"	software to be provided by the Service Provider to the Contracting Authority which is specially written for the Contracting Authority
"Business Day"	a day other than a Saturday or Sunday or a public or bank holiday in England
"Call-Off Contract"	a Call-Off Contract in the form(s) referred to in Schedule 2 that has been executed or otherwise signed or agreed by the Service Provider and the Contracting Authority and which incorporates the terms of this Framework Agreement, mutatis mutandis, and which may be materially in the form set out in Annex B to Schedule 2 or formed by way of the Contracting Authority's acceptance of the Service Provider's Proposal, as permitted by this Framework Agreement
"Call-Off Co-ordinator"	the person named as such in a Call-Off Contract or such other person as notified to the Service Provider by the Contracting Authority
"Call-Off Procedure"	procedure for calling off Deliverables as set out in clause 2.13 to 2.15 (inclusive) and Schedule 2
"Call-Off Term"	the duration of a Call-Off Contract, as set out in the relevant Call-Off Contract
"Cessation Plan"	a plan agreed between the Parties or determined by the Contracting Authority pursuant to clause 27 to give effect to a Declaration of Ineffectiveness
"Change Control Procedure"	means the procedure for making operational changes to the Framework set out in Schedule 8 or any change control procedure set out in a Call-Off Contract
"Change of Control"	change of the control of a company, and "control" shall be as defined by Section 840 of the Income and Corporation Taxes Act 1988
"Charges"	the charges set out in the relevant Call-Off Contract, with reference to clause 5 and Schedule 3
"Code"	means Schedule 2 of the Telecommunications Act 1984 (as amended by the Communications Act 2003)
"Commencement Date"	the date of this Framework Agreement
"Commercial Manager"	[REDACTED] or such other person set out in a Call-Off Contract or otherwise notified to the Service

Provider by the Contracting Authority

"Confidential Information"

all information in respect of the business of a Party (and, in the case of the Contracting Authority, including the Contracting Authority and/or the TfL Group Members and, if relevant, the Other Contracting Parties) including, without prejudice to the generality of the foregoing, any ideas; business methods; pricing or financial information; business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software; products or services including information concerning that Party's (and, in the case of the Contracting Authority, the Contracting Authority's, the TfL Group Members' and the Other Contracting Parties') relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Party (and, in the case of the Contracting Authority, the Contracting Authority's, the TfL Group Members' and the Other Contracting Parties') and any other information which, if disclosed, will be liable to cause harm to the first Party (and/or in the case of the Contracting Authority, the Contracting Authority, the TfL Group Members and the Other Contracting Parties)

"Contracting Authority" or "Contracting Authorities"

- (a) for the purposes of the signed Framework Agreement, TfL (being the signatory mentioned below); and
- (b) for the purposes of a Call-Off Contract(s), either TfL, the TfL Group, and/or any Other Contracting Party and/or Other Contracting Parties who may enter into or have entered into one or more Call-Off Contract(s) on their own behalf (and, at their option, for other entities as envisaged by the Framework Agreement) and, in relation to that Call-Off Contract, where the Call-Off Contract incorporates the terms of this Framework Agreement, a reference to Contracting Authority shall, for the purposes of such Call-Off Contract, mean the company entering into the Call-Off Contract and procuring the Deliverables, mutatis mutandis

"Contracting Authority's Goods"

means goods, equipment, peripherals and other items supplied by or owned or hired or leased by the Contracting Authority which the Contracting Authority wishes to be subject to Services under a Call-Off Contract, as more particularly specified in that Call-Off Contract

"Contracting Authorities' Premises"

land or premises (including temporary buildings) owned or occupied by or on behalf of the TfL Group and/or, if and to the extent applicable, the Other

Contracting Parties and premises to which Services need to be provided and/or Goods delivered in accordance with a Call-Off Contract

"Contract Information" this Framework Agreement in its entirety (including Call-Off Contracts and from time to time agreed changes to this Framework Agreement and/or Call-Off Contracts); and

(a) data extracted from the invoices submitted pursuant to **clause 5** which shall consist of the Service Provider's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount

"Contract Year" means each successive period of twelve (12) months with the first such period starting on the first day of the Framework Agreement or the Call-Off Contract, as the context permits

"CMDB" means database(s) of assets and Goods subject to the Services, being the Service Provider's Configuration Management Database or the Primary Service Desk Configuration Management Database (as the context so requires)

"Contracting Authority Data" means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Service Provider by or on behalf of the Contracting Authority; or (ii) which the Service Provider is required to generate, process, store or transmit pursuant to this Framework Agreement and/or a Call-Off Contract; or

(b) any Personal Data for which the Contracting Authority is the Data Controller

"Commercially Off the Shelf Software" or "COTS Software" means software of the Service Provider or a Third Party which is commercially available to persons or companies, whether Third Party software or otherwise

"Declaration of Ineffectiveness" a declaration of ineffectiveness in relation to this Framework Agreement made by a Court of competent jurisdiction pursuant to Regulation 47J of the Public Contracts Regulations 2006 or Regulation 45J the Utilities Contracts Regulations 2006

"Deliverable(s)"	Services, supply of Goods, and/or Documentation, as the context permits
"Deliverables Requirements"	means the list of requirements of the Contracting Authority or any Other Contracting Party (as appropriate) for the Deliverables, as set out in a Call-Off Contract (including any Statement of Requirements and technical and/or functional specifications documents), and as may be varied in accordance with this Framework Agreement or as set out under the specific Call-Off Contract
"Disaster"	unplanned interruption (whether of information processing facilities or systems or otherwise), including fire, interruption in power supply, act of terrorism, threat of act of terrorism, earthquake, extraordinary storm, flood or abnormal weather conditions, which impairs the ability of the Service Provider to perform its obligations under and in accordance with a Call-Off Contract (in whole or in part and other than in some superficial manner)
"Disaster Recovery Plan"	Service Provider's plan for its emergency response, back-up procedures and business continuity in the event of a Disaster as required and then set out in a Call-Off Contract, if any
"Dispute"	dispute or difference that may arise out of or in relation to this Framework Agreement and/or any Call-Off Contract
"Dispute Resolution Procedure"	procedure for resolving/attempting to resolve disputes, as set out in clause 40
"Documentation"	design documentation provided as part of the Services and/or manufacturer's specifications, documentation and/or any other technical and user documentation (including report guides, user manuals, technical manuals, installation and support manuals, operating standards, specifications and training materials) and/or other specifications or requirements for the Services and/or Goods or other documentation, as such written material may be updated from time to time in accordance with the Framework Agreement and any Call-Off Contract
"DPA"	Data Protection Act 1998 and related secondary legislation
"Equivalent Deliverables"	means services and/or goods which the Service Provider can supply which are the same or similar to the Deliverables
"Exit Plan"	exit strategy together with a plan for dealing with the exit of the Call-Off Contract upon termination or expiry, as required and then provided for in the relevant Call-Off Contract, if any

"Extended Warranty"	in relation to Deliverables of a Third Party supplier, the manufacturer's or Third Party supplier's or the Service Provider's standard extended warranty(ies) which it offers to the market to accompany the Service and/or Goods (if any)
"FOI Legislation"	Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004, and any guidance issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation
"Force Majeure Event"	any of the following: riot, civil unrest, war, act of terrorism, threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes (but excluding any strikes, lock-outs or other industrial disputes of or relating to employees of the Party whose obligation to perform is thereby affected, or employees of such Party's Sub-Contractors) to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (" Affected Party ") to perform its obligations in accordance with the terms of this Framework Agreement but excluding any such event if those events should have been negated by implementation by the Service Provider of its' Disaster Recovery Plan or insofar as the event arises from or is attributable to the willful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact
"Framework"	means the framework arrangements established by TfL, as the Contracting Authority, for the provision of the Deliverables to itself and other Contracting Authorities by service providers (including the Service Provider) pursuant to OJEU number 2014/S 246-434367
"Framework Agreement"	this framework agreement, its Schedules, Annexes and Appendices (if any) and any other document expressly incorporated into this Framework Agreement by virtue of any provision of this Framework Agreement
"Framework Period"	has the meaning given to it in clause 3.2
"Framework Suppliers"	means the suppliers (including the Service Provider) appointed either under this Framework Agreement or to agreements on the same or substantially the same terms to this Framework Agreement to be part

	of the Framework
"Functional Bodies"	the GLA's other functional bodies, as may change from time to time but at the date of this Framework Agreement being the London Legacy Development Corporation, the Mayor's Office for Policing and Crime, the London Fire and Emergency Planning Authority and Old Oak and Park Royal Development Corporation
"GLA"	Greater London Authority
"GLA Group"	the GLA and/or any of its other Functional Bodies
"Goods"	<p>means:</p> <ul style="list-style-type: none"> (a) goods which the Service Provider shall make available to Contracting Authorities to Call-Off Contract under this Framework Agreement and/or a Call-Off Contract, to support the delivery of the Services under this Framework Agreement or a Call-Off Contract; and/or (b) any other goods otherwise permitted by this Framework Agreement, <p>in each case, as may be further specified in a Call-Off Procedure and subsequently documented in a successful Call-Contract for the purposes of that Call-Off Contract</p>
"Holding Company"	company which from time to time directly or indirectly controls the Service Provider where "control" is as defined by section 840 of the Income and Corporation Taxes Act 1988
"Implementation Plan"	plan in relation to delivery of and/or implementation of any and all parts of the provision of the Deliverables (and which may include a list of delivery dates and/or times for delivery of Deliverables and/or which may include a more detailed project plan), as set out in any Call-Off Contract or as agreed between the Parties in writing from time to time
"Information"	information recorded in any form held by the Contracting Authority and/or any Other Contracting Party and/or by the Service Provider on behalf of the Contracting Authority
"Information Request"	request for any Information under the FOI Legislation
"Insolvency Event"	<p>any of the following:</p> <ul style="list-style-type: none"> (a) the Service Provider and/or the Holding

Company making any voluntary arrangement with its creditors or becoming subject to an administration order;

- (b) a receiver, administrative receiver, manager or administrator being appointed over all or part of the business of the Service Provider and/or the Holding Company;
- (c) being a company, the Service Provider and/or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- (d) the Service Provider and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Service Provider becoming bankrupt or dying; or
- (f) any similar event to those in (a) to (e) above occurring in relation to the Service Provider and/or the Holding Company under the law of any applicable jurisdiction

"Installation Services"	means services to install Goods and/or the Contracting Authority's Goods as part of the Services and/or a Solution, as may be further specified in a Call-Off Contract for the purposes of that Call-Off Contract
"Insurance" or "Insurances"	insurances, as set out in Schedule 1 , as may be varied in each and every Call-Off Contract
"Intellectual Property Rights" or "IPR"	any and all patents, trade marks, trade names, service marks, copyright, moral rights, rights in design, rights in databases, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating thereto
"Key Milestone Dates"	key dates for delivery of one or more Deliverables, as may be specified in an Implementation Plan and/or a Call-Off Contract
"Key Personnel"	Service Provider's key personnel set out in Schedule 5 , as may be varied or added to in a Call-Off Contract

"List of Types of Services for the Framework"	the non-exhaustive but high level and indicative list of Services (and potentially other Deliverables) set out in Schedule 1 which the Service Provider shall make available to Contracting Authorities throughout the Framework Period and the term of each Call-Off Contract, as may be added to, deleted from and/or amended in accordance with this Framework Agreement and/or under a Call-Off Contract
"Losses"	all direct costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, proceedings and judgments
"Manufacturer's Specification"	means, in relation to Ordered Goods or the Contracting Authority's Goods, the manufacturers own Documentation and/or specification for the goods, setting out, amongst other things, how the goods should be installed, operate and/or perform
"Milestone"	shall be given the meaning ascribed to it in clause 9.1 and shall include Key Milestone Dates
"Mini-Competition"	a competitive process which the Contracting Authority and/or Other Contracting Party may from time to time utilise to select a Framework Supplier to provide Deliverables from time to time
"Order"	means an order for Deliverables served by the Contracting Authority on the Service Provider for the Service Provider to provide such Deliverables, served in accordance with the terms of the Framework Agreement and any applicable Call-Off Contract
"Ordered Goods"	means Goods which are agreed to be supplied by the Service Provider pursuant to an Order
"Ordered Services"	means Services which are agreed to be supplied by the Service Provider pursuant to an Order
"Other Contracting Parties"	means all Contracting Authorities other than TfL, save that TfL Group Members other than TfL shall only be deemed to be an Other Contracting Party for the purposes of this Framework Agreement and/or a Call-Off Contract(s) where they are entering into or intend to enter into a Call-Off Contract as the Contracting Authority themselves rather than the another Contracting Authority procuring Deliverables on their behalf) and "Other Contracting Party" shall be construed accordingly
"Overground Network"	means the Stations and depots (wherever situate), assets, systems, track, and other buildings, which are used in the maintenance and provision of the

	overground service known as "London Overground"
"Parties"	means, in relation to this Framework Agreement, TfL and the Service Provider but, in relation to a Call-Off Contract, the Service Provider and the relevant Contracting Authority entering into that Call-Off Contract
"Personal Data"	has the meaning given to it by section 1(1) of the Data Protection Act 1998
"Policies"	TfL's policies which, as at the Commencement Date, are as set out in Schedule 4 and, after such date shall be deemed to include such policies as may be supplemented and/or varied in the relevant Call-Off Contract and/or by the Change Control Procedure in accordance with clause 13.1.1
"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
"Proposal"	the Service Provider's offer to provide Deliverables in response to a Request for Offer. A Proposal must be signed by the Service Provider or, in the case of email proposals, emailed from an authorised signatory of the Service Provider with authority to bind the Service Provider
"Request Form"	a document produced by the Contracting Authority pursuant to Schedule 2 , setting out its request for a Proposal, which document shall be in the form set out in Schedule 2, Annex A or in such other form permitted by or otherwise required by the Contracting Authority in accordance with this Framework Agreement
"Request for Offer"	shall be given the meaning set out Schedule 2 and "Request for Proposal" shall have the same meaning
"Requirements"	Standards, Policies (including Security Policies), security requirements, working arrangements and/or other requirements of the Contracting Authority which, as at the Commencement Date, are set out in Schedule 4 , and after such date shall be deemed to include such Standards, Policies, security requirements, working arrangements and/or other requirements of the Contracting Authority as may be supplemented and/or varied in the relevant Call-Off Contract and/or by the Change Control Procedure in accordance with clause 13.1.1
"Schedule" or "Schedules"	Schedule or schedules attached to and forming part of this Framework Agreement, as the context permits

"Security Policies"	the TfL Group's security policies which, as at the Commencement Date, are as set out in Schedule 4 and, after such date shall be deemed to include such policies as may be supplemented and/or varied in the relevant Call-Off Contract and/or by the Change Control Procedure in accordance with clause 13.1.1
"Service Levels", "Service Level Agreement" or "SLAs" or "SLA's"	minimum levels of service and/or standards of performance for aspects of performance of a Call-Off Contract and this Framework Agreement, as set out in Schedule 5 (Governance) , as may be updated and/or varied for individual Call-Off Contracts as set out in such Call-Off Contracts
"Service Provider's Equipment"	equipment and materials of whatsoever nature used by the Service Provider in providing the Deliverables which do not themselves form part of the Deliverables and in which title is not intended to pass to the Contracting Authority under the Call-Off Contract, if any
"Service Provider Personnel"	employees, officers, suppliers, Sub-Contractors and agents of the Service Provider engaged in the performance of any of the Services and including the Key Personnel
"Services"	<p>means:</p> <p>the services of the type described in the List of Types of Services for the Framework which the Service Provider shall make available to Contracting Authorities (including project management services, consultancy services, and business change services), as may be further specified in a Call-Off Contract for the purposes of that Call-Off Contract, and as may be added to, deleted from and/or amended in accordance with clause 2 or as otherwise permitted by this Framework Agreement; and/or</p> <p>(a) other services (including project management services, consultancy services, and business change services) of the type envisaged by OJEU number 2014/S 246-434367, which may be specified in and agreed to be provided under a Call-Off Contract</p>
"Site(s)"	Contracting Authorities' Premises, as specified in the relevant Call-Off Contract
"Software"	Bespoke Software and/or COTS Software
"Software as a Service"	Software which is provided to the market as a service rather than as a tangible good and usually made available over the internet, including cloud

	and ASP software
"Solution"	means an IT or other solution (which may be a combination of different Services and/or a mix of Services and accompanying Goods or goods or products or software) and which is to be provided as part of the Services
"Special Conditions"	means any special terms for a Call-Off Contract which vary and/or are supplemental to the Framework Agreement, as shall be set out in such Call-Off Contract
"Standards"	the Contracting Authority's (and, in the case of the Contracting Authority, the TfL Group Member's) standards and Policies which, as at the Commencement Date, are as set out in Schedule 4 and clause 13 and, after such date shall be deemed to include such standards and policies as supplemented and/or varied in the relevant Call-Off Contract and/or by the Change Control Procedure in accordance with clause 13.1.1
"Statement of Requirements"	means a statement issued by the Contracting Authority detailing its requirements for Deliverables as set out in a Call-Off Contract, if any
"Sub-Contractor"	sub-contractor and/or supplier to the Service Provider
"Successor Authority"	person created by statute or subordinate legislation to assume all (or part of) the TfL Group's functions
"Term"	term of this Framework Agreement as set out in clause 3 and being the Framework Period
"TfL"	Transport for London, a statutory corporation whose principal place of business is at Windsor House, 50 Victoria Street, London SW1H 0TL
"TfL Group"	TfL and all of its subsidiaries (as defined in Section 1159 of the Companies Act 2006) from time to time, which definition shall include the Contracting Authority (whether or not the Contracting Authority is a subsidiary) together with members of the GLA Group and reference to any "TfL Group Member" shall refer to TfL, the Contracting Authority and/or any such company, authority or organisation or member of the GLA Group, as applicable
"TfL Group Member"	any member of the TfL Group
"Third Party"	person, partnership, company or any other undertaking not being the Service Provider or the Contracting Authority, or, in the case of the Contracting Authority, not being a TfL Group

	Member
"Third Party IPR"	parts of the Deliverables or Services which are owned by a Third Party which, in the case of Services shall be as specifically detailed in a Call-Off Contract
"Transparency Commitment"	the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the Contracting Authority is committed to publishing its contracts, tender documents and data from invoices received
"Virus"	program code or set of instructions intentionally or recklessly constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations including Trojan horses, logic bombs, time bombs, data disabling code or any similar materials of any nature
"Standard Warranty"	in relation to Deliverables of a Third Party supplier, the manufacturer's or Third Party supplier's standard warranty(ies) which accompany the Deliverables
"Warranty Period"	<p>unless and until otherwise supplemented or varied in a Call-Off Contract (in which case such supplemental and/or varied period(s) shall apply):</p> <ul style="list-style-type: none"> (a) in relation to Deliverables of a Third Party, the manufacturer's or Third Party supplier's standard warranty period(s) supplied with the Warranty and/or Goods or Services or, where an Extended Warranty is purchased by the Contracting Authority, the warranty period mentioned above plus such extended warranty period that accompanies any such Extended Warranty; or (b) where the manufacturer or creator is the Service Provider (including via Sub-Contractors in relation to Services), the longer of their standard warranty periods or 12 months for all Goods or such other period as may be set out in a Call-Off Contract; or (c) where expressly set out below or in a Call-Off Contract, the Framework Period and the term of any applicable Call-Off(s), as the context permits
"WEE Equipment"	means any equipment which is an Ordered Good which falls within the scope of the WEEE Regulations
"WEEE Regulations"	means Waste Electrical and Electronic Equipment

Regulations 2006 (as amended by the Waste Electrical and Electronic Equipment (Amendment) Regulations 2007)

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument, unless the context otherwise requires, shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted (whether in whole or in part) by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether in place before or after the date of this Framework Agreement;
- 1.4 except as specified in **clause 1.3** or expressly elsewhere in this Framework Agreement, a reference to any document shall be construed as a reference to the document as at the date of execution of this Framework Agreement;
- 1.5 headings are included in this Framework Agreement for ease of reference only and do not affect the interpretation or construction of this Framework Agreement;
- 1.6 references to clauses or Schedules are, unless otherwise provided, references to clauses of or Schedules to this Framework Agreement and any reference to a paragraph or section in any Schedule (if any) shall, in the absence of provision to the contrary, relate to the paragraph or section in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the clauses, the Schedules, the Annexes, and the Appendices (if any) in this Framework Agreement, the clauses prevail, except where the conflicting part of the Schedule, Annex or Appendix is explicitly expressed to take precedence; or
- 1.8 except as otherwise expressly provided in any Call-Off Contract, and subject to **clause 1.7**, if there is any inconsistency between any of these clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Framework Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
 - 1.8.1 any variation to a Call-Off Contract made in accordance with its terms;
 - 1.8.2 the relevant Call-Off Contract (including any Special Conditions set out therein);
 - 1.8.3 any variation to this Framework Agreement made in accordance with its terms;
 - 1.8.4 these clauses;
 - 1.8.5 the Schedules;
 - 1.8.6 any other document referred to in or incorporated by reference into this Framework Agreement or any Call-Off Contract unless it is expressly stated that it has a higher priority;

- 1.9 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.10 references to “the Call-Off Contract” are to the relevant Call-Off Contract(s) or to each Call-Off Contract, according to context; and
- 1.11 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. **FRAMEWORK AGREEMENT AND SERVICE PROVIDER APPOINTMENT AND REFRESH**

- 2.1 The Contracting Authority hereby appoints the Service Provider as a potential provider of the Deliverables and the Service Provider shall be eligible to be considered for the award of Call-Off Contracts by the Contracting Authority and Other Contracting Parties during the Framework Period.
- 2.2 In consideration of the Service Provider agreeing to enter into this Framework Agreement and to perform its obligations under it TfL agrees to pay and the Service Provider agrees to accept on the signing of this Framework Agreement the sum of five pounds (£5.00) sterling (receipt of which is hereby acknowledged by the Service Provider).
- 2.3 Unless agreed otherwise expressly in a Call-Off Contract, the Service Provider acknowledges and agrees that in entering into this Framework Agreement no form of exclusivity has been conferred upon, or volume or value guarantee granted by the Contracting Authority and/or Other Contracting Parties in relation to the provision of the Deliverables by the Service Provider and that the Contracting Authority and Other Contracting Parties are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all services which are the same as or similar to the Deliverables and that there is no obligation whatsoever on the Contracting Authority and/or on any Other Contracting Party to invite or select the Service Provider to provide any Deliverables and/or to purchase any Deliverables under this Framework Agreement.
- 2.4 In the event that any Other Contracting Party makes an approach to the Service Provider with a request for the supply of Equivalent Deliverables under a different contract to this Framework Agreement and/or a Call-Off Contract, the Service Provider shall use reasonable endeavours, before any supply of Equivalent Deliverables is made, to inform such Other Contracting Party of the existence of this Framework and its ability to award Call-Off Contracts Deliverables pursuant to it.
- 2.5 Without prejudice to **clause 41** (Rights of Third Parties), this Framework Agreement and each Call-Off Contract made from time to time governs the relationship between the Contracting Authorities and the Service Provider in respect of the provision of the Deliverables by the Service Provider.
- 2.6 The purpose of this Framework Agreement is to:
 - 2.6.1 provide a mechanism whereby the Contracting Authority and/or Other Contracting Parties may enter into Call-Off Contracts;
 - 2.6.2 provide the framework to administer each Call-Off Contract; and
 - 2.6.3 set out the obligations of the Parties.

- 2.7 The Services that the Service Provider agrees to provide, if requested, and which may be requested by any Contracting Authority under the Call-Off Procedure by way of a Call-Off Contract are of the type set out in the List of Types of Services for the Framework (as may be amended from time to time). The Contracting Authority may, under a Call-Off Contract request that certain linked Goods are provided. The Service Provider shall ensure that Deliverables to be supplied under a Call-Off Contract are capable of fulfilling and shall fulfil any requirements for such Deliverables set out in this Framework Agreement and/or an applicable Call-Off Contract. If, after the Commencement Date, the Contracting Authority adds Deliverables to the List of Deliverables as may be permitted by this Framework Agreement, then the Service Provider shall use reasonable endeavours to ensure it can provide such Deliverables and to provide them in accordance with any updated requirements. If the Service Provider is unable to do so, it shall promptly demonstrate the reasons it is unable to the Contracting Authority and, if the Contracting Authority considers those reasons are reasonable (acting reasonably) the Service Provider shall be excluded from the obligation to provide the additional Deliverables.
- 2.8 The Contracting Authorities' requirements may vary and this Framework Agreement shall not place any Contracting Authority under any obligation to procure Deliverables from the Service Provider at a particular time or at all. This Framework Agreement is not an exclusive arrangement and nothing in this Framework Agreement shall operate to prevent any Contracting Authority from engaging any other organisations or persons to provide deliverables similar to or the same as the Deliverables.
- 2.9 **Clauses 2.13 to 2.15** (inclusive) and **Schedule 2** set out the procedure by which the Parties may enter into Call-Off Contracts.
- 2.10 The Service Provider shall provide the relevant Deliverables in accordance with the applicable Call-Off Contract(s) and the Service Provider agrees that it shall not commence provision of any Deliverables without an agreed Call-Off Contract relating to such Deliverables.
- 2.11 If and where requested by a Contracting Authority in a Call-Off Contract, the Service Provider shall take instructions from the Contracting Authority's agent(s) to the extent set out in such Call-Off Contract.

2.11A Managing Agent

- 2.11A1 Without prejudice to the generality of **clause 2.11**, the Contracting Authority may by written notice to the Service Provider (a "Managing Agent Notice") appoint a SIAM or other provider to act as its managing agent to manage the Contracting Authority's rights under this Framework Agreement and/or a Call-Off Contract. Subject to **clause 2.11A2**, following receipt of a Managing Agent Notice, the Service Provider shall (at no additional cost to the Contracting Authority):
- 2.11.A1.1 for the purposes of this this Framework Agreement and/or an applicable Call-Off Contract, treat enquiries, requests and instructions of the Managing Agent which relate to the Deliverables or this Framework Agreement and/or an applicable Call-Off Contract as enquiries, requests and instructions of the Contracting Authority, and comply with its obligations under this Framework Agreement and/or an applicable Call-Off Contract in relation thereto;

2.11A1.2 co-operate with the Managing Agent as required under the applicable Call-Off Contract or otherwise directed by the Contracting Authority and without limitation to the foregoing:

- (a) attend governance meetings chaired by the Managing Agent in lieu of attending similar meetings (which may be reasonably anticipated by the Service Provider) with the Contracting Authority;
- (b) report on service performance management and/or the performance of the relevant Call-Off Contract and/or this Framework Agreement to the Managing Agent; and
- (c) permit the Managing Agent to oversee financial management matters (subject always to **clause 31**).

2.11A1.3 The Contracting Authority may, by written notice to the Service Provider, withdraw notice to the appointment of the Managing Agent appointed pursuant to this clause **2.11A**, and upon receipt of such notice, the Service Provider's obligations under clause **2.11A** in respect of the relevant Third Party supplier shall cease and the Service Provider shall not treat enquiries, requests and instructions from that relevant Third Party supplier.

2.12 Notwithstanding anything to the contrary in this Framework Agreement or any Call-Off Contract, the Contracting Authorities' and the TfL Group's discretion in carrying out their statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Framework Agreement and/or any Call-Off Contract.

CALL-OFF PROCEDURE

2.13 If the Contracting Authority and/or any Other Contracting Party decides to source any of the Deliverables through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to run Mini-Competitions and award Call-Off Contracts for the supply of Deliverables from the Service Provider in accordance with **Schedule 2**.

2.14 The Service Provider shall comply at all times with the relevant provisions in **Schedule 2**.

2.15 Each Call-Off Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions of this Framework Agreement, mutatis mutandis (with the necessary changes) to (unless otherwise stated in the Call-Off Contract) form a separate agreement between the parties to such Call-Off Contract.

REFRESH OF DELIVERABLES

2.16 The Parties (as well as all Framework Suppliers) acknowledge and agree that any list of Services (including the List of the Types of Services for the Framework), whether under this Framework Agreement and/or under a specific Call-Off Contract (including any goods required to support the delivery of a Solution) may be amended by the Contracting Authority from time to time by the Contracting Authority giving reasonable notice (which, for the avoidance of doubt, may be given in a Request for Offer issued by the Contracting Authority) to the Service Provider (as well as, in the care of the Framework, to all other Framework Suppliers) as set out in **clauses 2.17 to 2.18** (inclusive) below.

GOODS

2.17 In the case of Goods identified under a Call-Off Contract,

2.17.1 a particular Good may be substituted for another; and/or

2.17.2 a Good may be added to any list of Services (including the List of Types of Services for the Framework) and, once added, such list of Services shall become a list of Deliverables,

at any point in time and as determined by the Contracting Authority, in accordance with the following principles, where relevant:

- (a) An end of life notice has been issued by the relevant manufacturer; (as that concept is defined by that manufacturer) and/or
- (b) A Good is going to reach the end of its life within 12 calendar months (meaning it will no longer be supported in the market generally and/or replacement parts will no longer easily be available for it as a reasonable price),

in which case the Contracting Authority can update the Good in the relevant list of Goods and Services with an equivalent or successor product or good which is envisaged to deliver the same or similar output or functionality;

2.17.3 A new version or release of a Good has been issued, in which case the Contracting Authority may replace the Good with the new version or release (or equivalent) and/or may simply add the new version or release (or equivalent) as an additional option (as well as the release or version currently set out in the list) for purchase in accordance with the relevant Call-Off Contract;

2.17.4 A successor product and/or replacement product and/or type of product has been issued to the market, in which case the Contracting Authority may replace the Good with the successor product or replacement product or type of product and/or may simply add the successor product as an additional option for purchase by the Contracting Authority, in each case which is envisaged to deliver the same or similar output or functionality; and/or

2.17.5 A new or evolving or successor technology or type of product has been issued to the market, in which case the Contracting Authority can add such new or evolving or successor technology or type of product onto any list of Goods and Services, in each case which is envisaged to deliver the same or similar output or functionality.

SERVICES

2.18 In the case of Software as a Service, if any, such Software may be substituted for other Software and/or another Software as a Service or Service and may be added to any list of Goods and Services at any point in time and as determined by the Contracting Authority, in accordance with the following principles, where relevant:

2.18.1 (a) An End of Life notice has been issued by the relevant manufacturer; and/or

(b) The Software as a Service is no longer going to be supported in the market generally at a reasonable price,

in which case the Contracting Authority can update the Software as a Service in any relevant list of Goods and Services with an equivalent or successor software / cloud software which is envisaged to deliver the same or similar output or functionality;

- 2.18.2 A new version or release of the Software as a Service has been issued, in which case the Contracting Authority may replace the Software as a Service with the new version or release (or equivalent) and/or may simply add the new version or release (or equivalent) as an additional option (as well as the release or version currently set out in the list) for purchase in accordance with the Framework Agreement or Call-Off Contract;
- 2.18.3 A successor software and/or replacement software and/or type of software has been issued to the market, in which case the Contracting Authority may replace the Software as a Service with the successor product or replacement product or type of product and/or may simply add the successor software as an additional option for purchase by the Contracting Authority, in each case which is envisaged to deliver the same or similar output or functionality; and/or
- 2.18.4 A new or evolving or successor technology or type of software has been issued to the market, in which case the Contracting Authority can add such new or evolving or successor technology or type of software onto the list of Goods and Services, in each case which is envisaged to deliver the same or similar output or functionality.

Refresh of the List of Types of Services for the Framework

- 2.19 The Parties (as well as all Framework Suppliers) acknowledge and agree that any list of Deliverables, whether under this Framework Agreement and/or under a specific Call-Off Contract (including the List of Types of Services for the Framework) may be amended by the Contracting Authority from time to time by the Contracting Authority giving reasonable notice (which, for the avoidance of doubt, may be given in a Request for Offer issued by the Contracting Authority) to the Service Provider (as well as, in the care of the Framework, to all other Framework Suppliers).

Equipment To Aid Disability

- 2.20 The Contracting Authority takes its obligations in relation to non-discrimination against disability extremely seriously. As such, from time to time, the Service Provider acknowledges and agrees that Contracting Authorities may need to source particular Deliverables to match the requirements of its staff or individual contractors working for it or due to work for it and sometimes these requirements will be at short notice. The Contracting Authority does not anticipate that such requirements from time to time will be high in value. If any one Request for Offer or Order at any time is for a value of more than £10,000 then TfL will run a detailed Mini-Competition process to tender the award of such Request for Offer and Order.

3. **COMMENCEMENT AND DURATION OF FRAMEWORK AGREEMENT AND CALL-OFF CONTRACTS**

3.1 This Framework Agreement shall take effect on the Commencement Date and shall expire either:

3.1.1 at the end of the period from the Commencement Date until its second anniversary (the “**Initial Framework Period**”); or

3.1.2 where the Contracting Authority elects to extend the Initial Framework Period in accordance with **clause 3.2** below, at the end of the relevant extension period,

unless it is further extended in accordance with **clause 3.2** below or unless terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of law.

3.2 The Contracting Authority may extend the duration of this Framework Agreement for one (1) year periods up to a maximum of two (2) one (1) year extensions in total, running from either the expiry of the Initial Framework Period or the subsequent anniversary thereof by giving the Service Provider, in each case, no less than three (3) months' written notice. The Initial Framework Period and any extensions made in accordance with this **clause 3.2** shall be the Framework Period.

3.3 The term for each Call-Off Contract shall be set out in the relevant Call-Off Contract.

4. **THE PARTIES' OBLIGATIONS**

Service Provider Obligations

4.1 The Service Provider shall:

4.1.1 supply the Deliverables; and

4.1.2 perform all of its obligations,

in accordance with the terms and conditions of the Framework Agreement and the applicable Call-Off Contract(s).

4.2 When supplying Deliverables which have standard manuals, operating instructions and/or other documentation (including Documentation) which should accompany them, the Service Provider shall ensure such Documentation is delivered with the Deliverables. Otherwise and without prejudice to the foregoing, Documentation shall be provided as set out in the applicable Call-Off Contract(s).

4.3 The Service Provider:

4.3.1 acknowledges that it has (or shall obtain by the date of the relevant Call-Off Contract) sufficient information about the Contracting Authority and, in the case of the Contracting Authority, the TfL Group and its or their requirements for the Deliverables and that it has made (or shall have made by the date of the relevant Call-Off Contract) all appropriate and necessary enquiries to enable it to supply the Deliverables in accordance with the Call-Off Contract;

- 4.3.2 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Call-Off Contract due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Contracting Authorities' and, in the case of the Contracting Authority, the TfL Group's requirements for the Deliverables or otherwise;
 - 4.3.3 shall comply with all lawful and reasonable directions of the Contracting Authority relating to its supply of the Deliverables;
 - 4.3.4 shall, when required by the Contracting Authority, give to the Contracting Authority such written or oral advice or information regarding the Deliverables as the Contracting Authority may reasonably require; and
 - 4.3.5 where a format for electronic receipt of orders by the Service Provider is set out in a Call-Off Contract shall, unless the Contracting Authority requires otherwise, receive orders in connection with that Call-Off Contract in such format and shall maintain its systems to ensure that it is able to do so throughout the relevant term of the Call-Off; and
 - 4.3.6 keep an up to date CMDDB(s) in a format agreed with the Contracting Authority of all assets and Goods it provides as part of the Deliverables and/or Services throughout the Framework Period.
- 4.4 The Service Provider shall provide the Service Provider Personnel as necessary for the proper and timely performance and management of the Deliverables including as may be set out in the Call-Off Contract and shall give the Contracting Authority, if so requested in relation to any Services to be supplied as part of the Deliverables, details of skills, experience and other relevant particulars of all such persons who are or may be at any time employed or engaged in performing the Call-Off Contract.
- 4.5 The Service Provider shall ensure that all Service Provider Personnel deployed on work relating to any Call-Off Contract shall be properly managed and supervised.
- 4.6 The Service Provider will only use personnel to perform the Services who:
- 4.6.1 are suitably qualified and experienced to perform their role in performing the Services; and
 - 4.6.2 hold up to date and comply with professional certifications and qualifications relevant to the Services they are providing; and
 - 4.6.3 in these and any other respects are acceptable to the Contracting Authority (with the Contracting Authority acting reasonably); and
 - 4.6.4 where stated, accord with any agreed requirements set out in a Call-Off Contract.
- The Service Provider shall demonstrate compliance with this **clause 4.6** as required by the Contracting Authority from time to time.
- 4.7 Without prejudice to any of the Contracting Authority's other rights, powers or remedies (including under **clause 4.6**), the Contracting Authority may (without liability to the Service Provider) deny access to such Service Provider Personnel to any Contracting Authorities' Premises if such Service Provider Personnel in the

Contracting Authority's view (acting reasonably) have not been properly trained in any way required by the Call-Off Contract and/or are otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall notify the Service Provider of such denial in writing and in which case the Service Provider shall immediately remove such Service Provider Personnel from performing the Services and provide a suitable replacement (with the Contracting Authority's prior written consent in the case of any Key Personnel).

- 4.8 If the Contracting Authority requests, for bona fide reasons, that any member of the Service Provider Personnel should cease to be involved in the supply of the Deliverables or the performance of the Services under a Call-Off Contract, it shall notify the Service Provider in writing and state the reasons for the request. If the Service Provider agrees to the request (such agreement not to be unreasonably withheld) the said member shall be removed immediately and the Service Provider shall provide a suitably and similarly qualified replacement as soon as reasonably practicable and, in any event, within five (5) Business Days unless otherwise agreed. The removal of a member of the Service Provider Personnel will not relieve the Service Provider from performance of its obligations under the Call-Off Contract nor provide grounds for an extension of time for the supply of the Deliverables or the performance of the Services.
- 4.9 The Service Provider shall not (except where the individuals are clearly not required for the performance of that part of the relevant Services or other obligations) assign any of the Key Personnel to other duties which would prevent them from or interfere with their ability to properly carry out their duties in respect of the Services and other obligations without the prior consent of the Contracting Authority. This shall not prevent the Service Provider from allowing members of the Service Provider Personnel to take sickness, maternity, paternity, compassionate, religious or holiday leave or to attend a reasonable number of training courses.
- 4.10 In the event that a member of the Key Personnel resigns or shall for any reason cease to be engaged in the provision of the Services, the Service Provider shall ensure that a suitably and similarly qualified replacement who is acceptable to the Contracting Authority (with the Contracting Authority having a right of veto in relation to such replacement where it has genuine and valid concerns regarding their ability to fulfill the role or otherwise) is appointed as soon as reasonably practicable and, in any event, within five (5) Business Days unless otherwise agreed; that there is a reasonable handover period (and that the costs of bringing the replacement up to the required level of knowledge are borne by the Service Provider); and that the performance of the Services are not affected. The Contracting Authority shall not unreasonably withhold agreement to the appointment of such replacement.
- 4.11 The Service Provider acknowledges and agrees that it shall be wholly responsible for the acts and omissions of the Service Provider Personnel regardless of whether or not they are employees of the Service Provider. The Contracting Authority shall be wholly responsible for the acts or omissions of its personnel and any other person, entity or agent acting on its behalf (other than the Service Provider or their agents).
- 4.12 The Service Provider warrants and shall ensure that it shall not use the Goods to provide any electronic communications networks or services to any Third Party (other than those who the Contracting Authority permits to make use of the Goods).

- 4.13 The Service Provider warrants and shall ensure that it has no intention of using the Code in order to retain the Goods, Service Provider's Equipment or any other electronic communications apparatus, or any part of the same in place on the Contracting Authorities' Premises after the termination or expiry of this Framework Agreement and/or any relevant Call-Off Contract.
- 4.14 The Service Provider warrants and shall ensure that if the Service Provider takes any step to use the Code (including issuing a notice under paragraph 5 of the Code; or issuing a counter-notice under paragraph 21 of the Code) to protect the Service Provider's right to use and operate the Goods or Service Provider's Equipment or takes any such step to retain the Goods, Service Provider's Equipment or any other electronic communications apparatus at the Contracting Authorities' Premises or for any associated purpose, the Service Provider will fully and effectually indemnify and keep indemnified the Contracting Authority, TfL Group and/or any Other Contracting Parties, and hold harmless without limit against all losses or costs, claims or demands or other liabilities incurred or suffered by the Contracting Authority, TfL Group and/or any Other Contracting Parties which are not covered by any compensation or consideration that the Contracting Authority TfL Group and/or any Other Contracting Parties are awarded by the Court under the Code.
- 4.15 **No reliance on approvals**
- No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the Contracting Authority, nor any enquiry or inspection which the Contracting Authority makes or has carried out for its benefit or on its behalf at any time, operates to reduce, extinguish, exclude, limit or modify the Service Providers duties and obligations under any Call-Off Contract unless it is in writing from the relevant Contracting Authority, refers to the relevant Call-Off Contract and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified.
- 4.16 **Service Provider to Check Information Provided by the Contracting Authority**
- 4.17 The Service Provider shall ensure that he has (or otherwise shall be deemed to have) verified the accuracy of any information provided by the Contracting Authority in connection with each Call-Off Contract.

The Contracting Authority's Obligations

- 4.18 The Contracting Authority shall:
- 4.18.1 order and purchase the Deliverables it requires in accordance with the terms of the Call-Off Procedure and the applicable Call-Off Contract(s);
 - 4.18.2 subject to **clauses 5.6** and **5.7**, pay all sums, fees and other charges due under the Call-Off Contract upon the dates provided for under the Call-Off Contract;
 - 4.18.3 allow the Service Provider access to Sites in accordance with **clause 12**; but only as necessary for the Service Provider to perform its obligations under this Framework Agreement and relevant Call-Off Contract(s); and
 - 4.18.4 provide the Service Provider, on request and within a reasonable period thereafter, with information and assistance that the Service Provider

may reasonably require in order to perform its obligations under this Framework Agreement and/or under any Call-Off Contract.

5. CHARGES AND PAYMENTS

5.1 **Schedule 3** sets out certain principles relating to charging as well as certain rates for Deliverables, other Charges, discounts, rebates and other commitments which the Service Provider agrees to and the Service Provider warrants and shall ensure it honours such Charges, rates, rebates, discounts and other commitments both during the Framework Period and during the term of any and all Call-Off Contracts (whichever is/are the later applicable date(s)), including in all of its Proposals.

5.2 Any rates or prices submitted by the Service Provider in response to a Request for Offer or Request for Proposal or otherwise for a Call-Off Contract shall not exceed the rates or prices set out in **Schedule 3** of the Framework Agreement (to the extent they cover the same or equivalent items) for the period(s) set out in **Schedule 3** (or if no period(s) is/are set out, then for the Framework Period) but such rates or prices may be lower than those rates or prices set out in **Schedule 3**.

5.3 Invoicing

5.3.1 The Service Provider will issue its invoices for the Charges in respect of the Deliverables for each Call-Off Contract at such dates, milestones or at the end of such periods as may be specified in **Schedule 3** and the applicable Call-Off Contract.

5.3.2 The Service Provider shall submit its invoices to the address specified by the Contracting Authority. Each such invoice will contain all information required by the Contracting Authority as specified in this **clause 5** together with the appropriate Call-Off Contract's Reference Number, SAP purchase order number, the Service Provider's name and address and a separate calculation of VAT. The Service Provider will not make any separate charge for submitting such invoices. If an invoice does not contain the required information or is not in the specified format, the Contracting Authority will notify the Service Provider and the Service Provider will issue a revised invoice. The period for payment set out in this **clause 5** will not begin until the Contracting Authority has received an invoice containing the required information and in the specified format.

5.3.3 The Service Provider's invoice shall specify the sum the Service Provider considers to be due at the payment due date and the basis on which that sum is calculated, whether or not that sum is zero.

5.3.4 The due date for payment of each payment in respect of the Charges will be the date on which a proper and correct invoice (complying with the requirements of **clause 5.3.2**, including any revised invoice submitted pursuant to this **clause 5** is received by the Contracting Authority. Invoices submitted prematurely or which do not comply with the requirements of this **clause 5**, will not be valid and will be resubmitted in the proper form at the proper time.

5.3.5 The final date for payment of each payment in respect of the Charges will be thirty (30) days after the due date for each such payment (or

ten (10) days after the due date for each such payment if the Service Provider is a Small or Medium Enterprise / SME.

- 5.4 The Service Provider shall submit invoices to the postal address set out in the relevant Call-Off Contract (or as otherwise specified by the Contracting Authority from time to time), or where an electronic format for submission of invoices is set out in the relevant Call-Off Contract, such electronic format shall, unless the Contracting Authority requires otherwise, be used. Each such invoice shall contain all information required by the Contracting Authority including the reference number of this Framework Agreement, relevant Call-Off Contract Number, purchase order number, the Service Provider's name and address, a separate calculation of VAT and an adequate description of the Services provided.
- 5.5 In the event that the United Kingdom joins the European Economic and Monetary Union, the Contracting Authority shall require the Service Provider, at no additional charge, to convert any sums payable in connection with the Call-Off Contract from sterling to Euros in accordance with EC Regulation Number 1103/97.
- 5.6 All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Contracting Authority arising out of or attributable to this Framework Agreement and/or any Call-Off Contract(s) (howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) may be deducted by the Contracting Authority from monies due or which may become due to the Service Provider under this Framework Agreement and/or any Call-Off Contract(s) or the Contracting Authority may recover such amount as a debt. The Contracting Authority's and TfL Group's rights under this **clause 5.6** will be without prejudice to any other rights or remedies available to the Contracting Authority under the Call-Off Contract(s) or otherwise.
- 5.7 Save as may be prevented in law and subject to any specific procedures which may be agreed in a Call-Off Contract, which shall be in addition to this **clause 5**, if the Contracting Authority receives an invoice which the Contracting Authority reasonably believes:
- 5.7.1 specifies a Charge which is not valid or properly due;
 - 5.7.2 relates to any Deliverable which has not provided in material accordance with the relevant Call-Off Contract;
 - 5.7.3 the invoice has not been calculated correctly; or
 - 5.7.4 the invoice contains any other error or inadequacy,
- in each case a **"Disputed Charge"**, then:
- 5.7.5 the Contracting Authority shall pay to the Service Provider the part of the Charges under that invoice which is not a Disputed Charge;
 - 5.7.6 the Contracting Authority may withhold payment of the Disputed Charge in that invoice and, in that case, the Contracting Authority shall promptly (and in any event within thirty (30) days after receipt of the invoice) notify the Service Provider of the nature of the dispute and the Parties shall commence, within five (5) days after the receipt of the

Contracting Authority's notice, to resolve the dispute in accordance with the Dispute Resolution Procedure; and

5.7.7 once the dispute has been resolved, the Contracting Authority shall pay any amount due as part of that resolution within ten (10) days of such resolution.

5.8 Where the Service Provider has agreed to a rebate as set out in **Schedule 3**, then the rebate shall be calculated, accounted for and payable as set out in **clauses 5.8.1 to 5.8.4** (inclusive) below:

5.8.1 The rebate shall be calculated using and by reference to:

- (a) those Charges which have been paid in respect of Deliverables; and
- (b) those Charges which have been invoiced in respect of Deliverables; and
- (c) those Charges in respect of Deliverables which are subject to a purchase order under a Call-Off Contract and/or otherwise accrued and payable in respect of Ordered Goods and Ordered Services, in all cases in a relevant Contract Year (by reference to the Commencement Date) (the "**Rebate Charges**");

5.8.2 Within 30 days of the end of the Contract Year, the Service Provider shall provide the Contracting Authority with a statement in writing showing:

- (a) the Rebate Charges;
- (b) the rebate due to the Contracting Authority in respect of that Contract Year; and
- (c) the worked calculations showing how the rebate has been calculated (the "**Rebate Statement**");

5.8.3 Within 30 days of the date mentioned in **clause 5.8.2** (or the date the Rebate Statement is received, whichever is the later), the Contracting Authority shall consider the Rebate Statement and will either agree the Rebate Statement and the rebate due in writing and/or raise any queries it may have in relation to the Rebate Statement and the Service Provider shall promptly answer any and all such queries as the Contracting Authority may have. In the event of a dispute as to the Rebate Statement and/or the rebate due, the parties shall resolve the dispute in accordance with the Dispute Resolution Procedure; and

5.8.4 Once the Rebate Statement and the rebate has been agreed by the Contracting Authority and signed off in writing by an authorised signatory of the Contracting Authority (or determined in accordance with the Dispute Resolution Procedure), then the Service Provider shall pay the rebate to the Contracting Authority to the bank account designated by the Contracting Authority in writing within 30 days of the date of such written agreement.

- 5.9 Except where otherwise provided in this Framework Agreement (whether in **Schedule 3** or elsewhere) or in a Call-Off Contract, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and/or other expenses whatsoever incurred by the Service Provider in discharging its obligations under this Framework Agreement and/or any Call-Off Contract.
- 5.14 Interest shall accrue at the interest rate of two percent (2%) above the base rate of HSBC Bank plc from time to time on all sums due and payable under this Framework Agreement or a Call-Off Contract from the due date until the date of actual payment (both before and after judgment). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The Parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under this Framework Agreement or a Call-Off Contract in accordance with s.8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

MARKET RATE

- 5.15 The Service Provider shall use reasonable endeavours to ensure that the pricing and Charges are reasonably in line with the prevailing market rate and shall, no more than once a year demonstrate to the Contracting Authority how it is seeking to achieve this.

6. SOURCE CODE, ESCROW AND VERIFICATION SERVICES

- 6.1 The source code to any Software in which the Intellectual Property Rights are, or are to be, owned by the Contracting Authority, together with any programmers' notes and other documentation reasonably required to operate the source code in object code form and to maintain and adapt the source code, shall be supplied to the Contracting Authority when that part of the Deliverables is supplied to the Contracting Authority.
- 6.2 Where required by the Contracting Authority and agreed by the Parties in a Call-Off Contract, the source code to any Software forming part of the Service Provider's own Intellectual Property Rights and/or Third Party IPR, together with any programmers' notes and other documentation reasonably required to operate the source code in object code form and to maintain and adapt the source code ("**Escrow Materials**") shall be subject to source code deposit arrangements and verification services to be entered into, on such terms as are reasonably acceptable to the Contracting Authority (whether in relation to part or all of the Software) for the benefit of the Contracting Authority, the TfL Group and their authorised agents with either a reputable escrow company on their then standard terms (whether single or multi-user escrow) and providing for the release of the source code of such Software in the event of insolvency (or analogous events) of the Service Provider, inadequate performance of support or maintenance obligations (if any) or cessation of trade by the Service Provider. The charges payable to such escrow agent shall be borne by the Contracting Authority, unless otherwise set out and agreed in a Call-Off Contract.
- 6.3 The Service Provider shall at all times ensure that the Escrow Materials deposited with the escrow agent are capable of being used to generate and maintain and adapt the latest version of the Software and the Service Provider shall deliver to such escrow agent an updated copy of the Escrow Materials as and when necessary for this purpose or when requested to do so by the Contracting Authority.

- 6.4 This **clause 6** shall survive termination of this or part of this Framework Agreement and any Call-Off Contract.

7. TERMS RELATING TO DELIVERY, INSTALLATION, STORAGE, TITLE AND RISK

Good and the Installation of Contracting Authority's Goods

- 7.1 In relation to Goods which may be required and procured as part of any Installation Services which form part of the overall Solution delivery as part of the Services,
- 7.1.1 the cost of delivery to the Site(s) is included in the Charges; and
- 7.1.2 delivery and installation will be arranged in accordance with a Call-Off Contract.
- 7.2 The point of delivery of Ordered Goods shall be when an authorised agent of the Contracting Authority gives written acknowledgement that the Ordered Goods have been removed from the transporting vehicle and deposited at the Contracting Authority's delivery address as specified in the Order or Call-Off Contract or, where Goods are subject to Installation Services, the point of acceptance by the Contracting Authority in accordance with the Call-Off Contract. Except where otherwise specified in the Call-Off Contract, delivery shall include the unloading, stacking and/or installation of the Ordered Goods by the Service Provider's personnel, Sub-Contractors, suppliers, or carriers at such place as the Contracting Authority or duly authorised person shall reasonably direct, and the Service Provider shall at all times comply with the reasonable requirements of the Contracting Authority's Security Policies and other applicable Requirements, as may be updated from time to time by the Contracting Authority.
- 7.3 Access to the Contracting Authority's premises and any labour and equipment that may be provided by the Contracting Authority in connection with delivery (where Goods are ordered under this Framework Agreement) and installation (either of the Ordered Goods or of the Contracting Authority's Goods) shall be provided without acceptance by the Contracting Authority of any liability whatsoever and the Service Provider shall indemnify the Contracting Authority against each and every action, proceeding, liability, cost, claim loss expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands which the Contracting Authority may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Service Provider's personnel, Sub-Contractors, suppliers or carriers.
- 7.4 The Contracting Authority shall be under no obligation to accept or pay for any Ordered Goods delivered until the date of delivery or successful installation where the Ordered Goods are subject to Installation Services (whichever is the later) specified in the Call-Off Contract.
- 7.5 The Service Provider shall deliver and, where the Ordered Goods are subject to Installation Services, install the Ordered Goods or transport and/or install the Contracting Authority's Goods in good working order and in accordance with any and all specific requirements set out in a Call-Off Contract (including the Deliverables Requirements). Additionally, where required by the Contracting Authority in a Call-Off Contract, the Service Provider will, prior to delivery to the

Contracting Authority carry out such tests as are necessary to ensure that the Ordered Goods and/or the Contracting Authority's goods are functioning correctly in all material respects, and are in accordance with the Manufacturer's Specification(s) and with any requirements of the Contracting Authority set out in a Call-Off Contract (including relevant Deliverables Requirements). Any charges to be paid for such testing shall be set out in the Call-Off Contract and shall be charged at no more than the applicable rates set out in **Schedule 3**.

- 7.6 Title and risk in the Ordered Goods shall be as specified in this **clause 7**.
- 7.7 Risk in the Ordered Goods will, pass to the Contracting Authority at the time of acceptance of delivery, (unless the Contracting Authority has specified in the Call-Off Contract an acceptance process, where risk shall remain with the Service Provider, until successful completion of such acceptance process).
- 7.8 Title in the Ordered Goods will pass to the Contracting Authority upon full payment of the Charges. Pending receipt by the Service Provider of payment in full for the Goods the Contracting Authority shall take good care of the Goods and house the Goods in suitable premises and under suitable conditions whilst under its control provided however that the Service Provider shall be responsible for taking care of the Goods whilst under its own control and/or whilst it is performing the Services.
- 7.9 Where, at the Contracting Authority's request, Ordered Goods provided by the Service Provider are to be transferred to a lessor, they shall remain the property of the Service Provider until such time as the relevant lease specifies the passage of title in such Ordered Goods. At such time, the risk in such Ordered Goods shall be determined in accordance with the relevant lease.
- 7.10 The Service Provider shall pass onto the Contracting Authority and/or any lessor (as directed by the Contracting Authority) the benefit of all warranties and indemnities which come with any Installation Services and/or with the Ordered Goods, including all contractual and intellectual property indemnities and warranties.

Faults in Ordered Goods

- 7.11 Where there is fault in any Ordered Goods which cannot be repaired, the Service Provider shall check with the Contracting Authority whether there is any data (including Contracting Authority Data) residing in any Ordered Goods which requires removal or transfer to another medium prior to such Ordered Goods being returned to any manufacturer or other Third Party for repair or disposal and, where the Contracting Authority does require such removal or transfer by the Service Provider, the Service Provider shall ensure and procure that it removes or transfers such data in the manner and form reasonably required by the Contracting Authority at the relevant time.

Retention of Title

- 7.12 The Service Provider hereby grants the Contracting Authority, its agents and employees an irrevocable licence at any time (but where practicable on reasonable notice and in normal working hours) to enter any Service Provider premises where any Ordered Goods owned by the Contracting Authority and/or (where and to the extent applicable) Contracting Authority's Goods are kept to inspect or remove them. The Service Provider shall store such Ordered Goods and (where and to the extent applicable) any and all Contracting Authority's Goods separately from all other goods of the Service Provider or any Third Party and in such a way that they remain readily identifiable as the Contracting

Authority's property. The Service Provider shall ensure and procure that it obtains equivalent rights of inspection and removal where any Ordered Goods owned by the Contracting Authority and/or (where and to the extent applicable) Contracting Authority's Goods are kept at Third Party (including any Sub-Contractor) premises and that such Ordered Goods and/or (where and to the extent applicable) Contracting Authority's Goods are kept separately from all other goods of that Third Party (including any Sub-Contractor) and in such a way that they remain readily identifiable as the Contracting Authority's property. If the Contracting Authority determines in its sole discretion that any of the termination events specified in **clause 25** have occurred or are likely to occur, the Contracting Authority may, either itself or via its agent, enter any premises of the Service Provider or any Third Party (including any Sub-Contractor) where Ordered Goods owned by the Contracting Authority and/or (where and to the extent applicable) Contracting Authority's Goods are kept to remove such Ordered Goods and/or (where and to the extent applicable) Contracting Authority's Goods, as applicable.

WEEE Regulations

- 7.13 The Service Provider shall comply with relevant obligations under the WEEE Regulations, if and to the extent applicable as part of the Deliverables. Without prejudice to the generality of the foregoing the following shall apply in relation to WEE Equipment, unless varied in any Call-Off Contract, when procuring any WEE Equipment for use in accordance with the Services whether by direct purchase by the Service Provider, purchase on behalf of the Contracting Authority, lease or otherwise the Service Provider will ensure that in accordance with the WEEE Regulations that the producer of the WEE Equipment (whether that be the Service Provider or a Third Party) shall assume responsibility for financing the costs of the collection, treatment, recovery and environmentally sound disposal of:

7.13.1 all Waste Electrical and Electronic Equipment arising from the WEE Equipment; and

7.13.2 all Waste Electrical and Electronic Equipment arising from equipment placed on the market prior to 13 August 2005 where such equipment is to be replaced by the WEEE Equipment and the WEEE Equipment is of an equivalent type or is fulfilling the same function as the equipment.

- 7.14 The Service Provider shall indemnify and keep indemnified the Contracting Authority as a result of any Losses which it incurs as a result of any failure on the part of the Service Provider or the relevant producer to comply with the terms of **clause 7.13**.

8. GOVERNANCE AND REPORTING

The Parties shall each comply with their obligations, including in relation to governance and reporting, as set out in **Schedule 5** as may be varied and/or supplemented in each Call-Off Contract.

9. PERFORMANCE AND DELAY

- 9.1 In respect of performance of Services to be delivered and/or performed and/or delivery of Goods under the Call-Off Contract, the Service Provider shall provide, perform and/or complete the performance of such Service(s) and/or deliver the Goods on or before the applicable date specified in the applicable

Implementation Plan or, in the event no such date is specified, promptly having regard to the nature of the project ("**Milestone**").

- 9.2 The Contracting Authority may set out and the Parties may agree under a Call-Off Contract that certain of the Milestones shall be Key Milestone Dates. In such case, the Service Provider shall deliver the Deliverables on or before the Key Milestone Dates. If and to the extent agreed in a Call-Off Contract, then without prejudice to the Contracting Authority's other rights and remedies, the Parties may agree that certain liquidated damages may become payable in relation to any failure by the Service Provider to meet such Key Milestone Dates¹. Time shall only be of the essence of a Call-Off Contract where specifically agreed under a particular Call-Off Contract and then only in respect of Key Milestone Dates.
- 9.3 The Service Provider agrees that the Deliverables shall comply in all respects with the Service Levels and, without prejudice to the Contracting Authorities' other rights and remedies, where service credits are set out in a Call-Off Contract, the Contracting Authority shall be entitled to the service credits in relation to any failure by the Service Provider to meet such Service Levels.
- 9.4 The Service Provider shall notify the Contracting Authority in writing as soon as reasonably practicable after becoming aware of any actual or likely failure to materially comply with any Milestone and/or to comply with any Key Milestone. Such written notice shall contain a detailed explanation of the causes of, and responsibility for, the delay, details of actions taken and to be taken by the Service Provider (and, to the extent that the Service Provider considers that the Contracting Authority is responsible for such delay, actions it requests be taken by the Contracting Authority) to remedy such delay and any effects such delay may have on the performance of the Services or supply of the Goods and on the ability to materially meet the next Milestone, to meet a Key Milestone Date and/or to meet any other applicable Milestone. Without prejudice to any liability of either Party, both Parties shall use their reasonable endeavours to overcome and/or mitigate any such actual or anticipated delay.
- 9.5 If the Service Provider shall fail (to the extent that such failure was not directly due to any failure by the Contracting Authority to comply with its obligations under the Call-Off Contract) to provide the Service(s) or supply the Goods in accordance with the Call-Off Contract by the Milestone(s) then notwithstanding anything else contained in the Call-Off Contract the Service Provider shall not be entitled to any payment for any additional time spent and materials used by the Service Provider in providing the Service(s) under the applicable Call-Off Contract.

10. **WARRANTIES AND OBLIGATIONS**

- 10.1 The Service Provider warrants, represents and shall ensure that:

- 10.1.1 it provides the Contracting Authority, in good time and in any event prior to binding the Contracting Authority to buy any Goods, Software (including COTs Software), and/or Software as a Service which are not manufactured or written or owned by the Service Provider and/or Services which are to be provided by it or a Third Party and/or prior to binding the Contracting Authority to accept the provision of any other Deliverables which are not otherwise created or made by the Service

¹ Liquidated damages will be calculated in accordance with the actual burn rate/daily rate of loss on a Call-Off by Call-Off basis.

Provider, with a copy of the relevant contract and/or license terms to which the Contracting Authority will be required to be a party to and/or be subject to (including without limit any shrink-wrap terms, click-wrap terms and/or written terms). The Service Provider shall ensure that copies of all such terms are included in all Proposals given by it relating to Deliverables to be provided or where no licence or contract is to be entered into or no warranties are to be given it confirms in writing (including in its Proposals) that this is the case. The Service Provider shall use its reasonable endeavours to ensure that each Third Party whose Deliverables are going to be provided to the Contracting Authority provides a contract and/or licence terms for the benefit of the Contracting Authority, the other TfL Group members and other beneficiaries under a relevant Call-Off Contract or Order which include the warranties, terms and indemnities set out in the following clauses, mutatis mutandis (so that the relevant Third Party provider of the Goods or Services gives legal coverage and binding terms covering and including the terms, warranties and indemnities to the Contracting Authority, the TfL Group and other parties stated in that the relevant clauses and Orders and/or Call-Off Contracts): **clause 10 and clauses 21.14 to 21.17** (inclusive). If the Service Provider is unable to procure such terms without additional charge (which may include that the standard terms do not include such terms, warranties and/or indemnities and the Third Party provider will not amend them without detailed discussion), it shall promptly notify the Contracting Authority in writing who may elect, in writing, to proceed with the order / purchase and/or elect to negotiate terms itself with the Third Party provider and/or may request that the Service Provider seeks to provide better coverage via another Third Party supplier. The Contracting Authority acknowledges in the market that some suppliers will not agree to amend their terms at all or without further charge but it is nevertheless a term of this Framework Agreement for the Service Provider to seek the terms, warranties and indemnities set out above and to inform the Contracting Authority in writing if they are not available;

- 10.1.2 the benefit of any and all warranties which it receives in respect of or which otherwise accompany any and all Goods (including COTs Software), any Software as a Service and, if applicable, any Services that are provided on to the Contracting Authority and the TfL Group such that the Contracting Authority can enforce those warranties directly against such original vendors or suppliers. Where Extended Warranties are available for purchase by customers, the Service Provider shall always give the Contracting Authority the option to purchase such Extended Warranty (confirming any additional fee payable in advance to ordering the relevant Good or Service) and, if requested, shall supply such Deliverables with the Extended Warranty.
- 10.2 Without prejudice to any other warranties expressed elsewhere in this Agreement and/or any Call-Off Contract, the Service Provider warrants to the Contracting Authority (and in the case of the Contracting Authority to the TfL Group) and shall ensure that:
 - 10.2.1 this Framework Agreement will be executed by a duly authorised representative of the Service Provider and each Call-Off Contract shall be authorised by a person who has authority to bind the Service Provider;

- 10.2.2 during the Framework Period and the term of any applicable Call-Off(s), as the context permits the Service Provider:
 - 10.2.2.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company, if any, to enter into and to perform the Framework Agreement and each Call-Off Contract); and
 - 10.2.2.2 is (or will be at the time of the relevant Call-Off Contract) aware of the purposes for which the Deliverables are required and acknowledges that the TfL Group is reliant upon the Service Provider's expertise and knowledge in the supply of the Goods and the provision of the Services; and
- 10.2.3 during the Framework Period and the term of any applicable Call-Off Contract(s), all materials, equipment and goods recommended, used and/or supplied by the Service Provider in connection with the Call-Off Contract (including all Goods) shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979, sound in design, shall comply with all statutory requirements and regulations relating to their sale and use;
- 10.2.4 all equipment it includes in any network or otherwise puts into service as part of its performance of the Services shall:
 - 10.2.4.1 where applicable, comply with the Radio Equipment and Terminal Equipment Regulations 2000;
 - 10.2.4.2 in relation to Wi-Fi apparatus:
 - (a) comply with the interface requirements and standards set out in Schedule 9 of the Wireless Telegraphy (Exemptions) Regulations 2003;
 - (b) operate at the correct frequencies and operates in such a way that it remains compliant with the exemptions set out in Schedule 9 of the Wireless Telegraphy (Exemptions) Regulations 2003;
- 10.2.5 in relation to any wireless telegraphy apparatus (other than Wi-Fi apparatus) will comply with any interface requirements, standards, operate at the correct frequencies and operate in such a way to ensure that it remains compliant with the Wireless Telegraphy (Exemptions) Regulations 2003.
- 10.2.6 it will (and it will procure that all Service Provider Personnel will):
 - 10.2.6.1 use only equipment which has all necessary CE markings affixed to it;
 - 10.2.6.2 follow an appropriate declaration of conformity and have in place appropriate conformity assessment, testing and manufacturing procedures to ensure that all equipment that is puts into service, where applicable, complies with

the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000; and

10.2.6.3 in relation to Wi-Fi apparatus and any other wireless telegraphy apparatus, not cause or contribute to any undue interference to any wireless telegraphy.

10.2.7 the Service Provider shall provide the Services:

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

10.2.7.2 in conformance in all material respects with the requirements of the Contracting Authority (including any relevant Deliverables Requirements and Documentation referred to in a Call-Off Contract) and so that they fulfill the purpose indicated by or to be reasonably inferred from such requirements;

10.2.7.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and

10.2.7.4 using appropriately qualified and trained staff, and in doing so shall minimise interference to the Contracting Authority and others caused by his work;

10.2.8 all Software as a Service and Goods will, on the date on which they are supplied, and for the Warranty Period (and any Extended Warranty Period) thereafter be in material conformance with their Deliverables Requirements, any applicable specifications (including any Manufacturer's Specification), and any other requirements expressly set out in a Call-Off Contract and with their Documentation;

10.2.9 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Framework Agreement, each Call-Off Contract and for the use of the Ordered Goods and the Ordered Services;

10.2.10 where Ordered Goods are supplied by way of sale and purchase they shall be supplied with full title guarantee;

10.2.11 the Deliverables shall comply with the Standards, to the extent relevant, and the Service Provider shall ensure it complies with the Requirements in its performance of this Framework Agreement and all Call-Off Contracts (to the extent applicable) at all times;

10.2.12 the Service Provider is able to make available and to supply the List of Deliverables for the Framework Period as well as any similar lists made under Call-Off Contracts for the applicable Call-Off Contract term(s);

10.2.13 the Service Provider is able to:

- (a) provide all of the Deliverables set out in List of Types of Services for the Framework throughout the Framework Period;
- (b) provide Deliverables which shall be capable of fulfilling the Deliverables Requirements throughout the Framework Period and/or their relevant Call-Off Contract as well as;
- (c) provide any and all requirements made under Call-Off Contracts for the applicable Call-Off Contract term(s);

10.2.14 without prejudice to **clause 2.11A**, the Service Provider shall fully co-operate with the Contracting Authority's and, in the case of the Contracting Authority, the TfL Group's agents (including any Managing Agents), representatives or service providers (including suppliers of computing products and services) and supply them with such information, materials and assistance as the Contracting Authority may reasonably request or authorise from time to time; (which shall not include a request for provision of commercially sensitive information unless specifically agreed with the Service Provider in writing) but provided that **clause 32** shall override and prevail at all times;

10.2.15 all of the Service Provider's liabilities, responsibilities, and obligations shall be fulfilled in compliance with all applicable laws provided that the Contracting Authority accepts and agrees that if a change in law after the commencement date of a Call-Off Contract which is relevant to such Call-Off Contract shall have a material impact on the Service Provider's performance of the applicable Call-Off Contract in terms of cost or operationally, then unless the Service Provider is having to amend its operations for more than one Contracting Authority due to a general change in law (in which case the Service Provider shall promptly implement the changes necessary to comply with the amended policy/standard without additional charge), then the Service Provider agrees to promptly implement the necessary changes to ensure it complies with the policy/standards (including the Standards) but the effect of the change shall be dealt with through the Change Control Procedure;

10.2.16 in performing its obligations under the Framework Agreement and any and all Call-Off Contracts, the Service Provider shall not damage the reputation of the Contracting Authority nor the TfL Group;

10.2.17 the Service Provider has and shall have taken and shall continue to take all steps in accordance with good industry practice to prevent the:

- 10.2.17.1 introduction, creation and/or propagation of any Virus or disruptive element; or
- 10.2.17.2 unauthorised use of and modification or access to (or into); or
- 10.2.17.3 loss of, or corruption or damage to,

the Deliverables which it delivers under a Call-Off Contract, systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Contracting Authority and the TfL Group;

- 10.2.18 the Ordered Goods and Ordered Services will be free from material errors and material defects in design, manufacture or materials throughout the applicable Warranty Periods and any and all Extended Warranty periods; and
- 10.2.19 the media on which any Deliverables is supplied will be free from material defects in materials and workmanship under normal use.
- 10.3 The Service Provider warrants and undertakes to the Contracting Authority as a condition of each Call-Off Contract that:
- 10.3.1 it shall and has examined all documents forming the relevant Call-Off Contract and is not aware of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of his work in accordance with the Framework Agreement and the relevant Call-Off Contract;
- 10.3.2 it has all the resources including financial, technical and human resources as are required to carry out and complete his work in accordance with the Framework Agreement and the relevant Call-Off Contract, and
- 10.3.3 their work and those parts of the Deliverables for which the Service Provider is responsible will be designed and specified using the best modern principles and practices at the time of preparing the design and in accordance with good industry practice.

Design Responsibility/Approvals

- 10.4 The Service Provider warrants to the Contracting Authority that insofar as it is responsible for the design of Deliverables, it has exercised and shall exercise in the design of Deliverables all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out services of a similar scope, nature, timescale and complexity and on a similar site or at a similar location to the relevant Deliverables.
- 10.5 The Service Provider warrants to the Contracting Authority that it shall use the reasonable skill, care and diligence set out in **clause 10.4** to see that the Deliverables instructed pursuant to each Call-Off Contract shall comply with any performance specification or requirement included or referred to in the relevant Call-Off Contract or the Service Provider's design (including any changes to the relevant Call-Off Contract) and shall comply with all statutory requirements and Applicable Laws. The Service Provider warrants that any part of the Deliverables designed by the Service Provider will interface and integrate fully with any design prepared by, or on behalf, of the Contracting Authority.
- 10.6 Unless the relevant Call-Off Contract indicates otherwise the Service Provider shall obtain from and/or give to Third Parties all licences, consents, notices and approvals necessary or appropriate to enable them to deliver the Deliverables instructed pursuant to each Call-Off Contract other than those which the relevant Call-Off Contract state will be obtained or given by the Contracting Authority or Third Parties. The Service Provider shall ensure that, prior to completion of the relevant Deliverables and wherever necessary during the course of delivery of the relevant Deliverables, the conditions and requirements of the licences, consents, notices and approvals, whether obtained by the Service Provider or the

Contracting Authority, are complied with and that the same are renewed whenever necessary or appropriate.

- 10.7 The Service Provider shall ensure that the Deliverables and any software, electronic or magnetic media, hardware or computer system recommended by the Service Provider for use in connection with the Call-Off Contract shall:

10.7.1.1 where specified by the Contracting Authority in the relevant Call-Off Contract, be compliant with the use of the Euro / Euro Compliant;

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

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

and any variations, enhancements or actions undertaken by the Service Provider in respect of such software, electronic or magnetic media, hardware or computer system shall not affect the Service Provider's compliance with this **clause 10.7**.

- 10.8 The Service Provider acknowledges that any breach of the warranties in **clauses 10.2 to 10.7** (inclusive) shall be remedied as a matter of urgency at no cost to the Contracting Authority. To the extent that any such breach(es) re-occurs (notwithstanding, in relation to any limited warranty periods contemplated in **clause 10.2**, the fact that the relevant Warranty Period or Extended Warranty Period may have ended) then, subject to the cause of the said re-occurrence being the same or materially similar to that which caused the initial breach(es), the Service Provider shall forthwith supply such further services as are necessary to remedy such breach(es) and to prevent any further re-occurrence thereof. Any services or repairs required to be performed pursuant to this **clause 10.8** or any Call-Off Contract shall (unless expressly stated to be subject to a support service charge) be performed at no additional cost to the Contracting Authority.

- 10.9 Without prejudice to **clause 10.8**, additional or alternative obligations and timings relating to breach of warranties and repairs may be set out in a Call-Off Contract and, if so, shall apply in relation to the relevant Call-Off Contract.

- 10.10 Each warranty and obligation in this **clause 10** shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Framework Agreement or any Call-Off Contract.

- 10.11 Except as expressly stated in this Framework Agreement or a Call-Off Contract, all warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

11. CONFLICT OF INTEREST

- 11.1 The Service Provider warrants that it does not and will not have at the Commencement Date or commencement date of any Call-Off Contract any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or where TfL is the Contracting Authority any TfL Group Member, save to the extent fully disclosed to and approved by the Contracting Authority.
- 11.2 The Service Provider shall check for any conflict of interest at regular intervals throughout the Term and through the term of each Call-Off Contract and in any event not less than once in every six (6) months and shall notify the Contracting Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or where TfL is the Contracting Authority any TfL Group Member and shall work with the Contracting Authority to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Contracting Authority's satisfaction, provided that, where the Contracting Authority is not so satisfied, it may terminate the Framework Agreement and/or any or all Call-Off Contracts made under it in accordance with **clause 25.2.4**.

12. ACCESS TO THE CONTRACTING AUTHORITIES' PREMISES

- 12.1 The extent of and the times of any and all access to any Contracting Authorities' Premises made available to the Service Provider in connection with the proper performance of one or more Call-Off Contracts shall be as set out in the Call-Off Contract(s) and shall be used by the Service Provider solely for the purpose of performing the Services and/or delivering the Goods. The Service Provider shall:
- 12.1.1 request access to any Contracting Authorities' Premises at the earliest opportunity and in accordance with all of the relevant Contracting Authority's or Other Contracting Parties' procedures, requirements, policies and standards as notified to the Service Provider from time to time which are applicable to the Contracting Authorities' Premises, including the Standards;
 - 12.1.2 have no guarantee that any access it requests to the Contracting Authorities' Premises shall be granted and acknowledges that the Contracting Authority shall use only its reasonable endeavours to grant such access and shall factor this into its delivery of the Deliverables;
 - 12.1.3 for the period of permitted access, have the use of such the Contracting Authorities' Premises as licensee and shall not have or purport to claim any sole, uninterrupted or exclusive right to possession or to possession of any particular part of such the Contracting Authorities' Premises;
 - 12.1.4 use any access which it has been granted to the Contracting Authorities' Premises in an efficient and productive manner and so as to ensure optimal use of the access with minimal disruption and disturbance to the Contracting Authority, Other Contracting Parties or any Third Party;
 - 12.1.5 prior to vacating the Contracting Authorities Premises (each time and at the end of such access and supply of the Deliverables), clear away and remove all of its facilities, plant, equipment, rubbish and surplus goods and materials and leave the Contracting Authorities Premises in a clean and workmanlike condition;

- 12.1.6 vacate such the Contracting Authorities' Premises in accordance with the terms on which the access has been granted or, if sooner, as soon as the relevant Goods have been delivered and/or the Services have been performed or at such earlier date as the Contracting Authority may reasonably require. If the Service Provider is asked to vacate the Contracting Authorities' Premises before the termination of the Call-Off Contract, the Service Provider shall not be liable for any delay in the supply of the Deliverables or the performance of the Services to the extent so caused by the request to vacate (provided such request is not due to the Service Provider's breach or default);
- 12.1.7 not exercise or purport to exercise any rights in respect of any of the Contracting Authorities' Premises in excess of those granted under this **clause 12** or otherwise expressly permitted in a Call-Off Contract;
- 12.1.8 ensure that the Service Provider Personnel carry any identity passes issued to them by the Contracting Authority at all relevant times; and
- 12.1.9 not damage the Contracting Authorities' Premises or any assets of the TfL Group; and
- 12.1.10 immediately return to the Contracting Authority in good working order and satisfactory condition (in the reasonable opinion of the Contracting Authority) all assets of the Contracting Authority used by the Service Provider in the performance of the Services.
- 12.2 Unless agreed otherwise in writing between the Parties (referencing the relevant Call-Off Contract), the Contracting Authority shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Service Provider.
- 12.3 The Service Provider shall, while on the Contracting Authorities' Premises, comply with all of the relevant TfL Group's or Other Contracting Parties' procedures, requirements, policies and standards notified to it from time to time, including the Standards and including complying with the list of security and site working arrangements and other applicable Requirements set out in **Schedule 4**, as may be updated from time to time by the Contracting Authority, and shall ensure that all of the Service Provider Personnel comply with all such procedures and requirements.
- 12.4 The Contracting Authority reserves the right, acting reasonably:
 - 12.4.1 to refuse to admit to any of the Contracting Authorities' Premises any of the Service Provider Personnel who fail to comply with any of the TfL Group's procedures, requirements, policies and standards and working arrangements referred to in **clause 13**;
 - 12.4.2 to instruct any of the Service Provider Personnel to leave any of the Contracting Authorities' Premises at any time and such Service Provider Personnel shall comply with such instructions immediately.
- 12.5 The Service Provider shall promptly notify the Service Provider Personnel and the Contracting Authority of any health and safety hazards that exist or may arise in connection with the performance of the Services:
 - 12.5.1 used by the Service Provider in the performance of the Services.

12.6 The Service Provider shall notify the Commercial Manager in writing within twenty-four (24) hours if it fails to use any access to the Contracting Authorities' Premises which it has requested and been granted.

12.7 Nothing in this **clause 12** shall create or be deemed to create the relationship of landlord and tenant in respect of any of the Contracting Authorities' Premises between the Service Provider and any TfL Group Member.

13. **COMPLIANCE WITH POLICIES AND LAW**

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

13.1.1 shall procure that all the Service Provider Personnel comply with all of the Standards that are relevant to the performance of the Call-Off Contract and/or Services) and, where the GLA is the Contracting Authority, the Contracting Authority's Dignity at Work policy as updated from time to time and with the GLA's Code of Ethics as updated from time to time and, where TfL is the Contracting Authority, TfL's workplace harassment policy as updated from time to time (copies of which are available on request from TfL) and with TfL's Code of Conduct (which is available on TfL's website, www.tfl.gov.uk) including those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Contracting Authority for personnel working at Contracting Authorities' Premises or accessing the Contracting Authority's computer systems. The Contracting Authority shall provide the Service Provider with copies of such policies and standards on request. In the event that the Services are being provided to both the GLA and TfL, then the policies and standards of each of the GLA and TfL shall apply as appropriate. The Contracting Authority accepts and agrees that if it materially amends a Standard relevant to this Framework Agreement after the commencement date of a Call-Off Contract which is relevant to such Call-Off Contract, then to the extent such amendment shall have a material impact on the Service Provider's performance of the applicable Call-Off Contract in terms of cost or operationally, then unless the Service Provider is having to amend its operations for more than one Contracting Authority due to a general change in law (in which case the Service Provider shall promptly implement the changes necessary to comply with the amended policy/standard without additional charge), then the Service Provider agrees to promptly implement the necessary changes to ensure it complies with the policy/standards but the effect of the change shall be dealt with through the Change Control Procedure;

13.1.2 shall provide the Deliverables in compliance with and the Service Provider Personnel comply with all statutory requirements as well as all other Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the Service Provider's business and/or the Contracting Authority's business, from time to time in force which are or may become applicable to the Deliverables. The Service Provider shall promptly notify the Contracting Authority if the Service Provider is required to make any change to the Deliverables for the purposes of complying with its obligations under this **clause 13.1.2**;

- 13.1.3 without limiting the generality of **clause 13.1.2**, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- 13.1.4 acknowledges that the Contracting Authority is under a 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 Contracting Authority where possible in satisfying this duty;
- 13.1.5 acknowledges that where the Contracting Authority is the GLA, the GLA is under a duty under section 404(2) of the Greater London Authority Act 1999 and where the Contracting 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:
 - 13.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
 - 13.1.5.2 eliminate unlawful discrimination; and
 - 13.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation,
- 13.1.6 and in providing the Deliverables, the Service Provider shall assist and co-operate with the Contracting Authority where possible to enable the Contracting Authority to satisfy its duty;
- 13.1.7 Where the GLA is the Contracting Authority, the Service Provider shall:
 - 13.1.7.1 comply with policies developed by the Contracting Authority with regard to compliance with the Contracting Authority’s duties referred to in **clause 13** above as are relevant to the Framework Agreement, the Call-Off Contracts and the Service Provider’s activities;
 - 13.1.7.2 obey directions from the Contracting Authority with regard to the conduct of the Framework Agreement and the Call-Off Contracts in accordance with the duties referred to in **clauses 13.1.4 to 13.1.5** (inclusive);
 - 13.1.7.3 assist, and consult and liaise with, the Contracting Authority with regard to any assessment of the impact on and relevance to the Framework Agreement and/or Call-Off Contract(s) of the duties referred to in **clauses 13.1.4 to 13.1.5** (inclusive);
 - 13.1.7.4 on entering into any contract with a Sub-Contractor in relation to this Framework Agreement and/or the Call-Off Contracts, impose obligations upon the Sub-Contractor to

comply with this **clause 13.1.7** as if the Sub-Contractor were in the position of the Service Provider;

13.1.7.5 provide to the Contracting Authority, upon request, such evidence as the Contracting Authority may require for the purposes of determining whether the Service Provider has complied with this **clause 13.1.7**. In particular, the Service Provider shall provide any evidence requested within such timescale as the Contracting Authority may require, and co-operate fully with the Contracting Authority during the course of the Contracting Authority's investigation of the Service Provider's compliance with its duties under this **clause 13.1.7**; and

13.1.7.6 inform the Contracting Authority forthwith in writing should it become aware of any proceedings brought against it in connection with this Framework Agreement by any person for breach of the Equality Act 2010.

13.1.8 shall promptly notify the Service Provider Personnel and the Contracting Authority of any health and safety hazards that exist or may arise in connection with the performance of the Deliverables; and

13.1.9 shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it.

13.1.10 In all cases, the costs of compliance with this **clause 13.1** shall be borne by the Service Provider.

13.2 In providing the Deliverables, the Service Provider shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) for the need to:

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

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

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

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

Work Related Road Risk

13.3 For the purposes of **clauses 13.4 to 13.14** (inclusive) of this Framework Agreement, the following expressions shall have the following meanings:

"Approved Driver Training" the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training details of which can be found at:

www.fors-online.org.uk

"Bronze Accreditation"	the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
"Car-derived Vans"	a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of either goods and/or equipment;
"Class VI Mirror"	a mirror that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC;
"Close Proximity Sensor"	a device consisting of a sensor system that detects objects in a vehicle's blind spot and alerts the driver via either of both in-cab visual or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle's indicators are engaged;
"Collision Report"	a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;
"Driver"	any employee of the Service Provider (including an agency driver), who operates Freight Vehicles on behalf of the Service Provider while delivering the Services;
"DVLA"	Driver and Vehicle Licensing Agency;
"FORS"	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
"FORS Standard"	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk ;
"Freight Vehicle"	a Lorry, a Van or a Car-derived Van;
"Fresnel Lens"	a clear thin plastic lens that is press fitted to a lorry window on the passenger side and that allows the driver to see that which is in the vehicle's blind spot;
"Gold Accreditation"	the highest level of accreditation within the

FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk;

"Lorry"	a vehicle with an MAM exceeding 3,500 kilograms;
"MAM"	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
"Side Guards"	guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
"Silver Accreditation"	the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk ;
"Van"	a vehicle with a MAM not exceeding 3,500 kilograms.

Fleet Operator Recognition Scheme Accreditation

13.4 Where the Service Provider operates Freight Vehicles, it shall within 90 days of the date of the Framework Agreement:

13.4.1 (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Contracting Authority, is an acceptable substitute to FORS (the "Alternative Scheme"); and

13.4.2 (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or an equivalent within the Alternative Scheme;

provided always that where the Contracting Authority is not TfL or a subsidiary thereof this **clause 13.4** and **clauses 13.5** and **13.6** shall only apply where the Service Provider uses Freight Vehicles to provide the Services.

13.5 The Service Provider shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain an equivalent standard within the Alternative Scheme. Alternatively, where the Service Provider has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

13.6 The Service Provider shall ensure that those of its sub-contractors who operate Freight Vehicles shall comply with **clauses 13.4** and **13.5** as if they applied directly to the sub-contractor.

Safety Equipment on Vehicles

- 13.7 The Service Provider shall ensure that every Lorry, which it uses to provide the Services, shall:
- 13.7.1 have Side Guards, unless the Service Provider can demonstrate to the reasonable satisfaction of the Contracting Authority that the vehicle will not perform the function for which it was built if Side Guards are fitted;
 - 13.7.2 have a close proximity warning system fitted comprising:
 - 13.7.2.1 a front-mounted, rear-facing CCTV camera with in-cab live feed from the said camera or a Fresnel Lens where the Fresnel Lens provides a reliable alternative to the CCTV camera and where the Service Provider has obtained the Contracting Authority's approval to use the Fresnel Lens, which approval the Contracting Authority may withhold in its unfettered discretion;
 - 13.7.2.2 a Close Proximity Sensor;
 - 13.7.2.3 have a Class VI Mirror; and
 - 13.7.2.4 bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.
- 13.8 The Service Provider shall ensure that every Van, which it uses to provide the Services, shall bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

Driver Licence Checks

- 13.9 The Service Provider shall ensure that each of its Drivers has a driving licence check with the DVLA or such equivalent authority before that Driver commences delivery of the Services and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licenses only), or the Service Provider's risk scale, provided that the Service Provider's risk scale has been approved in writing by the Contracting Authority within the last 12 months:
- 13.9.1 0 – 3 points on the driving licence – annual checks;
 - 13.9.2 4 – 8 points on the driving licence – six monthly checks;
 - 13.9.3 9 – 11 points on the driving licence – quarterly checks; or
 - 13.9.4 12 or more points on the driving licence – monthly checks,
- provided always that where the Contracting Authority is not TfL or a subsidiary thereof this **clause 13.9** and **clause 13.10** shall only apply where the Drivers are engaged in the provision of Services.

Driver Training

- 13.10 The Service Provider shall ensure that each of its Drivers who has not undertaken:
- 13.10.1 Approved Driver Training (or training, which in the reasonable opinion of the Contracting Authority, is an acceptable substitute) in the last three

years, undertakes Approved Driver Training or the said substitute training within 60 days of the commencement of this Framework Agreement; and

- 13.10.2 a FORS e-learning safety module in the last 12 months, undertakes a FORS e-learning safety module (or e-learning, which in the reasonable opinion of the Contracting Authority, is an acceptable substitute).

Collision Reporting

- 13.11 Within 15 days of the Commencement Date, the Service Provider shall provide to the Contracting Authority a Collision Report. The Service Provider shall provide to the Contracting Authority an updated Collision Report on a quarterly basis and within five working days of a written request from the Contracting Authority.

FORS Reports

- 13.12 Within 30 days of its achieving Bronze Accreditation or equivalent within the Alternative Scheme, the Service Provider shall make a written report to the Contracting Authority at fors@tfl.gov.uk detailing its compliance with **clauses 13.7, 13.8, 13.9 and 13.10** of this Framework Agreement (the "Safety, Licensing and Training Report"). The Service Provider shall provide updates of the Safety, Licensing and Training Report to the Contracting Authority at fors@tfl.gov.uk on each three month anniversary of its submission of the initial Safety, Licensing and Training Report.

Obligations of the Service Provider Regarding Subcontractors

- 13.13 The Service Provider shall ensure that each of its subcontractors that operates the following vehicles shall comply with the corresponding provisions of this Framework Agreement as if those subcontractors were a party to this Framework Agreement:

13.13.1 For Lorries – **clauses 13.7, 13.9, 13.10 and 13.11**; and

13.13.2 For Vans – **clauses 13.8, 13.9, 13.10 and 13.11**.

Failure to Comply with Freight-related Obligations

- 13.14 Without limiting the effect of any other clause of this Framework Agreement relating to termination, if the Service Provider fails to comply with **clauses 13.4, 13.5, 13.6, 13.7, 13.9, 13.10, 13.11, 13.12 and 13.13**:

13.14.1 the Service Provider has committed a material breach of this Framework Agreement; and

13.14.2 the Contracting Authority may refuse the Service Provider, its employees, agents and Freight Vehicles entry onto any property that is owned, occupied or managed by the Contracting Authority for any purpose (including but not limited to deliveries).

14. MISCELLANEOUS COMPLIANCE OBLIGATIONS

14.1 Corrupt Gifts and Payment of Commission

The Service Provider shall not, and shall ensure that its employees, agents and Sub-Contractors do not, pay any commission, fees or grant any rebates to any

employee, officer or agent of the Contracting Authority or where TfL is the Contracting Authority any TfL Group Member nor favour any employee, officer or agent of the Contracting Authority or where TfL is the Contracting Authority any TfL Group Member with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Contracting Authority or where TfL is the Contracting Authority any TfL Group Member other than as a representative of the Contracting Authority, without the Contracting Authority's prior written approval.

Health & Safety and CDM Regulations

- 14.2 The Service Provider shall act in accordance with the health and safety requirements stated in the relevant Call-Off Contract and each Call-Off Contract and shall co-operate with any persons having health and safety responsibilities on or adjacent to the Contracting Authority's Premises for the effective discharge of all such responsibilities. Without prejudice to the generality of the above, if a Safety Breach is committed by one of the Service Provider's employees or agents or by any Sub-Contractor (or one of the Sub-Contractor's employees or agents) then the relevant Contracting Authority may (at his sole discretion) choose to serve a warning notice upon the Service Provider instead of exercising his right to terminate with immediate effect pursuant to **clause 25** and unless, within thirty (30) days of receipt of such warning notice, the Service Provider removes or procures the removal of the relevant person or Sub-Contractor (as the case may be) from the relevant Site and (if necessary) procures the provision of the affected Deliverables by another person or Sub-Contractor this constitutes a material breach of the relevant Call-Off Contract and entitles the relevant Contracting Authority to terminate the relevant Call-Off Contract or (in the case of, in TfL's discretion, safety breaches) the Framework Agreement, in each case in whole or in part, with immediate effect in accordance with **clause 25**.

15. EQUIPMENT

- 15.1 Risk in:
- 15.1.1 all of the Service Provider's Equipment shall be with the Service Provider at all times; and
- 15.1.2 all other equipment and materials forming part of the Deliverables ("**Materials**") shall be with the Service Provider at all times unless or until ownership and risk transfers in accordance with the terms of the Call-Off Contract or this Framework Agreement,
- regardless of whether or not the Service Provider's Equipment and Materials are located at the Contracting Authorities' Premises.
- 15.2 The Service Provider shall ensure that all of the Service Provider's Equipment and all Materials meet all minimum safety standards required from time to time by law.
- 15.3 All of the Service Provider's Equipment which the Service Provider brings to the Contracting Authorities' Premises shall be removed by the Service Provider on termination of the Framework Agreement or the Call-Off Contract, as applicable, and the Contracting Authority shall provide the Service Provider with such access to the Contracting Authorities' Premises as is reasonably required to enable such removal.

16. **QUALITY AND BEST VALUE**

- 16.1 The Service Provider acknowledges that the Contracting Authority is a best value authority for the purposes of the Local Government Act 1999 and as such the Contracting Authority is required to make arrangements to secure continuous improvement in the way it exercises its functions (having regard to a combination of economy, efficiency and effectiveness) and, as such, the Service Provider shall, where reasonably requested by the Contracting Authority, participate in any relevant best value review.
- 16.2 Where the GLA is the Contracting Authority then in accordance with the statutory requirement set out in section 61(3) of the Greater London Authority Act 1999, the Service Provider shall send such representatives as may be requested to attend the Greater London Assembly for questioning in relation to a relevant Call-Off Contract. The Service Provider acknowledges that it may be liable to a fine or imprisonment if it fails to comply with a summons to attend.

17. **RECORDS, AUDIT AND INSPECTION**

- 17.1 The Service Provider shall, and shall procure that its Sub-Contractors shall:
- 17.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Deliverables and the Service Provider's obligations under the Framework Agreement, the Call-Off Contract(s) and all transactions entered into by the Service Provider for the purposes of the Framework Agreement and the Call-Off Contract(s) (including time-sheets for the Service Provider Personnel where such records are material to the calculation of the Charges which shall apply to Services only) ("**Records**"); and
 - 17.1.2 retain all Records during the Term and for a period of not less than 2 years (or such longer period as may be required by law or set out in a Call-Off Contract) following termination or expiry of the later of the Framework Agreement and any Call-Off Contracts ("**Retention Period**").
- 17.2 The Contracting Authority and any person nominated by the Contracting Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Service Provider what the Contracting Authority considers to be reasonable notice and at any reasonable time to inspect any aspect of the Service Provider's performance of the Deliverables (including compliance with **clause 13.1**) and the performance of the Service Provider under each Call-Off Contract and the Service Provider shall give all reasonable assistance to the Contracting Authority or its nominee in conducting such inspection, including making available documents and staff for interview provided that such audit for each Call-Off Contract and the Framework Agreement shall be no more than once a year in each case. Except where:
- 17.2.1 an audit is imposed on the Contracting Authority by a regulatory body;
 - 17.2.2 the Contracting Authority has reasonable grounds for believing that the Service Provider has not complied with its obligations under this Agreement; or
 - 17.2.3 an audit relates to any security matters (including where the Contracting Authority believes that a breach of security has occurred or is likely to occur),

17.3 The Service Provider shall allow the Contracting Authority to audit its screening process in full and provide access to records at the Service Provider's site(s) when requested by the Contracting Authority providing reasonable notice. The Service Provider's screening process may, at the Contracting Authority's option and requirement, be audited during Mini-Competition and personnel will be agreed on a Call-Off Contract basis.

17.4 The Contracting Authority reserves the right to audit, throughout the duration of the Call-Off Contract(s), in the manner permitted by this **clause 17**.

18. **CHANGE CONTROL PROCEDURE**

18.1 Any and all changes to the Framework Agreement which have a material impact on timings, the charges and/or cost shall be made in accordance with the Change Control Procedure set out in **Schedule 8**.

18.2 Save as where expressly provided for to the contrary, any and all changes to a Call-Off Contract (including the Deliverables to be supplied under any Call-Off Contract) shall be made in accordance with the Change Control Procedure set out in that Call-Off Contract.

19. **INSURANCE**

19.1 The Service Provider shall, at its sole cost, obtain and maintain the Insurances.

19.2 The Service Provider shall:

19.2.1 procure that its public liability insurance extends to indemnify the Contracting Authority as principal;

19.2.2 procure that its public liability insurance, employer's liability insurance and product liability insurance includes an indemnity to principal clause;

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

19.2.4 where the Insurances contain a care, custody or control exclusion, procure that the relevant policy is endorsed so as to delete the exclusion in respect of any of the Other Contracting Parties' Premises (including contents) that are occupied by the Service Provider for the purpose of performing the Services and delivering the Deliverables;

19.2.5 if required by the Contracting Authority, procure that prior to cancelling or changing any term of any Insurances, such that it no longer meets the requirements set out in the Call-Off Contract, the insurer or insurers under such Insurances give the Contracting Authority not less than thirty (30) days' notice of intention to cancel or make such change;

19.2.6 bear the cost of all or any excesses under the Insurances;

- 19.2.7 notify the Contracting Authority as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any Insurance lapsing or being terminated or the cover under it being reduced or modified;
 - 19.2.8 notify the Contracting Authority as soon as reasonably practicable in writing upon becoming aware of any claim, event or circumstance which is likely to give rise to any claim or claims in aggregate in respect of the insurance policies held by the Service Provider which are relevant to the Insurances in excess of one million pounds (£1,000,000) or the figure set out in the relevant Call-Off Contract, if different;
 - 19.2.9 promptly and diligently deal with all claims under the Insurances (or any of them) and in accordance with all insurer requirements and recommendations; and
 - 19.2.10 in relation to any claim settled under the Insurances and to the extent that the proceeds of such claim are payable to the Service Provider, pay the proceeds to the person who suffered the loss or damage that gave rise to the claim (whether the Contracting Authority, a TfL Group Member or any Third Party).
- 19.3 If the required levels of Insurances would not be available to be called upon by the Contracting Authority due to claims to a Third Party(ies), then the Service Provider shall immediately increase its insurances so that the levels are reinstated.
- 19.4 If the Service Provider is in breach of **clause 19.2** and does not remedy such breach within thirty (30) days of notice from the Contracting Authority to do so, then such breach shall be considered to be a material breach under the Framework Agreement entitling the Contracting Authority to terminate the Framework Agreement and/or a relevant Call-Off Contract without prejudice to any of its other rights, powers or remedies.
- 19.5 The Service Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the Insurances being or becoming void, voidable or unenforceable.
- 19.6 In relation to Insurances which must be held for a period which extends beyond termination, this **clause 19** shall survive termination of this Framework Agreement and any Call-Off Contract.
20. **THE TFL GROUP'S DATA**
- 20.1 The Service Provider acknowledges the Contracting Authority's and the TfL Group's ownership of Intellectual Property Rights which may subsist in the Contracting Authority's and the TfL Group's data. The Service Provider shall, save where necessary in relation to its obligations to remove and/or transfer data under **clause 7.11**, not delete or remove any copyright notices contained within or relating to the data.
- 20.2 The Service Provider and the Contracting Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of the Contracting Authority's and the TfL Group's data and to prevent any corruption or loss of the Contracting Authority's and the TfL Group's data.

21. **INTELLECTUAL PROPERTY RIGHTS**

- 21.1 Save as granted under this Framework Agreement or in a Call-Off Contract, neither the Contracting Authority nor the Service Provider shall acquire any right, title or interest in the other Party's (and additionally in the case of the Contracting Authority, the TfL Group's) Intellectual Property Rights which existed prior to the Commencement Date or prior to the date of a relevant Call-Off Contract.
- 21.2 The Service Provider acknowledges that the Contracting Authority Data is the property of the Contracting Authority and the Contracting Authority hereby reserves all Intellectual Property Rights which may subsist in the Contracting Authority Data.
- 21.3 The Service Provider shall ensure that no unlicensed software or, subject to **clause 21.5**, open source software is supplied (whether as a Deliverable or otherwise), interfaced with and/or embedded within any software which is proprietary to the Contracting Authority (or a TfL group Member) or which is developed by or on behalf of the Service Provider under this Framework Agreement. Subject to the provisions of **clauses 21.4** and **21.5**, COTS Software may contain open source software.
- 21.4 The Service Provider can provide open source software to the Contracting Authority where it is part of COTS Software or, in relation to other Software, where the Contracting Authority agrees to this in writing as part of a Call-Off Contract and/or Order, provided that at all times the Service Provider agrees to supply the Contracting Authority with copies of all relevant open source licensing terms in advance to providing such Software and that the Service Provider shall not do or allow to be done any act or omission which would cause the open source licence terms relating to such open source software to be breached.
- 21.5 Subject to **clauses 21.7** and **21.8**, the Service Provider shall procure that the owners or the authorised licensors of any COTS Software or other Third Party Software hereby grant a licence to the Contracting Authority on the COTS Software or Third Party Software owner's standard licence terms or such other license terms requested in a Call-Off Contract (provided they can reasonably be procured from such Third Party Software or COTS Software provider).
- 21.6 The Service Provider hereby grants to the Contracting Authority a non-exclusive licence to copy the descriptions of the Ordered Goods and Ordered Services (if any), including technical specifications, user manuals, operating manuals, process definitions and procedures, for any purpose that is connected with or otherwise incidental to the exercise of the rights granted to the Contracting Authority under this **clause 21**.
- 21.7 Where any Third Party Software or COTS Software is being licensed to the Contracting Authority:
- 21.7.1 the Service Provider shall ensure that such Third Party Software or COTS Software is licensed directly from the owner to the Contracting Authority or, where agreed in a Call-Off Contract sub-licensed to the Contracting Authority by the Service Provider; and
- 21.7.2 the Contracting Authority shall not, by virtue of the Third Party Software or COTS Software owner's standard licence terms (or otherwise) be required to pay charges directly to the Third Party Software owner or any other Third Party but shall pay the Service Provider who shall be

responsible for paying such COTS Software Provider/Third Party. Where Third Party Software or COTS Software owner's licence terms require payment by the Contracting Authority to the Third Party Software/COTS Software owner or any other Third Party, the Service Provider shall pay that party on the Contracting Authority's behalf as stated above or, if not, shall indemnify (and keep indemnified) the Contracting Authority for all such charges and any associated taxes payable.

21.8 Where the Service Provider grants or procures a licence/licences to use Intellectual Property Rights in Software (other than Bespoke Software which is provided for in **clause 21.11** below) under or in accordance with this Framework Agreement, the Service Provider shall:

21.8.1 ensure that such licenses are:

- (a) assignable to all permitted assignees under this Framework Agreement and/or as otherwise stated in a relevant Call-Off Contract including, in the case where TfL is the Contracting Authority, to the TfL Group Members and, in all cases, to the Contracting Authority's agents who work as individual sub-contractors or as outsourced sub-contractors for the Contracting Authority (and/or, where relevant to the TfL Group or the Other Contracting Parties) and who are contracted to support or develop relevant Software on their behalf;
- (b) sub-licensable to all users envisaged by this Framework Agreement and/or as may be set out under a Call-Off Contract (and including the Contracting Authority and, where the Contracting Authority is the Contracting Authority, the TfL Group);
- (c) fully transferable so that the Software can be used on different equipment (where technically possible) and so that the individual licenses (where licensed on a per user basis) are transferable between the Contracting Authority, Other Contracting Parties' and other TfL Group Members); and
- (d) subject to **clause 21.8.2**, shall, where commercially possible, ensure that such licenses are provided without additional charge being added by virtue of the extended license/user rights referred to in **clause 21.8.1** above;

21.8.2 where charges are payable ("Additional Charges") for assignment, sub-licensing or transfer of such licenses as set out in **clause 21.8.1** above, the Service Provider shall only be permitted to pass on the Additional Charges to the Contracting Authority where the Service Provider has provided written notification of such Additional Charges to the Contracting Authority prior to such licence being entered into and the Contracting Authority has consented in writing to pay such Additional Charges and otherwise shall agree such lesser licence terms as the Contracting Authority may wish to accept in writing;

21.8.3 where the Contracting Authority would be obliged to pay the Additional Charges but the Contracting Authority did not provide its consent to them in accordance with **clause 21.8.2**, indemnify (and keep

indemnified) the Contracting Authority for all such charges and associated taxes payable.

- 21.9 If the Service Provider cannot obtain for the Contracting Authority the rights set out in **clause 21.8.1**, the Service Provider shall, prior to such licence being entered into, consult with the Contracting Authority on whether the rights that can be obtained are nevertheless acceptable to the Contracting Authority or whether the Service Provider should seek to use an alternative provider.
- 21.10 To the extent that the Service Provider creates any materials (in whatever form or media), outside the scope of the open source licensing terms, including training, marketing, promotional or publicity materials and Documentation, relating to the provision of the Ordered Goods and Ordered Services (**"Materials"**) it shall provide copies of all Materials to the Contracting Authority promptly and the Service Provider hereby grants to the Contracting Authority and the TfL Group Members a royalty free, irrevocable, non-exclusive licence for such term as the Contracting Authority shall require to use all and any Intellectual Property Rights in the Materials as it shall reasonably require with the ability to sub-licence the same.
- 21.11 Unless stated otherwise in a Call-Off Contract, all Intellectual Property Rights of whatever nature in the Services (other than Software as a Service, which shall be licensed as if it were Software which is a Good) and all Intellectual Property Rights in Bespoke Software (**"the Contracting Authority Rights"**) whether created by the Service Provider or any of the Service Provider's Personnel shall or shall on creation of the same be and remain vested in the Contracting Authority. Prior to such vesting, the Service Provider grants the Contracting Authority, the Other Contracting Parties and the TfL Group a perpetual, royalty-free, worldwide and transferable licence to use, adapt, translate, support and sub-license the Contracting Authority Rights to the extent necessary for the Contracting Authority, the Other Contracting Parties and the TfL Group and their authorised agents to receive their rights under the Call-Off Contract, including with respect to the right to amend, use, test and support the Deliverables and Software. The Service Provider shall do all such acts and execute all such deeds and documents as shall be necessary or desirable to perfect the right, title and interest of the Contracting Authority in and to such Intellectual Property Rights, including ensuring that the Service Provider's Personnel assign all such Intellectual Property Rights owned by them either direct to the Contracting Authority or to the Service Provider to enable the Service Provider to comply with its obligations hereunder and waive any moral rights they may otherwise have, in each case at no cost to the Contracting Authority.
- 21.12 Nothing in this **clause 21** shall prevent either Party from using data processing techniques, ideas and know-how gained during the Framework Period or the term of any Call-Off Contract in the furtherance of its normal business, to the extent that this does not constitute or relate to a disclosure of Confidential Information or an infringement by the Party of any Intellectual Property Right.
- 21.13 To the extent that any TfL Group Member provides the Service Provider for the purpose of or in connection with providing the Services or supplying the Deliverables with any materials in which any TfL Group Member owns (or is licensed by a third Party to use) the Intellectual Property Rights, the Service Provider acknowledges and agrees that nothing in this Framework Agreement or any Call-Off Contract grants to the Service Provider any right, title or interest in such materials other than a limited non-exclusive right to use those materials solely for the purposes of providing the Services. All Intellectual Property Rights

in such materials are and shall remain the exclusive property of the TfL Group Member or (if applicable) its third Party licensors.

- 21.14 The Service Provider (a) warrants and (b) shall ensure that: the possession and/or use by the Tfl Group of the Deliverables, Documentation and Materials, and the performance by the Service Provider of the Services shall not constitute any infringement or misappropriation of any Intellectual Property Rights or any other legal or equitable right of any person and (c) warrants and shall ensure that the Service Provider owns or has obtained valid licenses to or of all such Intellectual Property Rights and other rights which are necessary for the performance of its obligations under the Call-Off Contract provided that, in relation to COTs Software and/or Third Party Services and/or Third Party Goods not being provided on behalf of the Service Provider as the Service Provider's subcontractor, the Service Provider shall in relation to (a) and (b) use its reasonable endeavours to procure a contract for the Contracting Authority and its beneficiaries which gives the same benefit as this **clause 21.14** above to the Tfl Group in respect of such COTs Software and/or Services and/or Third Party Goods in accordance with **clause 10.1** and which the Contracting Authority can enforce directly against such Third Party and shall promptly notify the Contracting Authority if this is not available in accordance with **clause 10.1**.
- 21.15 If any third Party claims that the possession and/or use of the Deliverables, Documentation, Materials and/or the receipt of the Services (being **"Indemnified Deliverables"** save in relation to COTs Software and/or Third Party Goods which shall be dealt with as set out below and in **clause 10**) by any Tfl Group Member and/or the provision by the Service Provider of any Indemnified Deliverables under or in connection with any Call-Off Contract constitutes an infringement or misappropriation of any Intellectual Property Rights or other right of that third Party (**"IPR Claim"**), the Service Provider shall indemnify, keep indemnified and hold harmless the Contracting Authority, Tfl Group Members (including their respective employees, Sub-Contractors and agents) against all Losses arising from or incurred by reason of any such IPR Claim (including the defence and any settlement of such IPR Claim). In relation to COTs Software, and/or Third Party Services and/or Third Party Goods not being provided on behalf of the Service Provider as the Service Provider's subcontractor, the Service Provider shall use its reasonable endeavours to procure a contract for the Contracting Authority and its beneficiaries which gives the same benefit as this **clause 21.14** above to the Tfl Group in respect of such COTs Software and/or Services and/or Third Party Goods in accordance with **clause 10.1** and which the Contracting Authority can enforce directly against such Third Party and shall promptly notify the Contracting Authority if this is not available in accordance with **clause 10.1**.
- 21.16 In the event of a claim pursuant to **clause 21.15** in relation to the Indemnified Deliverables:
- 21.16.1 the Contracting Authority shall promptly notify the Service Provider of the claim;
- 21.16.2 the Service Provider shall, at its own cost and expense, control the defence of such IPR Claim and any related proceedings or settlement negotiations, except that the Contracting Authority shall be entitled to take any action which it deems necessary if the Service Provider fails to take action, or (in the Tfl Group's reasonable opinion) delays taking action, in defending or settling any such IPR Claim and such failure or delay may, in the reasonable opinion of the Contracting Authority, prejudice the interests of the Tfl Group; and

- 21.16.3 at the cost and expense of the Service Provider, the Contracting Authority shall take all reasonable steps to co-operate with the Service Provider in the defence or settlement of such IPR Claim.
- 21.17 If any Indemnified Deliverables becomes the subject of any IPR Claim and, as a result of such IPR Claim, a court of competent jurisdiction grants an injunction preventing the use by the Service Provider, any TfL Group Member of any of such Indemnified Deliverables or there is substantial risk of such injunction being granted or the IPR Claim is settled on the basis that the Indemnified Deliverables cannot be used, the Service Provider shall at its expense as soon as possible following (and in any event within thirty (30) days of) such event occurring:
- 21.17.1 obtain for the Contracting Authority and the TfL Group Members the right to continue to possess, use and/or receive the benefit of the relevant Indemnified Deliverable(s); or
- 21.17.2 replace or modify the relevant Indemnified Deliverable(s) so that it becomes non-infringing without detracting from the functionality or performance of the overall Deliverables or Service and provided that any such replacement or modification shall not prevent the Service Provider's compliance with the warranties contained at **clause 10** In relation to COTs Software and Third Party Goods and Third Party Services not being provided on behalf of the Service Provider as the Service Provider's subcontractor, the Service Provider shall use its reasonable endeavours to procure a contract for the Contracting Authority and its beneficiaries which gives the same benefit as this **clause 21.14** above to the TfL Group in respect of such COTs Software and/or Services and/or Third Party Goods in accordance with **clause 10.1** and which the Contracting Authority can enforce directly against such Third Party and shall promptly notify the Contracting Authority if this is not available in accordance with **clause 10.1**.
- 21.18 The Service Provider shall have no liability under or in connection with the Call-Off Contract for any infringement caused solely and directly by:
- 21.18.1 the combination of the relevant Indemnified Deliverables with other products, data or information not supplied by the Service Provider unless the combination was made or approved by the Service Provider;
- 21.18.2 the modification of the Indemnified Deliverables unless the modification was made or approved by the Service Provider; or
- 21.18.3 breach by the Contracting Authority of any of the terms of the Call-Off Contract and/or any licence terms in respect of the Indemnified Deliverables to which the Contracting Authority is subject pursuant to the terms of the Call-Off Contract.
- 21.19 If any third Party claims that the possession and/or use by the Service Provider of any of goods, documents and/or software provided to the Service Provider by the Contracting Authority under a Call-Off Contract for the purposes of the Provider providing Deliverables in relation to such goods, documents and/software ("**the Contracting Authority Deliverables**") constitutes an infringement or misappropriation of any Intellectual Property Rights or other right of that third Party, the Contracting Authority shall indemnify keep indemnified and hold harmless the Service Provider (including their respective employees, Sub-Contractors and agents) and keep the Service Provider indemnified against all claims, demands, actions, costs, expenses (including legal

costs and disbursements on a full indemnity basis) and damages awarded by a court of competent jurisdiction or agreed to be paid by way of settlement of such claim provided that:

- 21.19.1 the Service Provider promptly notifies the Contracting Authority of such claim;
 - 21.19.2 the Contracting Authority shall, at its own cost and expense, be entitled to control the defence of such claim and any related proceedings or settlement negotiations; and
 - 21.19.3 at the cost and expense of the Contracting Authority, the Service Provider takes all reasonable steps to co-operate with the Contracting Authority in the defence or settlement of such claim.
- 21.20 The Contracting Authority shall not be liable under **clause 21.19** or otherwise for any infringement:
- 21.20.1 caused by the combination of the relevant Contracting Authority Deliverables with other products, data, or information not supplied by the Contracting Authority;
 - 21.20.2 caused by any use by the Service Provider of any the Contracting Authority Deliverables other than strictly for the purpose of the Service Provider performing its obligations under the Call-Off Contract; or
 - 21.20.3 caused by breach by the Service Provider of any of the terms of the Call-Off Contract.
- 21.21 If any the Contracting Authority Deliverables become the subject of any claim as described in **clause 21.19** and, as a result of such claim, a court of competent jurisdiction grants an injunction preventing the TfL Group's and/or the Service Provider's use of any such the Contracting Authority Deliverables or there is substantial risk of such injunction being granted or the claim is settled on the basis that the Contracting Authority Deliverables cannot be used, the Contracting Authority shall at its expense as soon as possible following (and in any event within thirty (30) days of) such event occurring:
- 21.21.1 obtain for the Service Provider the right to continue to possess and/or use the relevant the Contracting Authority Deliverables;
 - 21.21.2 with all such assistance from the Service Provider (including the provision of Additional Services) as may be agreed in accordance with **clause 34**, replace or modify the relevant the Contracting Authority Deliverables so that it becomes non-infringing without detracting from the functionality or performance of the Contracting Authority Deliverables so as to prevent the Service Provider from complying with its obligations under the Call-Off Contract; or
 - 21.21.3 if it is not commercially reasonable to perform either of the above options, the Contracting Authority and the Service Provider shall cease use of the infringing the Contracting Authority Deliverables in which case the Parties' representatives shall meet and, in good faith, explore all possible amendments to the Services which are required as a result of such cessation of use. Any such amendments shall be considered and (where applicable) agreed in accordance with **clause 34**.

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

21.23 This **clause 21** shall survive termination of this Framework Agreement and any Call-Off Contract.

22. GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY

22.1 Neither Party excludes or limits its liability to the other Party in respect of:

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

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

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

22.1.4 **clause 31** (Confidentiality and Transparency);

22.1.5 fraud (including fraudulent misrepresentation); or

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

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

22.2 Unless stated to the contrary expressly in a Call-Off Contract:

22.2.1 the Service Provider's liability for breach of Intellectual Property Rights (pursuant to **clause 21** (Intellectual Property Rights)) shall not be limited;

22.2.2 NOT USED;

22.2.3 the Service Provider limits its liability in each Contract Year in respect of liability for damage to tangible property damage, to the higher of the Charges paid and/or accrued and payable under all the Call-Off Contracts in that Contract Year or ten million pounds (£10,000,000), whichever is the higher;

22.2.4 the Service Provider limits its liability in each Contract Year in respect of liability pursuant to **clauses 32 and 33** (Freedom of Information and Data Protection) to the higher of the Charges paid and/or accrued and payable under all the Call-Off Contracts in that Contract Year or ten million pounds (£10,000,000), whichever is the higher; or

22.2.5 the Service Provider limits its liability in each Contract Year in respect of liability pursuant to **clause 24** (Loss of Data Security) to the higher of the Charges paid and/or accrued and payable in that Contract Year under all the Call-Off Contracts or ten million pounds (£10,000,000), whichever is the higher.

- 22.3 Subject to **clauses 22.1** and **22.2**, **clauses 22.3** to **22.9** set out the entire liability of each Party (including liability for the acts or omissions of its employees, agents or Sub-Contractors and, in relation to the Contracting Authority, the acts or omissions of the TfL Group) to the other Party in respect of:
- 22.3.1 any breach of its contractual obligations arising under or in connection with this Framework Agreement and/or any Call-Off Contract;
 - 22.3.2 any representation, statement, negligence, breach of statutory duty or other tortious act or omission arising under or in connection with this Framework Agreement and/or any Call-Off Contract; and
 - 22.3.3 any damage to property.
- 22.4 Except as provided in **clauses 22.1** and **22.2**, and any call off contract, the Service Provider's maximum aggregate liability under this Framework Agreement and all Call-Offs will not exceed, for each and every claim/incident, the greater of ten million pounds (£10,000,000) or one hundred and fifteen per cent (115%) of the Charges paid and/or accrued and payable in the 18 months prior to the relevant claim/incident arising.
- 22.5 Except as provided in **clause 22.1**, the entire aggregate liability of the Contracting Authority, the Other Contracting and the TfL Group (together) under or in connection with this Framework Agreement and all Call-Off Contracts will not exceed in any Contract Year:
- 22.5.1 in relation to a Call-Off Contract, the aggregate of all amounts paid and/or payable (to the extent any sums remain outstanding) to the Service Provider by the Contracting Authority under such Call-Off Contract; in such Contract Year; and
 - 22.5.2 in the aggregate, under this Framework Agreement, the aggregate of all amounts paid and/or payable (to the extent any sums remain outstanding) to the Service Provider by the Contracting Authority under this Framework Agreement in such Contract Year.
- 22.6 In no event shall either Party (nor in the case of the Contracting Authority, TfL Group Members or the Other Contracting Parties) be liable for indirect, consequential or special loss or damage.
- 22.7 In the event that a TfL Group Member and/or Other Contracting Party other than the Contracting Authority suffers Losses in circumstances where the Contracting Authority would be able to recover such Losses from the Service Provider if they were the contracting party, such person may recover from the Service Provider an amount equal to the amount that the Contracting Authority would have been able to recover had the Losses been suffered by the Contracting Authority rather than the other TfL Group Member and/or Other Contracting Party subject always to the limitations and exclusions of liability contained in this Framework Agreement. In the alternative, the Service Provider agrees that any Losses suffered or incurred by any TfL Group member and/or Other Contracting Party arising under or in connection with this Framework Agreement or any Call-Off Contract (in this **clause 22.7** collectively "**Group Member Losses**"): (i) will be deemed to have been incurred by the Contracting Authority; and (ii) will be recoverable by the Contracting Authority from the Service Provider as if they were losses suffered or incurred directly by the Contracting Authority but always subject to the limitations and exclusions of liability set out in this Framework

Agreement and/or the relevant Call-Off Contract. For the purposes of this **clause 22.7**, any Group Member Losses shall not be deemed to be consequential or indirect or special merely as a result of not being suffered directly by the Contracting Authority. For the avoidance of doubt, the Service Provider shall still be entitled, in the case of a remediable breach, to remedy such breach in accordance with the terms of the Framework Agreement or Call-Off Contract.

- 22.8 In the event that the Service Provider is defined under this Framework Agreement and/or a Call-Off Contract to include more than one person, then each such person shall be jointly and severally liable for all obligations of the Service Provider under the Call-Off Contract.
- 22.9 The exclusions from and limitations of liability set out in this **clause 22** shall be considered severable. The validity or unenforceability of any one clause, sub-clause, paragraph or sub-paragraph of this **clause 22** shall not affect the validity or enforceability of any other clause, sub-clause, paragraph or sub-paragraph of this **clause 22**.
- 22.10 The provisions of this **clause 22** shall survive the termination of the whole or a part of this Framework Agreement and of any Call-Off Contract.

23. **FORCE MAJEURE**

- 23.1 Subject to **clause 23.4**, neither Party shall be liable for any delay in performing or for failure to perform any of its obligations under a Call-Off Contract due to a Force Majeure Event.
- 23.2 Subject to **clause 23.4**, if either Party is prevented from performing any of its obligations due to a Force Majeure Event it shall promptly notify the other Party in writing of the circumstances of the Force Majeure Event and the other Party shall grant a reasonable extension for the performance of the Call-Off Contract, commensurate with the period of delay caused by the force Majeure Event. The Contracting Authority may terminate the Call-Off Contract on immediate notice in writing if a Force Majeure Event affecting the Service Provider continues for more than three (3) months or such other period as may be set out in a Call-Off Contract.
- 23.3 Subject to **clause 23.4**, it is expressly agreed that any failure by the Service Provider to perform, or any delay by the Service Provider in performing, its liabilities, obligations or responsibilities under the Call-Off Contract which results from any failure or delay in the performance of its obligations by any person with which the Service Provider shall have entered into any contract, supply arrangement, sub-contract or otherwise, shall be regarded as a failure or delay due to a Force Majeure Event only in the event that such person shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement, sub-contract or otherwise as a result of circumstances of a Force Majeure Event.
- 23.4 In the case of Services which are for business critical or safety critical parts of the TfL Group, its estate or services or which otherwise require continuous uninterrupted service, as indicated by TfL in the relevant Call-Off Contract, the Service Provider shall not be excused from performance due to a Force Majeure Event or a Disaster.

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

- 24.1 The Service Provider shall comply with the relevant Security Policies in relation to data security, where and to the extent applicable.
- 24.2 The Service Provider shall, where appropriate in accordance with good industry practice, use up to date Virus-checking software to protect against the introduction of Viruses to the Contracting Authority's, the TfL Group's and/or Other Contracting Party's systems and/or environment and use reasonable endeavours not to introduce any Viruses into any Software it hosts or creates for the Contracting Authority or its service recipients.
- 24.3 In the event that any of the Contracting Authority's, the TfL Group's and/or Other Contracting Party's software or data is corrupted or lost or so degraded as to be unusable due to any act or omission of the Service Provider after its receipt or creation by the Service Provider or during any collection, processing, storage or transmission by the Service Provider of the Contracting Authority's, the TfL Group's and/or Other Contracting Party's software or data or otherwise as a result of any default by the Service Provider then, without prejudice to the Contracting Authority's other rights and remedies the Service Provider shall restore, at its own cost, the software and data up to the last backup provided by the Contracting Authority to the Service Provider, if any.
- 24.4 This **clause 24** shall survive termination of this Framework Agreement and any Call-Off Contract.

25. **TERMINATION**

- 25.1 For the purposes of this **clause 25.1**, "**Relevant Authority**" means:
- 25.1.1 in the case of any termination of this Framework Agreement, the Contracting Authority; and
- 25.1.2 in the case of any termination of a Call-Off Contract, the Contracting Authority who has entered into that Call-Off Contract.
- 25.2 Without prejudice to the Relevant Authority's right to terminate at common law, the Relevant Authority may terminate this Framework Agreement and/or any current Call-Off Contracts (and in the case of a right to terminate a Call-Off Contract, the Relevant Authority can terminate the Call-Off Contract, and at its option can also but is not obliged to terminate all other Call-Off Contracts and the Framework Agreement additionally), in either case immediately (or on such later date as it shall specify in writing) upon giving notice to the Service Provider if:
- 25.2.1 the Service Provider has committed any material or persistent breach of this Framework Agreement and/or of a Call-Off Contract (and in the case of a material breach of a Call-Off Contract, the Relevant Authority can at its option can also but is not obliged to terminate the Call-Off Contract, and at its option terminate all other Call-Off Contracts and the Framework Agreement additionally) and in the case of such a breach that is capable of remedy fails to remedy that breach within twenty (20) Business Days from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied;
- 25.2.2 the Service Provider is subject to an Insolvency Event;

- 25.2.3 there is a Change of Control or of management personnel of the Service Provider; or
 - 25.2.4 the Contracting Authority is not satisfied on the issue of any conflict of interest in accordance with **clause 11**;
 - 25.2.5 the Service Provider commits any of the money laundering offences under the Money Laundering Regulations 2003;
 - 25.2.6 the Service Provider or any of its officers, employees, Sub-Contractors or agents commits any act of bribery described in the Bribery Act 2010; or
 - 25.2.7 a termination right arises under this Framework Agreement and/or a Call-Off Contract.
- 25.3 To the extent that the Relevant Authority has a right to terminate this Framework Agreement or a Call-Off Contract under this **clause 25** then, as an alternative to termination, the Relevant Authority may by giving notice to the Service Provider require the Service Provider to provide part only of the Deliverables or the Services in the relevant Call-Off Contract with effect from the date specified in the TfL Group's notice ("**Change Date**") whereupon the provision of the remainder of the Deliverables or the Services will cease and the definition of "the Deliverable" and/or "the Services" shall be deemed amended accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or, if in the TfL Group's opinion a proportionate adjustment would not be reasonable, in such manner as the Relevant Authority may reasonably determine.
- 25.4 Subject to **clause 5**, the Service Provider may terminate the relevant Call-Off Contract for non-payment by the Contracting Authority in respect of that Call-Off Contract. Such termination may only occur after a failure to remedy by the Contracting Authority within sixty (60) Business Days from the date of written notice by the Service Provider provided that the Service Provider also provides a written notice to the Contracting Authority thirty (30) Business Days after the first written notice is served of its intention to terminate such Call-Off Contract if payment is not made within the next thirty (30) Business Days.
- 25.5 Without prejudice to the Relevant Authority's right to terminate the Framework Agreement and/or the Call-Off Contracts under this **clause 25** or at common law, the Contracting Authority may terminate the Framework Agreement and/or a Relevant Authority may terminate a Call-Off Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of **clause 27**.
26. **CONSEQUENCES OF TERMINATION/EXIT**
- 26.1 The termination or expiry of this Framework Agreement and/or a Call-Off 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.
- 26.2 Unless stated otherwise in a Call-Off Contract, any rights and obligations of the Parties pursuant to a Call-Off Contract which remain to be performed as at the date of termination of this Framework Agreement shall extend beyond the termination or expiry of this Framework Agreement, in which case the provisions of this Framework Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.

- 26.3 A Call-Off Contract may expire or be terminated in accordance with its terms or **clause 25** of this Framework Agreement, but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Framework Agreement.
- 26.4 Except in the case of termination for breach, the Service Provider shall provide the Contracting Authority with a statement of account of monies owing to it (if any) for agreement with the Contracting Authority. The statement will not include monies withheld under **clause 5**.
- 26.5 The termination of this Framework Agreement and/or any Call-Off 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.
- 26.6 Upon termination of any Call-Off Contract (howsoever caused) the Parties shall perform their respective obligations under any Exit Plan or any other exit management provisions applicable to such Call-Off Contract.
- 26.7 Notwithstanding the provisions of the Exit Plan(s) and any exit management provisions applicable to such Call-Off Contract, whenever the Contracting Authority chooses to put out to tender for a new or replacement service provider for some or all of the Services and/or Deliverables, the Service Provider shall disclose to tenderers such information concerning the Services and/or Deliverables as the Contracting Authority may require for the purposes of such tender. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 26.8 The Contracting Authority shall, within thirty (30) days of the statement of accounts being agreed under **clause 26.4**, pay the Service Provider any charges remaining due in relation to any Services properly performed and/or the Deliverables properly delivered in accordance with the Call-Off Contract up to the date of termination.
- 26.9 If the Contracting Authority terminates any Call-Off Contract under **clause 25**, then the Contracting Authority may, without prejudice to its other rights under the Call-Off Contract then, where a Deliverable is (i) bespoke and is being written for the Contracting Authority's requirements; or (ii) in the case of Services, partially completed:
- 26.9.1 itself complete the supply of the Deliverables, or enter into a contract with a third Party to effect such completion and, for the avoidance of doubt, such completion shall be taken to include the creation, manufacture, production or procurement of any hardware, software or other products (or reasonable equivalents thereof); and
- 26.9.2 the Contracting Authority shall be entitled to use or have used on its behalf all know-how and Intellectual Property Rights owned or controlled by the Service Provider used in or in connection with such particular Deliverables (including any Escrow Materials) free of charge for the purposes of completion and use, amendment, modification and/or enhancement of the Deliverables as envisaged by the Call-Off Contract.
- 26.10 If the Contracting Authority terminates any Call-Off Contract in accordance with **clause 25.2.2**, then the Service Provider shall, as of the date of termination of the Call-Off Contract, assign to the TfL Group with full title guarantee, all Intellectual Property Rights in the Services and the Deliverables which were due to be transferred to the Contracting Authority should the Insolvency Event have

not occurred and which are in existence and capable of assignment as of the date of termination.

26.11 Upon termination of any Call-Off Contract (howsoever caused) or a cessation of any Services or part thereof, the Contracting Authority may enter into any agreement with any third Party or parties as the Contracting Authority thinks fit to provide any or all of the Services and the Deliverables and, in relation to Services, the Service Provider shall (save in the case of termination for convenience under a relevant Call-Off Contract) be liable for all additional expenditure reasonably incurred by the Contracting Authority in having such services carried out and all other costs and damages reasonably incurred by the Contracting Authority in consequence of such termination. Where applicable, the Contracting Authority may deduct such costs from the charges or any other sums due to the Service Provider or otherwise recover such costs from the Service Provider as a debt.

26.12 Upon expiry or termination of the Framework Agreement and/or a Call-Off (howsoever caused):

26.12.1 the Service Provider shall, at no further cost to the Contracting Authority:

26.12.1.1 implement its obligations under the agreed Exit Plan, if any;

26.12.1.2 take all such steps as shall be necessary to agree with the Contracting Authority a plan for the orderly handover of the Framework Agreement or relevant Call-Off Contract to the Contracting Authority (or its nominee), such that the Framework Agreement and/or a Call-Off Contract can be carried on with the minimum of interruption and inconvenience to the Contracting Authority and to effect such handover and implement such plan in accordance with its timescales;

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

26.12.1.4 return or destroy all Confidential Information it holds relating to the Framework agreement and/or relevant Call-Off Contract.

26.12.2 the Contracting Authority shall pay the Service Provider any Charges remaining due in relation to any Services properly performed and goods properly delivered in accordance with the relevant Call-Off Contract up to the date of termination or expiry.

26.12.3 where required by the Contracting Authority in writing, the Service Provider undertakes to:

26.12.3.1 power down, cease to use, and/or disconnect the Goods or any Service Provider Equipment; and/or

26.12.3.2 remove or cause to be removed the Goods or any Service Provider Equipment;

from the Contracting Authorities Premises within twenty eight (28) days (or such earlier period) of the date of the Contracting Authority's notice or within such other timetable as may be agreed between the Parties taking into account the circumstances. The Service Provider will make good any damage caused to the Contracting Authorities Premises or to Third Party property caused by the removal of the Goods or any Service Provider Equipment to the reasonable satisfaction of the Contracting Authority.

26.12.3.3 If the Service Provider fails to remove the Goods or any Service Provider Equipment from the Contracting Authorities' Premises within twenty eight (28) days or such other period required by the Contracting Authority in accordance with **clause 26.12.3.2** (or such time period as maybe agreed by the Parties), the Contracting Authority may remove the same (including instructing a Third Party to remove the same) and the Parties agree that:

- (a) the Contracting Authority will use competent contractors for any such removal work; and
- (b) the Service Provider will reimburse the Contracting Authority in respect of the reasonable and proper cost of removal, and any associated storage and disposal costs incurred.

If the Contracting Authority removes or arranges the removal of all or any part of the Goods or any Service Provider Equipment from the Site, the Contracting Authority will, in relation to Service Provider Equipment, arrange to store the same and to make the same available for collection on reasonable prior notice by the Service Provider for a period of three (3) months. If at the expiry of three (3) months the same has not been collected by the Service Provider, the Service Provider shall have no further title or other rights in connection with the same, and the Contracting Authority shall be free to dispose of the same as it sees fit.

26.13 On termination or expiry of this Framework Agreement, howsoever caused, clauses and Schedules in this Framework Agreement and any Call-Off Contract which expressly or impliedly have effect after termination or expiry shall remain in effect including **clause 2.11(a)** (managing agent), **clause 21** (Intellectual Property Rights), **clause 31** (Confidentiality and Transparency), **clause 22** (Liability), **clause 40** (Dispute Resolution Procedure) and any provisions in any Call-Off Contract relating to exit management.

27. **DECLARATION OF INEFFECTIVENESS**

27.1 In the event that a court makes a Declaration of Ineffectiveness, the Contracting Authority shall promptly notify the Service Provider. The Parties agree that the provisions of **clause 26** and this **clause 27** 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 26** and this **clause 27** or the Cessation Plan, the provisions of this **clause 27** and the Cessation Plan shall prevail.

- 27.2 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.
- 27.3 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 Contracting Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 27.3.1 an orderly and efficient cessation of the Services and other applicable Deliverables or (at the Contracting Authority's request) a transition of the Services and other applicable Deliverables to the Contracting Authority or such other entity as the Contracting Authority may specify; and
- 27.3.2 minimal disruption or inconvenience to the Contracting Authority or to public passenger transport services or facilities,
- in accordance with the provisions of this **clause 27** and to give effect to the terms of the Declaration of Ineffectiveness.
- 27.4 Upon agreement, or determination by the Contracting Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 27.5 The Contracting Authority shall pay the Service Provider's reasonable costs in assisting the Contracting Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Framework Agreement, a relevant Call-Off Contract and/or as otherwise reasonably determined by the Contracting Authority. Provided that the Contracting Authority shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Framework Agreement or a relevant Call-Off Contract pursuant to this **clause 27**.
28. **SUSPENSION RIGHTS**
- 28.1 If the Contracting Authority identifies any material non-compliance under the Framework Agreement or one or more Call-Off Contracts or of any SLAs (where applicable) in respect of the Service Provider such that the Contracting Authority is concerned about the Service provider's ability to perform any future Call-Off Contract or in the event that the Service Provider is no longer able to undertake a Request for Offer, then the Contracting Authority reserves the right to refrain from placing a Request for Offer with the Service Provider and may instead place a Request for Offer with the Service Provider ranked in second place under the process used. In the event that the Contracting Authority identifies a non-compliance in respect of the Service Provider ranked in second place, the Contracting Authority may look to award the Request for Offer to the next highest ranked Service Provider who meets the requirements of this Framework Agreement and Key Performance Indicators (KPIs) (if applicable).
- 28.2 If, in the Contracting Authority's opinion, the Service Provider persistently and/or regularly refuses to bid or to submit a Proposal in respect of a Mini-Competition Request under **Schedule 2** and the Service Provider is not able to demonstrate to the Contracting Authority's satisfaction within five (5) Business Days of the Contracting Authority's request for it to do so that such refusal or lack of bid is not for the valid and genuine reason then the Contracting Authority reserves the

right to exclude the Service Provider from bidding under a Mini-Competition for future Call-Off Contracts for a period which, at the Contracting Authority's discretion, may be up to the same period in time over which the persistent or regular refusals or failures were measured by the Contracting Authority as determined by the Contracting Authority (but being no longer than 12 weeks). It shall be the Contracting Authority's discretion as to whether the thresholds set out above have been met or not met.

- 28.3 Without prejudice to any other rights or remedies which the Contracting Authority may possess under this Framework Agreement or otherwise (including any right to terminate), if the Service Provider:

28.3.1 is in material breach of a term of a Call-Off Contract;

28.3.2 materially fails to proceed regularly and/or diligently with the Services or the delivery of its obligations under a Call-Off Contract,

then the Contracting Authority may give it notice in writing (or in an emergency oral notice) specifying the default and a time period for remedying the default and if the Service Provider fails to remedy the default within the specified time, and demonstrate to the Contracting Authority the steps it has taken to prevent the default reoccurring then the Contracting Authority may suspend any part or the whole of the Services and/or delivery of the Deliverables under that Call-Off Contract until such time as it considers the Service Provider is once again in a position to execute the same and, during such time, the Contracting Authority may employ a Third Party to carry out and complete the Services and deliver the Deliverables for that purpose.

- 28.4 The Service Provider shall not be paid for any suspended services or lack of performance under this **clause 28**.

Step-in

- 28.5 If the Contracting Authority believes (at its discretion) that it needs to take action in connection with one or more of the Services or Deliverables:

28.5.1 because the Service Provider is in breach of the Contract in accordance with **clause 25** or insolvent or similar in accordance with **clause 25** or the Contracting Authority has a right to suspend the Services or provision of the Deliverables;

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

28.5.3 to discharge a statutory duty;

28.5.4 because the Service Provider does not have sufficient resources to carry out and complete any of the Services;

28.5.5 because the Service Provider is unable to perform the Services in a timely manner and the Contracting Authority is reasonably concerned that a right to remedy or provide rectification first would materially prejudice the Contracting Authority, any of the other TfL Group or any of the general public or other Third Parties; and/or

28.5.6 where the Service Provider is unable to perform the Services due to a Force Majeure Event; and/or

then the following provisions will apply as set out in this **clause 28** below.

- 28.6 The Contracting Authority will, save in respect of an emergency (where the Contracting Authority does not need to provide notice in advance but must act reasonably), provide notice (the **"Step-In Notice"**) (which may be immediate) to the Service Provider in writing of the following:
- 28.6.1 the action it wishes to take;
 - 28.6.2 the reason for such action;
 - 28.6.3 the date it wishes to commence such action (which may be the date of the notice) (being the start of the **"Step-In Period"** as defined below); and
 - 28.6.4 the time period which it believes will be necessary for such action (if known).
- 28.7 Following service of the Step-In Notice, the Contracting Authority or a Third Party appointed by the Contracting Authority for the purpose, which may include another contractor appointed to the Framework, will take such action as is notified under these provisions and any consequential additional action as the Contracting Authority reasonably believes is necessary (the **"Step-In Services"**) and the Service Provider will give all reasonable assistance to the Contracting Authority or such Third Party while it is taking such Step-In Services (such assistance to be at the expense of the Contracting Authority except where the requirement for the Contracting Authority to Step-In results from a failure of the Service Provider to perform its obligations under this Framework Agreement and/or Call-Off Contract, as applicable). The period during which the Step-In Services shall be taken shall be referred to as the Step-In Period.
- 28.8 During the Step-in Period:
- 28.8.1 the Contracting Authority (or one or more Third Parties nominated by the Contracting Authority) will manage and/or supervise performance of the Step-In Services to the extent detailed in the relevant notice (or subsequently notified by the Contracting Authority to the Service Provider) using (without charge) (and for this purpose the Service Provider will promptly make available for the entire Step-In Period) the Service Provider's resources relevant to this Framework Agreement, the Service Provider's Premises, the Service Provider Personnel, Ordered Goods being stored, the benefit of any Third Party contracts and, if required by the Contracting Authority, the services of the permitted Sub-Contractors as well as all plant, software, tools, equipment, goods and materials intended for, delivered to and placed on the Site in connection with the Services and/or which was to be used or would reasonably be needed to be used by a Third Party to provide the Services, documentation and any manuals relating to any equipment or Software or Goods and anything else reasonably required by the Contracting Authority (together referred to as the **"Resources"**). The Service Provider's Resources may be used virtually or from any of the Service Provider Premises at the Contracting Authority's choice; and
 - 28.8.2 the Service Provider will continue to provide all Services other than the Step-In Services.

Contractor Co-operation

- 28.9 The Service Provider will permit the Contracting Authority and Authority-nominated Third Parties to have such reasonable access to and use of the Service Provider's Resources and the Service Provider Premises at no cost to the Contracting Authority as the Contracting Authority requires in order to fully and effectively exercise its rights under this **clause 28**. The Service Provider will at all times cooperate fully with the Contracting Authority in relation to the exercise of its rights under this **clause 28** and provide the Contracting Authority with any reasonable information required by the Contracting Authority in relation to or in connection with the exercise of those rights.

Revocation of Step-in

- 28.10 The Contracting Authority may (at its sole discretion and at any time) revoke a Step-In Notice by giving not less than five (5) Business Days' notice to the Service Provider. The Service Provider will resume provision of the Step-In Services at the date and time specified in such notice.

Contractor's rights to resume Services Provision

- 28.11 The Service Provider shall promptly, where possible remedy any act or omission which led to the Step-In Services being performed and take steps to ensure the issue is resolved for future purposes. If the Service Provider is able to remedy the relevant event or omission leading to the Step-In Services and/or to successfully put in place arrangements to ensure that it does not recur, then the Service Provider may serve notice (a "**Step-In Resumption Notice**") on the Contracting Authority requesting that the Service Provider resume provision of the Step-In Services. The Service Provider will provide the Contracting Authority with all information that the Contracting Authority reasonably requires to verify that the Service Provider will be able to provide the Step-In Services to the Contracting Authority's reasonable satisfaction and ensure proper and sustained compliance with all Service Levels and other provisions set out in this Framework Agreement. If the Contracting Authority acting reasonably is satisfied that the Service Provider will be able to provide all of the Step-In Services to the Contracting Authority's satisfaction, the Contracting Authority will serve not less than five (5) Business Days' written notice (a "**Re-commencement Notice**") requiring the Service Provider to resume provision of the Step-In Services and at the date and time specified in that notice the Service Provider will resume provision of the Step-In Services. If the Contracting Authority has not served a Re-commencement Notice within ten (10) Business Days of receipt of a Step-In Resumption Notice, then either the Contracting Authority or the Service Provider may refer the matter to the Dispute Resolution Process.

Authority right to terminate

- 28.12 If a Step-In Notice has been served (which has not been revoked by the Contracting Authority pursuant to this **clause 28**) and:
- 28.12.1 the Service Provider has not served a Step-In Resumption Notice within twenty (20) Business Days of service of that Step-In Notice;
 - 28.12.2 following service of a Re-commencement Notice the Service Provider has not resumed provision of the Step-In Services (for any reason) on the date and time specified in that Re-commencement Notice; and/or

- 28.12.3 the Contracting Authority has not served a Re-commencement Notice on the Service Provider within thirty (30) Business Days of service of a Step-In Resumption Notice,

the Contracting Authority may at its sole discretion terminate this Framework Agreement.

Status of the Services and Charges during the Step-In Period

- 28.13 During any Step-in Period the Contracting Authority shall only be liable to pay Charges in respect of those of the Step-In Services that it continues to receive from the Service Provider and shall not be liable to pay Charges in respect of any other Step-In Services.

Step-in Expenditure

- 28.14 In the event that the Contracting Authority incurs costs in exercising its Step-In rights in accordance with this **clause 28** such costs exceed the Charges which would have been payable but for the Step-In, the Service Provider shall credit an amount equal to the difference between the costs and such Charges against all future Charges to the effect that no Charges shall be payable by the Contracting Authority unless and until the full amount of such credit has been utilised. The Contracting Authority may at any time by written notice require the Service Provider to cease crediting the amount in question against the Charges and any unused balance thereof shall be remitted to the Contracting Authority in cleared funds within twenty (20) Business Days of service of such written notice.

28A PERFORMANCE OF SERVICES SIMILAR TO THE SERVICES WHICH WOULD ORDINARILY HAVE BEEN PERFORMED BY ANOTHER SERVICE PROVIDER

- 28A.1 The Service Provider acknowledges that there may be circumstances where the Contracting Authority requires the assistance of the Service Provider to provide services similar to some or all of the Services on other projects with contractors to this Framework where the Contracting Authority has had to suspend or Step-In to such services. The Service Provider agrees in good faith to, where at all possible, provide such services as are requested by the Contracting Authority and the charges for providing such services shall be no more than those set out in **Schedule 3** or, if none are set out, than those set out in the relevant Call-Off Contract.

29. SEVERABILITY

If any provision of the Framework Agreement or a Call-Off 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 Framework Agreement or relevant Call-Off Contract and the remaining provisions shall continue in full force and effect as if the Framework Agreement or relevant Call-Off Contract had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Contracting Authority's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement or relevant Call-Off Contract, the Contracting Authority and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

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

- 30.1 The Service Provider shall not assign or sub-contract this Framework Agreement and/or any Call-Off Contract (or any part of them) without the prior written consent of the Contracting Authority identifying the relevant Sub-Contractor and their role. The Contracting Authority agrees to not unreasonably withhold consent to the Service Provider sub-contracting immaterial parts of the Framework Agreement and/or Call-Off Contracts from time to time to Third Parties of good repute.
- 30.2 Where the Service Provider sub-contracts all or any part of its obligations to any person, the Service Provider shall:
- 30.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under the Call-Off Contract insofar as they relate to the Deliverables or obligations or part of them (as the case may be) which that Sub-Contractor is required to provide;
 - 30.2.2 be responsible for payments to that person;
 - 30.2.3 remain solely responsible and liable to the Contracting Authority for any breach of this Framework Agreement and/or the Call-Off Contract or any performance, non-performance, part-performance or delay in performance by any Sub-Contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider;
 - 30.2.4 without prejudice to the provisions of **clause 13**, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such Sub-Contractor; and
 - 30.2.5 where the GLA is the Contracting Authority, include a term in each sub-contract requiring payment to be made by the Service Provider to the Sub-Contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.
- 30.3 The Service Provider shall give notice to the Contracting Authority within ten (10) Business Days where:
- 30.3.1 there is any change in the ownership of the Service Provider where such change relates to 50% or more of the issued share capital of the Service Provider; and
 - 30.3.2 there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company; and
 - 30.3.3 (in the case of an unincorporated Service Provider) give notice to the Contracting Authority if there is any change in the management personnel of the Service Provider, which alone or taken with any other change in management personnel not previously notified to the Contracting Authority, equates to a change in the identity of 50% or more of the management personnel of the Service Provider.
- 30.4 Upon the occurrence of any of the events referred to at **clauses 30.3.1 to 30.3.3** (inclusive) above, the Contracting Authority shall have the right to

terminate the Framework Agreement and any or all Call-Off Contracts provided always that such right must be exercised with 12 months of receipt of such notice.

31. CONFIDENTIALITY AND TRANSPARENCY

31.1 Subject to **clauses 31.3, 31.6** and **32**, the Parties shall keep confidential:

31.1.1 the terms of this Framework Agreement; and

31.1.2 any and all Confidential Information that they may acquire in relation to the other.

31.2 The Service Provider will not use the Contracting Authority's Confidential Information for any purpose other than to perform its obligations under this Framework Agreement. The Service Provider will ensure that its officers and employees comply with the provisions of **clause 31.1**.

31.3 The obligations 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 Each Party shall keep secure all materials containing any information in relation to the Framework Agreement, each Call-Off 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 Framework Agreement or any Call-Off Contracts or that it is providing the Deliverables and other Services to the Contracting Authority or in relation to any matter under or arising from the Framework Agreement or any Call-Off Contracts unless specifically granted permission to do so in writing by the Contracting Authority. The Contracting Authority shall have the right to approve any announcement before it is made.

31.6 The Service Provider acknowledges that the Contracting Authority is subject to the Transparency Commitment. Accordingly, **clause 32** shall take precedence over this **clause 31**.

31.7 The provisions of this **clause 31** will survive any termination or expiry of the Framework Agreement and the Call-Off Contracts made under it for a period of 6 years from the expiry or termination of each.

32. FREEDOM OF INFORMATION

32.1 For the purposes of this **clause 32**:

- 32.1.1 **"FOI Legislation"** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- 32.1.2 **"Information"** means information recorded in any form held by the Contracting Authority or by the Service Provider on behalf of the Contracting Authority, the Other Contracting Parties and the TfL Group Members; and
- 32.1.3 **"Information Request"** means a request for any Information under the FOI Legislation.
- 32.2 The Service Provider acknowledges that the Contracting Authority, the Other Contracting Parties and the TfL Group Members:
 - 32.2.1 are subject to the FOI Legislation and agrees to assist and co-operate with the Contracting Authority to enable the Contracting Authority, the Other Contracting Parties and the other TfL Group Members to comply with their obligations under the FOI Legislation; and
 - 32.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.
- 32.3 Without prejudice to the generality of **clause 32.2**, the Service Provider shall and shall procure that its Sub-Contractors (if any) shall:
 - 32.3.1 transfer to the Commercial Manager (or such other person as may be notified by the Contracting Authority to the Service Provider) each Information Request relevant to the Framework Agreement, any and all Call-Off Contracts, the Deliverables and/or where TfL is the Contracting Authority any TfL Group Member that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Request; and
 - 32.3.2 in relation to Information held by the Service Provider on behalf of the Contracting Authority and TfL Group Members, provide the Contracting Authority with details about and/or copies of all such Information that the Contracting Authority requests and such details and/or copies shall be provided within five (5) Business Days of a request from the Contracting Authority (or such other period as the Contracting Authority may reasonably specify), and in such forms as the Contracting Authority may reasonably specify.
- 32.4 The Contracting Authority agrees to use reasonable endeavours to take the Service Provider's representations into account in relation to disclosure of commercially sensitive data or other reasonable concerns in relation to exempt information under FOI Legislation provided that the Service Provider acknowledges and agrees that the Contracting Authority shall at all times be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Service Provider shall not itself respond to any person making an Information

Request, save to acknowledge receipt, unless expressly authorised to do so by the Contracting Authority.

33. DATA PROTECTION

33.1 The Service Provider shall comply with all of its obligations under the DPA and, if Processing Personal Data on behalf of the Contracting Authority, the Other Contracting Parties and the TfL Group ("**Authority Personal Data**"), shall only carry out such Processing for the purposes of providing the Services and the Deliverables in accordance with the Call-Off Contract and in accordance with any additional obligations imposed by the Contracting Authority in any Call-Off Contract and any other instructions from the Contracting Authority as may be specified from time to time.

33.2 Without prejudice to the generality of **clause 33.1**, the Service Provider shall:

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

33.2.2 provide the Contracting Authority with such information as it may from time to time require to satisfy itself of compliance by the Service Provider with **clause 33.2.1**;

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

33.2.4 when notified by the Contracting Authority, comply with any agreement between the Contracting 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;

33.2.5 take reasonable steps to ensure the reliability of Personnel having access to Authority Personal Data and to ensure that such Personnel are fully aware of the measures to be taken and the Service Provider's obligations under this **clause 33** when Processing Authority Personal Data; and

33.2.6 not Process any Authority Personal Data outside the European Economic Area (or any country deemed adequate by the Commission pursuant to Article 25(6) Directive 95/46/EC) without the TfL Group's prior written consent and, in the event of such consent, only if the Service Provider has agreed in writing to reasonable provisions imposed by the Contracting Authority relating to such Processing.

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

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

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

33.4.2 to comply with the same obligations with which the Service Provider is required to comply under this **clause 33**.

33.5 This **clause 33** shall survive termination of this Framework Agreement and any Call-Off Contract.

34. **AMENDMENT**

34.1 Subject to **clause 18**, this Framework Agreement and/or any Call-Off Contract may only be varied or amended with the written agreement of both Parties.

35. **EMPLOYEES**

35.1 Unless set out to the contrary in a Call-Off Contract, **Schedule 10** shall apply in relation to employees and their potential transfer under relevant legislation.

35.2 Nothing in this Framework Agreement nor the Call-Off Contract(s) will render the Service Provider Personnel an employee, partner of the Contracting Authority or of any TfL Group Member by virtue of the provision of the Deliverables by the Service Provider under the Call-Off Contract or their performance of their obligations and the Service Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider Personnel.

35.3 Notwithstanding **clause 35.1**, the Service Provider shall indemnify, keep indemnified and hold harmless the Contracting Authority, the Other Contracting Parties and other TfL Group Members from and against all liabilities, costs, expenses, injuries, direct or indirect or consequential loss, damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the Contracting Authority, the Other Contracting Parties or the TfL Group Members incur or suffer whenever arising or brought by the Service Provider Personnel or any person who may allege to be the same.

35.4 The Service Provider shall give the Contracting Authority, if so requested, full particulars of all persons who are or may be at any time employed on the Framework Agreement and/or any Call-Off Contract and shall take all reasonable steps to avoid changes to any of its staff designated in the Framework Agreement or Call-Off Service Provider as Key Personnel. The Service Provider shall give the Contracting Authority reasonable notice of any proposals to change Key Personnel.

35.5 The Service Provider shall pay to the Service Provider Personnel not less than the amounts to which the Service Provider Personnel are contractually entitled.

35.6 **Non-Solicitation**

35.6.1 Subject to **clause 35.6.2**, neither the Service Provider nor the Contracting Authority shall, whether directly or indirectly and whether

alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, Service Provider or otherwise:

- 35.6.1.1 at any time during the Term and/or the term of any Call-Off Contract solicit, induce or entice away or endeavour to solicit, induce or entice away from the other Party any person employed by or contracted to that Party in a senior and/or skilled capacity where such person is engaged at any time during the term in the performance of the Call-Off Contract whether or not such person would commit any breach of his or her contract of employment or engagement by leaving the employment or engagement of the other Party;
 - 35.6.1.2 at any time during the Term and/or the term of any Call-Off Contract employ, engage or appoint any person employed by the other Party in any senior and/or skilled capacity where such person is engaged at any time during the term in the performance of the Call-Off Contract and where such person would commit a breach of his or her contract of employment by leaving the employment of the other Party;
 - 35.6.1.3 at any time during the period of twelve (12) months following the end of the Term and/or the term of any Call-Off Contract (as applicable), solicit, induce or entice away or endeavour to solicit, induce or entice away, from the other Party any person employed by or contracted to the other Party in a senior and/or skilled capacity where such person was engaged at any time during the final three (3) months of the term in the performance of the Call-Off Contract (including employees whose employment has transferred to the Contracting Authority or a new service provider pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 after the end of the Framework Period) whether or not such person would commit any breach of his or her contract of employment or engagement by leaving the employment or engagement of the other Party; or
 - 35.6.1.4 at any time during the period of twelve (12) months following the end of the Term and/or the term of any Call-Off Contract (as applicable) employ, engage or appoint any person employed by the other Party in a senior and/or skilled capacity where such person was engaged at any time during the final three (3) months of the term of the Framework Agreement or Call-Off Contract in the performance of the Framework Agreement or Call-Off Contract and where such person would commit a breach of his or her contract of employment by leaving the employment of the other Party.
- 35.6.2 This **clause 35.6** shall not prevent employment resulting from general recruitment advertising which shall not constitute a breach of **clause 35.6**.

- 35.7 This **clause 35** shall survive termination of this Framework Agreement and any and all Call-Off Contract(s).

36. **NOTICES**

Any notice, demand or communication in connection with this Framework Agreement or a Call-Off Contract will be in writing and may be delivered by hand, prepaid recorded delivery first class post or facsimile addressed to the recipient at its registered office, the address stated above or any other address (including a facsimile number) notified to the other Party in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

- 36.1.1 if delivered by hand, at the time of delivery;
- 36.1.2 if delivered by post, two (2) Business Days after being posted or in the case of Airmail fourteen (14) Business Days after being posted; or
- 36.1.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party within 24 hours after transmission.

37. **PUBLICITY**

- 37.1 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 Framework Agreement and/or any Call-Off Contract or that it is providing the deliverables to the Contracting Authority or in relation to any matter under or arising from the Framework Agreement and/or any Call-Off Contract unless specifically granted permission to do so in writing by the Contracting Authority. The Contracting Authority shall have the right to approve any announcement before it is made.
- 37.2 The Service Provider agrees and shall ensure that the Contracting Authority has the right to control and to supervise all dealings with the press and any other media in relation to any incident, event, claim or action arising in connection with the Framework Agreement and/or any Call-Off Contract.

38. **DISASTER RECOVERY**

Where required by a Contracting Authority under a Call-Off Contract, the Service Provider will ensure that it has in place a Disaster Recovery Plan and that the Disaster Recovery Plan is adequate to minimise the effect of any Disaster and, in such case, in the event of a Disaster, the Service Provider shall promptly comply with its obligations relating to such Disaster.

39. **INDEMNITY - CONDUCT OF CLAIMS**

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

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

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

39.1.3 where the claim is by a Third Party against the Indemnified Party,

39.1.3.1 at the request of the Indemnifying Party; and

39.1.3.2 provided at all times that the Indemnifying Party provides to the reasonable satisfaction of the Indemnified Party security for all costs, charges and expenses,

surrender to the Indemnifying Party or its insurers the conduct, in the Indemnified Party's name, of the defence, settlement and/or counterclaim to the Third Party's claim (provided that the Indemnified Party will be kept fully informed as to the conduct of such defence, settlement and/or counterclaim).

40. **DISPUTE RESOLUTION**

40.1 In order to overcome differences and avoid disputes and where this cannot be achieved to facilitate their clear definition and early resolution (whether by agreement or otherwise) the Parties will first follow the procedure set out in **clause 40.3** in respect of all disputes in relation to this Framework Agreement (save that either Party will have the right to refer a dispute to adjudication at any time in accordance with **clause 40.5**). The Parties may then follow the procedures set out in **clauses 40.4** or **40.5** or proceed to litigation in accordance with **clause 40.4.4**.

40.2 The Service Provider will continue to provide the Deliverables in accordance with this Framework Agreement and without delay or disruption whilst a Dispute is being resolved.

40.3 **Escalation**

40.3.1 As soon as either Party becomes aware of any matter which if not resolved might become a dispute it will so advise the other Party in writing.

40.3.2 The Contracting Authority and the Service Provider will use reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Framework Agreement ("**Dispute**").

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

40.4 **Mediation**

- 40.4.1 If the Dispute is not resolved within fourteen (14) Business Days of referral to the representatives set out in the Call-Off Contract either Party may propose by notice to the other Party ("**Notice**") that a structured mediation or negotiation be entered into with the assistance of a mediator.
- 40.4.2 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within twenty-eight (28) Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that mediator will be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 40.4.3 Where a Dispute is referred to mediation under this **clause 40.4**, the Parties:
- 40.4.3.1 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; and
- 40.4.3.2 agree to co-operate fully with such a mediator and to provide such assistance as is necessary to enable the mediator to discharge its duties.
- All negotiations connected with respect to the Dispute will be conducted in confidence and without prejudice to the rights of the Parties in any future court proceedings.
- 40.4.4 If the Parties reach agreement on the resolution of the Dispute, such agreement will be recorded in writing and once signed by the Parties' authorised representatives, it will be final and binding on the Parties.
- 40.4.5 If the Parties fail to reach agreement within forty (40) Business Days of the appointment of the mediator, such failure will be without prejudice to the right of either Party to refer the Dispute to the English courts. In addition, failing agreement, either of the Parties may invite the mediator to provide a non-binding opinion in writing as to the merits of the Dispute and the rights and obligations of the Parties. Such opinion will be provided on a without prejudice basis and will be subject to the confidentiality provisions of this Framework Agreement.

40.5 **Adjudication**

- 40.5.1 In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays in England.
- 40.5.2 Either Party has the right to refer a Dispute to the Adjudicator at any time by way of a Notice of Adjudication.
- 40.5.3 The Adjudicator shall act impartially and decides the Dispute as an independent adjudicator and not as an arbitrator.
- 40.5.4 The Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Party may ask the Adjudicator Nominating Body to choose an adjudicator. Such joint appointment or referral to the Adjudicator Nominating Body shall take place immediately upon the

serving of a Notice of Adjudication, or immediately following the position of Adjudicator falling vacant.

- 40.5.5 The Adjudicator Nominating Body shall choose an adjudicator within four (4) days of the request. The chosen adjudicator shall become the "**Adjudicator**".
- 40.5.6 A replacement Adjudicator shall have the power to decide a Dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. The Adjudicator shall deal with an undecided Dispute as if it had been referred to him on the date he was appointed.
- 40.5.7 The Adjudicator, his employees and agents shall not be liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.
- 40.5.8 Before a Party refers a Dispute to the Adjudicator, that Party shall give a Notice of Adjudication to the other Party with a brief description of the Dispute, including the provisions of this Framework Agreement that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that the Party wishes the Adjudicator to make. Following the appointment of the Adjudicator, the Party issuing the Notice of Adjudication shall immediately send a copy of the Notice of Adjudication to the Adjudicator. Within three (3) days of the receipt of the Notice of Adjudication, the Adjudicator shall notify the Parties:
 - 40.5.8.1 that he is able to decide the Dispute in accordance with this Framework Agreement; or
 - 40.5.8.2 that he is unable to decide the Dispute and has resigned.
- 40.5.9 If the Adjudicator does not so notify within three (3) days of the issue of the Notice of Adjudication, either Party may act as if he has resigned.
- 40.5.10 Within seven (7) days of a Party giving a Notice of Adjudication that Party shall:
 - 40.5.10.1 refer the Dispute to the Adjudicator;
 - 40.5.10.2 provide the Adjudicator with the information on which that Party relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents, and
 - 40.5.10.3 provide a copy of the information and supporting documents that Party has provided to the Adjudicator to the other Party.
- 40.5.11 Upon receipt of the referral notice, the Adjudicator shall inform every Party to the Dispute of the date that it was received. Within fourteen (14) days from the referral, any Party, who is not the Party giving a Notice of Adjudication, shall provide the Adjudicator with the information on which that Party relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents.

- 40.5.12 The time periods set out in **clauses 40.5.10** and **40.5.11** above may be extended if the Adjudicator and the Parties agree.
- 40.5.13 If a matter disputed by the Service Provider under or in connection with a sub-Contract is also a matter disputed under or in connection with this Framework Agreement the Service Provider may, with the consent of the Sub-Contractor and the Contracting Authority, refer the sub-Contract dispute to the Adjudicator at the same time as the main Contract referral. The Adjudicator shall then decide the disputes together and references to the Parties for the purposes of the dispute shall be interpreted as including the Sub-Contractor. The Parties shall comply with any reasonable request by the Adjudicator for more time to decide the disputes referred to him.
- 40.5.14 The Adjudicator may:
- 40.5.14.1 make directions for the conduct of the Dispute;
 - 40.5.14.2 review and revise any action or inaction of the Contracting Authority related to the Dispute and alter a quotation which has been treated as having been accepted;
 - 40.5.14.3 take the initiative in ascertaining the facts and the law related to the Dispute;
 - 40.5.14.4 instruct a Party to provide further information related to the Dispute within a stated time; and
 - 40.5.14.5 instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.
- 40.5.15 If a Party does not comply with any instruction within the time stated by the Adjudicator, the Adjudicator may continue the adjudication and make his decision based upon the information and evidence he has received.
- 40.5.16 The Adjudicator shall consider any relevant information submitted to him by any of the Parties and shall make available to them any information to be taken into account in reaching a decision.
- 40.5.17 A communication between a Party and the Adjudicator shall be communicated to the other Party at the same time.
- 40.5.18 Save as required by Applicable Law, the Parties and the Adjudicator shall keep information relating to the Dispute confidential.
- 40.5.19 For Disputes relating to Services, if the Adjudicator's decision includes assessment of additional cost or delay caused to the Service Provider, the Adjudicator shall make his assessment in the same way as a compensation event is assessed.
- 40.5.20 The Adjudicator shall decide the Dispute and notify the Parties of his decision and his reasons within twenty-eight (28) days of the Dispute being referred to him. This period may be extended by up to fourteen (14) days with the consent of the Parties or by any other period agreed by the Parties.

- 40.5.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and expenses of the adjudication, excluding the Adjudicator's own remuneration and expenses, as between the Parties.
- 40.5.22 Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his own remuneration and expenses as between the Parties.
- 40.5.23 Unless and until the Adjudicator has notified the Parties of his decision the Parties shall proceed as if the matter disputed was not disputed.
- 40.5.24 If the Adjudicator does not make his decision and notify it to the Parties within the time provided by this Framework Agreement the Parties and the Adjudicator may agree to extend the period for making his decision. If they do not agree to an extension, either Party may act as if the Adjudicator has resigned.
- 40.5.25 The Adjudicator's decision is binding on the Parties unless and until revised by the courts pursuant to any legal proceedings and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The Adjudicator's decision shall be final and binding if neither Party has notified the other within the time required by this Framework Agreement that he is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the courts.
- 40.5.26 The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five (5) days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this clause, the Adjudicator shall deliver a copy of the corrected decision to each of the Parties. Any correction of a decision shall form part of the decision.
- 40.5.27 If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven (7) days from the date of the decision or the final date for payment of the notified amount whichever is the later.
- 40.5.28 Unless the Parties agree otherwise, a Party shall not refer any Dispute under or in connection with this Framework Agreement to the courts unless it has first been decided by the Adjudicator in accordance with this Framework Agreement.
- 40.5.29 If, after the Adjudicator notifies his decision, a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within six (6) weeks of the notification of the Adjudicator's decision.
- 40.5.30 The courts shall settle the Dispute referred to it. The courts shall have the power to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the Contracting Authority related to the Dispute. A Party shall not be limited in court proceedings to the information or evidence put to the Adjudicator.

- 40.5.31 Neither Party shall call the Adjudicator as a witness in court proceedings.
- 40.6 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 40** and **clause 40** shall not apply in respect of any circumstances where such remedies are sought.
41. **RIGHTS OF THIRD PARTIES**
- 41.1 Any TfL Group Member and/or Other Contracting Party has the right to enforce the terms of (i) this Framework Agreement; and/or (ii) any Call-Off Contract, in each case under which it is a Party or has a benefit, in accordance with the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**").
- 41.2 Members of the GLA Group have the right to enforce the terms of (i) this Framework Agreement; and/or any relevant Call-Off Contracts entered into by them, in each case under which it is a Party or has a benefit, subject to the terms of, and to the extent contemplated by, **Schedule 2**, in accordance with the Third Party Act.
- 41.3 Subject to **clauses 41.1** and **41.2** the Parties do not intend that any of the terms of this Framework Agreement or any Call-Off Contract will be enforceable by virtue of the Third Party Act by any person not a Party to it.
- 41.4 Notwithstanding **clause 41.1**, the Parties are entitled to waive time, vary or rescind this Framework Agreement or any relevant Call-Off Contract without the consent of any other TfL Group Members or members of the GLA Group.
42. **SECURITY AND GUARANTEES**
- 42.1 If required by the Contracting Authority at any time during the Framework Period in relation to the Framework Agreement and/or under any Call-Off Contract, the Service Provider shall (to the extent that it has not already done so) provide:
- 42.1.1 at its expense, a parent company guarantee (from such Holding Company as the Contracting Authority may require unless otherwise agreed with the Contracting Authority) and, if requested by the Contracting Authority, a legal opinion as to its enforceability both to be materially in the form set out in **Schedule 6**; and/or
- 42.1.2 at the Contracting Authority's expense (which shall be agreed in advance prior to the bond being entered into or agreed to be paid as part of a Call-Off Contract) a performance bond, together with a legal opinion as to its enforceability, both to be materially in the form set out in **Schedule 6**.
- 42.2 Where a parent company guarantee and/or bond is required:
- 42.2.1 the Contracting Authority shall not be obliged to make any payment to the Service Provider under a Call-Off Contract, whether for the Charges or otherwise, unless and until the parent company guarantee and/or performance bond (as the case may be) (and legal opinion if applicable) have been provided in a form satisfactory to the Contracting Authority; and

- 42.2.2 the Service Provider shall be regarded as being in material breach of the Call-Off Contract which is incapable of remedy in the event that any parent company guarantee and/or performance bond (as the case may be) is or becomes invalid or otherwise unenforceable.
- 42.3 Where the Service Provider has provided the Contracting Authority with a performance bond and thereafter any variation is made to the Services in accordance with the terms of the Framework Agreement or a Call-Off Contract, the Contracting Authority may in its discretion require the Service Provider to provide at its expense a replacement performance bond for a greater sum where such variation either alone or when aggregated with any other variations has resulted in a material increase to the value of the Call-Off Contract and/or Framework Agreement to the Contracting Authority.
- 42.4 The Service Provider shall give notice to the Contracting Authority within ten (10) Business Days where there is any change in the ownership of the guarantor of the parent company guarantee where such change relates to 50% or more of the issued share capital of the guarantor. The Contracting Authority shall have the right to terminate the Framework Agreement (where the parent company guarantee covers the Framework Agreement) and/or a Call-Off Contract(s) (where the parent company guarantee covers the Framework Agreement) within sixty (60) calendar days of receipt of the required notice from the Service Provider, or in the event that the Service Provider fails to give the required notice, within sixty (60) calendar days of the Contracting Authority becoming aware of such event, unless the Service Provider has within such period provided a parent company guarantee or other appropriate security from a replacement guarantor acceptable to the Contracting Authority on terms identical to the parent company guarantee.

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

43.1 Subject to **clause 43.3**:

43.1.1 the Framework Agreement and all documents referred to in the Framework Agreement, contains all of the terms which the Parties have agreed relating to the subject matter of the Framework Agreement 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 its obligations under such Framework Agreement. Neither Party has been induced to enter into the Framework Agreement by a statement which the Framework Agreement does not contain; and

43.1.2 without prejudice to the Service Provider's obligations under the Framework Agreement, the Service Provider is responsible for and shall make no claim against the Contracting Authority in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of the Framework Agreement or the Call-Off Procedure or any incorrect or incomplete information howsoever obtained.

43.2 Subject to **clause 43.3**:

43.2.1 each Call-Off Contract and all documents referred to in such Call-Off Contract, contains all of the terms which the Parties have agreed relating to the subject matter of the Call-Off 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 its obligations under such Call-Off Contract. Neither Party has been induced to enter into the Framework Agreement by a statement which the Call-Off does not contain; and

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

43.3 Nothing in this **clause 43** excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

44. **GOVERNING LAW**

This Framework Agreement and all Call-Off Contracts made in accordance with it shall be governed by and construed in accordance with the laws of England and Wales. Without prejudice to **clause 40**, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Framework Agreement and/or any Call-Off Contract provided that the Contracting Authority has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

45. **LONDON LIVING WAGE**

45.1 The Service Provider shall ensure that:

45.1.1 none of his employees engaged in the performance of this Framework Agreement or a Call-Off Contract is paid an hourly wage less than the London Living Wage, as published by the Mayor of London; and that

45.1.2 the obligation set out in **clause 45.1.1** is placed upon any and all Sub-Contractors in the Service Provider's contract with such Sub-Contractors.

46. **RELIEF**

46.1 Subject to **clause 46.2**, the Service Provider shall be excused from any failure to perform or meet its obligations under this Framework Agreement only to the extent that such failure is directly caused by (and the Service Provider can demonstrate in writing to the reasonable satisfaction of the Contracting Authority that such failure is directly caused by) a Relief Event. If, as a direct consequence of a Relief Event in respect of which the Service Provider receives relief under this **clause 46.1**, the Service Provider is unable to meet a deadline date related to the performance of the Services (including any Milestone Date and Key Milestone Dates), such deadline date shall be postponed by such time as is both proportionate and reasonable, and agreed by the Parties in writing, for such Relief Event. The Service Provider shall only be entitled to relief under this clause in respect of a Relief Event to the extent that any failure to perform or meet its obligations under this Framework Agreement arises after the date on which that Relief Event occurred.

- 46.2 Where the Service Provider may be entitled to relief under **clause 46.1** as the result of a Relief Event, such relief will only be provided if:
- 46.2.1 the Service Provider provides the Contracting Authority with notice (a "**Relief Notice**") of the Relief Event, as soon as reasonably practicable (and, in any event, within five (5) Business Days) after becoming aware of it. The Relief Notice must contain:
- 46.2.1.1 the Service Provider's claim for relief, which for this purpose shall be at least: (i) a summary of the nature of the Relief Event; and (ii) reasonable details of the likely impact of the Relief Event on the Service Provider's obligations under this Framework Agreement (including the impact on the provision of the Services and compliance with the KPIs);
 - 46.2.1.2 identification of the cause or likely cause of the Relief Event;
 - 46.2.1.3 the date of occurrence of the Relief Event;
 - 46.2.1.4 the likely duration of the Relief Event; and
 - 46.2.1.5 its suggestions for either remedying or mitigating the effects of the Relief Event;
- 46.2.2 within five (5) Business Days of provision of the Relief Notice under **clause 46.2.1**, the Service Provider provides the Contracting Authority with notice of full details of the relief claimed and demonstrates to the reasonable satisfaction of the Contracting Authority that:
- 46.2.2.1 the Service Provider could not have avoided the failure to perform or meet its obligations under this Framework Agreement in respect of which the relief is claimed by steps that it might reasonably be expected to have taken;
 - 46.2.2.2 the Relief Event directly caused the relevant failure to perform or meet its obligations under this Framework Agreement;
 - 46.2.2.3 the relief from its obligations under this Framework Agreement claimed by the Service Provider could not reasonably be expected to be mitigated or recovered by the Service Provider (acting in accordance with this Framework Agreement (including Good Industry Practice)); and
 - 46.2.2.4 the Service Provider has complied, and is complying, with **clause 46.2.4**;
- 46.2.3 the Service Provider notifies the Contracting Authority if, at any time, it receives or becomes aware of any further information relating to the Relief Event, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading; and

- 46.2.4 the Service Provider uses all its reasonable endeavours to mitigate the impact of the Relief Event and bring to an end its impact. The Service Provider shall use all reasonable endeavours to perform its obligations under this Framework Agreement notwithstanding any Relief Event.
- 46.3 Without prejudice to **clause 46.2.4**, following the provision of each Relief Notice, the parties shall:
- 46.3.1 consult with each other to agree any steps to be taken, and an appropriate timetable in which those steps should be taken, to enable continued provisions of any Services affected by the relevant Relief Event to the standards required by this Framework Agreement; and
- 46.3.2 negotiate in good faith with a view to, and as soon as reasonably practicable attempt to, (in accordance with the Change Control Procedure) agree upon any relief to be granted to the Service Provider under **clause 46.1** in a change control notice. If necessary, the parties may escalate the matter in accordance with the Dispute Resolution Procedure.
- 46.4 Where a failure by the Service Provider to meet its obligations under this Agreement is attributable in part to the Service Provider's default and in part to a Relief Event in respect of which the Service Provider receives relief under **clause 46.1**, the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for such failure and, if necessary, the parties may escalate the matter in accordance with the Dispute Resolution Procedure above.
- 46.5 For the purposes of this **clause 46**, a Relief Event shall be an event where the Contracting Authority has agreed in writing to provide a dependency in order for the Service Provider to provide the Services but, in relation to access, the dependency shall only be for the access period and the Service Provider shall not be entitled to claim relief because it does not have access rights outside of the parameters set out in the Call-Off Contract.
47. **GENERAL**
- 47.1 Nothing in this Framework Agreement and/or any Call-Off Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in the Framework Agreement or the Call-Off 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.
- 47.2 No waiver of any of the provisions of the Framework Agreement and/or any Call-Off 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 36**. The single or partial exercise of any right, power or remedy under the Framework Agreement and/or any Call-Off 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.
- 47.3 The Contracting Authority may novate or otherwise transfer this Framework Agreement (in whole or in part). Within ten (10) Business Days of a written request from the Contracting Authority, the Service Provider shall, at its own expense, execute such agreement as the Contracting Authority may reasonably require to give effect to any such transfer of all or part of its rights and

obligations under this Framework Agreement to one or more persons nominated by the Contracting Authority.

- 47.4 This Framework Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.
- 47.5 Each Call-Off 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.
- 47.6 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 Framework Agreement and each Call-Off Contract, as the context requires.

SCHEDULE 1

LIST OF TYPES OF SERVICES FOR THE FRAMEWORK

Set out below is a non-exhaustive list of the types of Services which are covered by the Framework and by this Framework Agreement. This list is intended to give a high level indication of Services and certain other Deliverables that will be subject to the Call-Off Procedure. However, the Parties agree that the specific Services and other Deliverables to be competed for and delivered by the successful bidder will be specified in detail in the relevant Mini-Competitions, procured in accordance with the Framework Agreement and/or agreed in the awarded Call-Off Contract(s) using the Call-Off Procedure.

As part of the delivery of any of the Services set out below, the Service Provider will be required to manage its supply chain and any Third Parties it uses on behalf of the Contracting Authority.

The Service Provider shall ensure that its proposed supply chain and Sub-Contractors are best placed to support its high quality delivery of successful Solutions to programme and budget.

During each Mini-Competition it competes for and/or in each Call-Off Contract, the Service Provider shall ensure that Sub-contractors it intends to use for a Call-Off Contract are clearly identified, with appropriate roles and responsibilities set out.

Subject to **clause 33** (including **clause 33.2.6**), the Contracting Authority is not averse to consideration of offshore or nearshore working but the Service Provider must be explicit in their explanation of their proposed use during each Mini-Competition and each Call-Off Contract.

Glossary of terms:

For the purposes of this Schedule 1, the following additional definitions and terms shall apply:

Term	Description
Acceptance Criteria	means the specified indicators or measures employed in accepting a Deliverable
Acceptance Test Specification	means the technical specification to describe the tests to be performed, for acceptance testing a Deliverable
ACMMi	refers to the Architecture Capability Maturity Model Integration
APM	refers to the Association for Project Management
BAMM	means Business Analysis Maturity Model
BAU	means Business As Usual
BPMN	means Business Process Model and Notation; and is a graphical representation for specifying business processes in a business process model
Catalogue Entry	means Goods and/or Services that are agreed between the parties and then listed in the Catalogue
Catalogue Maintenance	means, the process of maintaining the Catalogue with changes in models, versions and its overall lifecycle (including costs)
Catalogue Management	means, the support of Product (Goods) management within the Catalogue and the management of Goods / Product information contained within a structured and consistent way
CMDB	has the meaning set out in the terms and conditions of the Framework Agreement, above
CMMi	refers to the Capability Maturity Model Integration

Term	Description
Confidential Information	has the meaning set out in the terms and conditions of the Framework Agreement, above
Configuration	means the way a system is set up, or the assortment of Hardware components, Software or the combination of both, that make up the system.
Configuration Management	means the process of identifying and defining the Configuration Items in a system, recording and reporting the status of Configuration Items and Requests for Change, and verifying the completeness and correctness of configuration items.
COTS - Commercial Off-The-Shelf Packages	has the meaning set out in the terms and conditions of the Framework Agreement, above
CSI	means Continual Service Improvement; the process uses methods from quality management in order to learn from past successes and failures
DDA	means the Disability Discrimination Act
Demand Management	means the management of the distribution of and access to Goods and Services on the basis of needs
Discovery Phase	means a period of time, commencing on the commencement date of a Call-Off Contract, as applicable, and finishing at the end of the initial Service period identified within such Call-Off Contract.
EOL	means End of Life; a term used with respect to terminating the sale or support of Goods and Services.
GIS	means Geographical Information System
Home Worker	means a User who has been provided with the facility to securely access the Contracting Authority and/or TfL Group network from a non-Contracting Authority or TfL Site.
HSE	refers to the Health and Safety Environment
IaaS	means the outsource of equipment used to support operations, including storage, hardware, servers and networking components. (Infrastructure as a Service).
Incident	any event which is not part of the standard operation of a system which causes, or may cause an interruption to or reduction in the quality of the system including unplanned outages.
Industry Best Practice	means a set of guidelines, ethics or ideas that represent the most efficient or prudent course of action.
ITIL	means the Information Technology Infrastructure Library; which is a set of practices for IT service management (ITSM) that focuses on aligning IT services with the needs of business.
LAN	means Local Area Network
Lean	refers to creating more value for customers with fewer resources.
MoP	refers to Management of Portfolios
MSP	means Managing Successful Programmes; and is a methodology that comprises a set of principles and processes for use when managing a program
New Condition	means something recently made, discovered, or created.
OEM	means the original equipment manufacturer, who manufactures hardware or software, that is purchased by another company and retailed under the original equipment manufacturers brand name.
Off-The-Shelf Packages	means any software packages generally and commercially available for purchase on a shrink-wrap or click-wrap licence basis and is also capable of use without material configuration.
Operational Environment	means the environment in which Users run application software, whereby the environment consists of a User interface provided by an applications manager and usually an application programming interface.
Operational (Agreement) Level	means the interdependent relationships among the internal support groups of the Service Provider working to support a service-level agreement.
Order	means an order for Goods and/or associated Services served by the Contracting Authority on the Service Provider for the Service Provider to provide such Goods and/or Services, served in accordance with the terms of the Framework Agreement and any applicable Call-Off

Term	Description
	Contract.
Outline Implementation Plan	means a high level implementation plan with key milestones shown
P3M3	means Portfolio, Programme & Project Management Maturity Model
P3O	means Portfolio, Programme and Project management Offices; provides universally applicable guidance that will enable individuals and organisations to establish, develop and maintain appropriate business-support structures
PaaS	means Platform as a service; a category of cloud computing services that provides a computing platform and a Solution stack as a service.
Period end	means the end of the relating TfL / Contracting Authority accounting period (with 13 Periods in a year)
Plant	means equipment owned by the Contracting Authority or the TfL Group, as applicable, and associated with the control of physical environments, such as a communications room.
PMP	means Project Management Professional; and is a credential offered by the Project Management Institute (PMI)
Prince2	refers to the leading project management training resource, Improve project management skills, employment prospects with PRINCE2 certification
Product	means a Good or Contracting Authority's Goods and/or other product, as will be detailed further as part of a Call-Off Procedure
Programme Office	means an administrative function of the Service Provider responsible for processing Technical Changes and Projects.
Remote Worker	means a Contracting Authority User, not at a Contracting Authority location, who connects to the Contracting Authority Network.
Response Time	means the time from the point at which the Service Provider becomes aware of the Incident or problem until the time that operational investigation into the Incident or problem begins.
Restoration	means the full resumption and restoration of the relevant part of the Services and/or fixing of the Incident or problem so the Deliverables are available and being performed in accordance with the relevant Call-Off Contract (and "Restored" and "Restore" shall have the same meaning)
Restore Time	means the time from the point at which the Service Provider becomes aware of an Incident until either the Incident is resolved / Restored, or the Contracting Authority has approved a plan for resolution / Restoration, or a plan for resolution / restoration has been logged with the Primary Service Desk when no Contracting Authority representative can be contacted.
Root Cause Analysis	means a method of problem solving that tries to identify the root causes of faults or problems within a system or software or Solution.
Scheduled Outage Time	means a planned period of time during which a system or service (including a Service) or Solution will be unavailable.
Service	has the meaning set out in the terms and conditions of the Framework Agreement, above
Service Provider	has the meaning set out in the terms and conditions of the Framework Agreement, above
SLA	means a Service Level Agreement
SLA Category	means a collection of performance targets sharing a common SLA
SME	means Subject Matter Expert
SOA	means Service Oriented Architecture
SoR or Statement of Requirements	means Statement of Requirement
Sub-Contractor personnel	means any person employed or engaged by or on behalf of a Sub-Contractor and who is wholly or mainly engaged in the performance of the Service Provider's obligations under the Framework Agreement.
Technical Change	means any technical changes to the technical delivery or technical elements of the Statement of Requirements and/or any equipment or personnel moved by agreement between the Parties in accordance with the Technical Change Management Process.
TfL Period	refers to one of the defined 13 Periods that the TfL Group report

Term	Description
	against
the Contracting Authority	has the meaning set out in the terms and conditions of the Framework Agreement, above
Third Party Contracts	means any contract with a person, partnership, company or any other undertaking not being the Service Provider or the Contracting Authority.
Ticket	means the Primary Service Desk reference number given to a User to log a call made by the User to the Primary Service Desk in respect of an Incident or Request.
TMMi	means Test Maturity Model integration
TOGAF	means The Open Group Architecture Framework; a detailed method and a set of supporting tools - for developing an enterprise architecture
ToR	means Technical Reference Model
UAT	means User Acceptance Testing; is the last phase of the software testing process
UML	means Unified Modelling Language; is a general-purpose modelling language in the field of software engineering, which is designed to provide a standard way to visualize the design of a system
Use Cases	A use case is a methodology used in system analysis to identify, clarify, and organize system requirements
User Interfaces	refers to the visual part of computer application or operating system through which a user interacts with a computer or a software
User Stories	User stories are one of the primary development artefacts for Scrum and Extreme Programming (XP) project teams

1. Project Management Services

- 1.1 The Service Provider, if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall:
- Provide a range of project management related services aimed at managing and delivering activities across portfolios, programmes and projects. Specific requirements will be provided to Framework Suppliers as part of the Call-Off Procedure and/or in any Mini-Competition exercise
- 1.2 The Service Provider shall be able to provide the full end to end services at all times, or any part of the thereof, if requested by the Contracting Authority. Each individual requirement will be specified as part of the Call-Off Procedure and then in the Call-Off Contract and which may include requiring the Service Provider to complete activities relating to:
- Project, Programme and Portfolio Delivery Management Services ensuring that outcomes are achieved and benefits are realised. This could include delivering objectives within the defined performance targets for time, cost, quality, scope, benefits and risks.
 - Creation or review of business case(s), including:
 - Reviewing the risks, issues and dependencies.
 - Financial analysis.
 - Reviewing total cost of ownership.
 - Identifying benefits.
 - Project, Programme and Portfolio Management Support / Office Services, including;

- Finance / Budget Management and Reporting.
 - Progress / Highlight Reporting.
 - Configuration and change management.
 - Risk, Issue, Assumption and Dependency management.
 - Portfolio Pipeline Management and prioritisation.
 - Governance and Assurance.
 - Project, Programme and Delivery Portfolio Planning using appropriate methodologies (e.g. DevOps, Waterfall, Agile, Scrum etc.).
- 1.3 Where relevant to the delivery of a project as part of any Services, or where requested by the Contracting Authority, the Service Provider shall demonstrate adherence to the following maturity models (or, if acceptable to the Contracting Authority (acting reasonably), an equivalent):
- Adherence to and measured against standard industry maturity models such as P3M3, P3O.
 - Certification in one or more of the following methodologies: Prince2, MSP, MoP, P3M3, APM, PMP.

2. Consultancy and Advice

- 2.1 The Service Provider, if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall
- Provide consultancy and advice on all or parts of the entire change lifecycle by appropriate Subject Matter Experts (SMEs). Consultancy and advice may be required at any stage in the change lifecycle.
- 2.2 The Service Provider shall be able to provide the full end to end services at all times, or any part of the thereof, if requested by the Contracting Authority. Each individual requirement will be specified as part of the Call-Off Procedure and/or in a Mini-Competition and which may include activities relating to:
- The creation of, review of or provision of advice relating to:
 - Information Management Strategy,
 - Investment planning,
 - Technology,
 - Information and applications,
 - Security,
 - Product Solutions,
 - Process and organisational design.
 - Providing advice relating to Research, development and innovation.
 - Creation or review of Feasibility Studies(s), including
 - Defining requirements.
 - Identifying and explore Solutions.
 - Highlighting recommendations.
 - Outline Business Case(s).

- Conducting, reviewing/validating or provision of advice relating to:
 - Health checks and Audits of Project
 - Programme and Portfolio Delivery Management.
- Creation of, review of and/or provision of advice relating to Performance Management. This would include (but not be limited to) activities:
 - Key Performance Indicator creation,
 - Management and monitoring.
- Benchmarking activities relating to reviewing costs and technology options to deliver best value to the Contracting Authority

3. Business Change

- 3.1 The Service Provider, if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall:
- Provide effective management of the change process to ensure the desired outcomes are achieved. The Call-Off Procedure and/or any Mini-Competition exercise will detail whether this is to assist in an existing initiative or as a function within an end-to-end delivery.
- 3.2 The Service Provider shall be able to provide the full end to end services at all times, or any part of the thereof, if requested by the Contracting Authority. Each individual requirement will be specified as part of the Call-Off Procedure and/or any Mini-Competition exercise and which may include activities relating to:
- Process, People, Organisational and Transformational change.
 - Business / Organisational change planning and execution.
 - Stakeholder and Communication management and planning.
 - Organisational technology integration.
- 3.3 Where relevant to the delivery of a project as part of any Services, or where requested by the Contracting Authority, the Service Provider shall make use of a proven structured change model with demonstrable results and experience.

4. Requirement Analysis

- 4.1 The Service Provider, if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall:
- Provide a range of requirements capture, analysis and related disciplines in order to understand the business and technical requirements. The Call-Off Procedure and/or any Mini-Competition exercise will detail whether this is to assist in an existing initiative or as a function within an end-to-end delivery.
- 4.2 The Service Provider shall be able to provide the full end to end services at all times, or any part of the thereof, if requested by the Contracting Authority. Each individual requirement will be specified as part of the Call-Off Procedure and/or any Mini-Competition exercise is accordance with the Framework and may include activities relating to:

- Gathering and Documenting Business Requirements including:
 - Functional and Non-Functional requirements
 - Process requirements
 - Service requirements
 - Use Cases, User Stories and User Interfaces.
 - Business Architecture requirements
 - Workshop facilitation including multiple elicitation techniques.
 - Process Analysis including 'as-is' and 'to-be' definition
- 4.3 Where relevant to the delivery of a project as part of any Services, or where requested by the Contracting Authority, the Service Provider shall demonstrate adherence to the following maturity models (or, if acceptable to the Contracting Authority (acting reasonably), an equivalent) and provide certification if requested:
- Adherence to and measured against standard industry maturity models BAMM.
 - Certification and the use of structure business requirements analysis, use case, UML, BCS, Lean, BPMN.

5. Design

- 5.1 The Service Provider, if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall:
- Provide a structured approach to change initiative(s), to define the Solution(s) required for delivery, based on approved requirements and within agreed constraints (e.g. standards, cost, timeframe, technology). The Call-Off Procedure and/or any Mini-Competition exercise will detail whether this is to assist in an existing initiative or as a function within an end-to-end delivery.
- 5.2 The Service Provider shall be able to provide the full end to end services at all times, or any part of the thereof, if requested by the Contracting Authority. Each individual requirement will be specified as part of the Call-Off Procedure and/or any Mini-Competition exercise and may include activities relating to:
- Structured approach to design (Business & Technical) using frameworks such as TOGAF and UX Design (or, if acceptable to the Contracting Authority (acting reasonably), an equivalent).
 - Enterprise architecture, addressing the goals of; effectiveness, efficiency, agility, and durability.
 - End to end architecture governance.
 - New-build designs, and design updates to augment existing services.
 - System Architecture Design and Service Design
 - Application, Data and Technical (Infrastructure) - High and Low Level Design.
 - Solution design including:

- application design, development, build, implementation, transition and training
 - Identification of requirements required to implement and roll out the Solution including upgrade, replace, refresh requirements.
- 5.3 In the event that hardware and/or Software are identified as part of a Solution, TfL will reserve the right to source these additional items directly i.e. benchmark costs where TfL believe it would be more economical or commercially advantageous to do so outside this Framework on a case by case basis.
- 5.4 Where relevant to the delivery of a project or Solution as part of any Services, or where requested by the Contracting Authority, the Service Provider shall demonstrate adherence to the following maturity models, standards (or, if acceptable to the Contracting Authority (acting reasonably), an equivalent);
- Compliance with internal security, technology and human factors / user experience standards.
 - Adherence to and measured against standard industry maturity models ACMMI.
 - Adherence to TfL software and hardware standards.
 - Certification and demonstrable use of TOGAF.
 - Use of structured enterprise modelling tools and Solution design.

6. Solution Build and Configure

- 6.1 The Service Provider, if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall:
- Provide build and configuration expertise in relation to the delivery of Solutions that meet approved requirements and designs within agreed time, cost and quality constraints. The Call-Off Procedure and/or any Mini-Competition will detail whether this is to assist in an existing initiative or as a function within an end-to-end delivery.
- 6.2 The Service Provider shall be able to provide the full end to end services at all times, or any part of the thereof, if requested by the Contracting Authority. Each individual requirement will be specified as part of the Call-Off Procedure and/or any Mini-Competition exercise and may include activities relating to:
- Developing, configuration and building of adaptive, multi-channel (e.g. desktop, web, smartphone, tablet, – server, storage, networks, GIS-Geographical Information System) Solutions.
 - Developing, configuration and build over multiple technologies (including mobile and telecommunications).
 - Infrastructure environment management, build, release and deployment (development, test, pre-production, production, training).
 - Structured source code management.
 - Unit testing to ensure the delivered product is fit for purpose.
 - Using structured software development life cycle approaches; DevOps, Waterfall, Agile (e.g. Iterative, Incremental etc).

- Use of collaborative interactive delivery techniques such as prototypes and proof of concepts.
 - Systems integration, orchestration, information integration and SOA.
 - Data modelling, transformation, loading, migration and management.
 - Delivering of Management / Business Information Reporting and Analytic Solutions.
- 6.3 Where relevant to the delivery of a project as part of any Services, or where requested by the Contracting Authority, the Service Provider shall demonstrate adherence to the following maturity models, products and standards (or, if acceptable to the Contracting Authority (acting reasonably), an equivalent);
- Adherence to and measured against standard industry maturity models CMMi.
 - Adherence to Disability Discrimination Act (DDA), technology and coding standards.
 - Use of structured source code products.

7. Testing

- 7.1 The Service Provider, if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall:
- Provide structured testing capability to confirm and assure build objectives and functionality have been met for delivered Solutions. The Mini-Competition will detail whether this is to assist in an existing initiative or as a function within an end-to-end delivery.
- 7.2 The Service Provider shall be able to provide the full end to end services at all times, or any part of the thereof, if requested by the Contracting Authority. Each individual requirement will be specified as part of the Call-Off Procedure and/or any Mini-Competition exercise and which may include activities relating to:
- Management of the end to end to test process from the test strategy, test plan, test schedule, scripts, defect management, test reporting (along with ongoing test report progress) and acceptance and Completion / Exit reports.
 - Functional, Integration and Non-Functional testing (including automated testing).
 - Visibility of testing lifecycle activity and products via reporting and collaboration systems.
 - Performance Testing (Stress, Load, Soak, etc.).
 - Use of tools associated with testing.
 - Facilitation and management of User Acceptance Testing (UAT).
 - Bug/defect tracking and test management activities and utilising tools where appropriate.
- 7.3 Where relevant to the delivery of a project as part of any Services, or where requested by the Contracting Authority, the Service Provider shall use structured testing and defect management processes and tools and

demonstrate adherence to the following maturity models (or, if acceptable to the Contracting Authority (acting reasonably), an equivalent);

- Adherence to and measured against standard industry maturity models (e.g. TMMi).

8. Product Delivery

8.1 The Service Provider, , if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall:

- Evaluate, identify and implement product based (e.g. Commercial Off The Shelf) Solutions that meet business outcomes, objectives and requirements. The Call-Off Procedure and/or any Mini-Competition exercise will detail whether this is to assist in an existing initiative or as a function within an end-to-end delivery.

8.2 The Service Provider shall be able to provide the full end to end services at all times, or any part of the thereof, if requested by the Contracting Authority. Each individual requirement will be specified as part of the Call-Off Procedure and/or any Mini-Competition exercise which may include activities relating to:

- Providing marketplace product identification and evaluation, excluding direct procurement.
- The management of Third Party suppliers.
- Delivering of a product / commercial off the shelf product / COTs Software that meets the business outcomes and requirements.
- End-to-End Product delivery, configuration and training
- Delivering of hosted, 'as a service' or SaaS or related support and maintenance services for a chosen product or Good.

8.3 Where relevant to the delivery of a project as part of any Services, or where requested by the Contracting Authority, the Service Provider shall be proven as a service provider in delivering COTS Solutions or COTs Software and demonstrate adherence to the following maturity models (or, if acceptable to the Contracting Authority (acting reasonably), an equivalent);

- Adherence to and measured against standard industry maturity models CMMi.

9. Implementation, Transition and Training

9.1 The Service Provider, if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall:

- Ensure successful delivery of an end product, Solution or service into production (business as usual), including where applicable, delivery of user / trainer training. The Call-Off Procedure and/or any Mini-Competition exercise will detail whether this is to assist in an existing initiative or as a function within an end-to-end delivery.

9.2 The Service Provider shall be able to provide the full end to end services at all times, or any part of the thereof, if requested by the Contracting Authority. The service areas that each individual requirement may be related to are Service Transition, Implementation Management and associated training

9.2.1 Service Transition activities may include:

- Confirming adherence to the agreed service requirements and service models.
- Management of the service including acceptance into production.
- Ensuring the Service Management and Infrastructure operations have all the collateral and knowledge needs to manage the service.
- Management of the warranty definition and warranty acceptance process.
- Provision of the resources to support warranty.
- Transition of risks into BAU.

For the purposes of this Schedule 1, "warranty" shall include Manufacturer's Warranty and/or other agreed warranties under a Call-Off Contract.

9.2.2 Implementation Management activities may include:

- Management of the implementation / cutover planning and execution.
- Management of warranty packs.
- Management of the data migration.
- Decommissioning of legacy information, application and technology.
- Management of rollback and contingency plans and execution.
- Release, change and deployment management.
- Asset tagging (e.g. physical tagging) and updating of the Contracting Authority CMDB (or data in a pre-defined electronic format) for all installation and decommissioned services.

9.2.3 Training requirements will be set out as part of any Mini-Competition and may be related to:

- Training needs analysis.
- Training planning.
- Creation of training collateral.
- Delivery of end user(s) / trainer training.

9.3 Where relevant to the delivery of a project as part of any Services, or where requested by the Contracting Authority, the Service Provider shall demonstrate that they are experienced in delivering Solutions in adherence to ITIL principles.

10. Support and Maintenance

10.1 The Service Provider, if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall:

- Be responsible for the managing the support and maintenance of a product or service (whether a Good, Contracting Authority's Goods or a Service or otherwise). The requirement will detail whether this is to assist in an existing initiative or as a function within an end-to-end delivery.

10.2 The Service Provider shall be able to provide the full end to end services at all times, or any part of the thereof, if requested by the Contracting Authority. Each individual requirement will be specified as part of the Call-Off Procedure and/or any Mini-Competition exercise which may include activities relating to:

- Management of a product or service (whether a Good, Contracting Authority's Goods or a Service or otherwise) within the agreed service level agreements (SLAs).
- Management of Incidents and problems including knowledge management, problem management and major Incident management.
- Provision of resilient hosted and/or 'as a Service' Solutions.
- Management of Third Party suppliers in the support model to ensure SLA's are achieved.
- Management of the product or service (whether a Good, Contracting Authority's Goods or a Service or otherwise) within an ITIL environment.
- Management of infrastructure environments including preventative maintenance, patching, upgrading.
- Maintenance of the Solution in terms of change, configuration, testing and release management.
- Service reviews and reporting.
- The effective application of a Continuous Service Improvement (CSI) regime.
- The effective knowledge management in terms of documentation, CMDB, resource without single points of failure.

10.3 Where relevant to the delivery of a project as part of any Services, or where requested by the Contracting Authority, the Service Provider shall demonstrate that they are an experienced ITIL organisation, ideally with a recognised ITIL accreditation.

11. Cyber Security and Information Assurance

11.1 The Service Provider, if requested as part of the Call-Off Procedure and/or any Mini-Competition exercise, shall:

- Provide expertise in Cyber Security and Information Assurance Solutions and services including any implementation activities.
- Comply with the Standards and Policies and security requirements. If only some of the Standards and Policies are required to be complied with under a Call-Off Contract then such Standards and Policies will be included in each individual Call-Off Procedure and/or any Mini-Competition exercise.

11.2 The Service Provider shall be able to provide security services at all times, or any part of the thereof, if requested by the Contracting Authority. Each individual requirement will be specified in the Call-Off Procedure and/or any Mini-Competition exercise and which may include activities relating to:

- End User Device Security - Provide expertise to assess and review suitability of emerging security options for end user devices such as mobile devices and cloud security.

- Intrusion Detection and Intrusion Prevention - provide subject matter expertise in the field of intrusion detection and intrusion protection to monitor and log TfL Group network activity.
- Access Control - provide expertise to provide, review, make recommendations in information security access control activities.
- Infrastructure and Platform Security - provide expertise in services for TfL Group information security infrastructure and platform activities.
- Cyber security awareness - Provide expertise services on all aspects of cyber security awareness to protect TfL Group information security.
- Threat Identification and Analysis – The identification and potential remediation of local, national and /or international cyber threats.
- Data Analytics - Provide expertise in data analytics including data mining and analysis with trends forecasting.
- Intelligence / Social media - provide expertise in actionable intelligence gathering for TfL Group social media information.
- Secure Cloud Services – Provide a range of cloud based security Solutions that is agnostic of technology and location.
- Security compliance - Provide expertise to in classification management for security compliance, be able to analyse and monitor security policies within TfL Group estate to provide recommendations.

11.3 Where relevant to the delivery of a project as part of any Services, or where requested by the Contracting Authority, the Service Provider shall demonstrate adherence to the following products and policies (or, if acceptable to the Contracting Authority (acting reasonably), an equivalent);

- Adherence to TfL Group Information Security Controls Framework and policies.
- Adherence to and integration with TfL Group Information Security control products.

12. Ongoing Support of Service

12.1 The Contracting Authority expects the Service Provider to deliver the Services in line with the Industry Best Practice and industry standards. Without prejudice to the generality of the foregoing, the Contracting Authority expects the following minimum levels of service outlined in this section to be adhered to for all Deliverables. This shall include provision of a mobilisation plan detailing how the Service Provider will mobilise the support for the Services providing detail documentation on:

- Time line to acquire security clearance
- Provision of Health and Safety Plan.
- Risk Assessment.
- Method Statement.

12.2 If a product is provided by the Service Provider as part of the delivery of a Solution that such products shall be covered by the manufacturer for the defined warranty period of that product. There may be instances that additional support is required once the standard support period expires and it is expected that the Service Provider will facilitate the extension of such support and maintenance contracts as and when required

- 12.3 Where appropriate the Service Provider can use a support partner to deliver certain services providing that the support partner can demonstrate the minimum pre-requisites of the Service Provider for providing such services.
- 12.4 For any associated Goods with an Installation Service request found to be Dead-On-Arrival, the Service Provider is expected to replace the Goods within 24 hours and at the Supplier's cost.
- 12.5 If there is a requirement for asset management the Service Provider shall be expected to, if required by Contracting Authority, asset tag (physical tagging) and update the Contracting Authority CMDB (or data in a pre-defined electronic format) for all installation and decommissioned service. The Contracting Authority use standardised Asset Tags and will provide these to the Supplier for physical asset tagging purposes. The Contracting Authority gives no guarantee of the number of units requiring asset tagging.
- 12.6 The Service Provider shall advise the Contracting Authority of the expected End of Life date related to any product that forms part of a Solution design and delivery. Where appropriate the successful Service Provider shall provide guidance on what products are best suited following EOL of current hardware on the estate, and the Service Provider will be expected to have market knowledge and advice on support options for EOL products.
- 12.7 If the Service Provider provides products as part of the Solutions they will be required to replace any products that are found to be Dead on Arrival ("DOA") or refund the cost of that item. A product is deemed to be DOA if it fails when it is first powered up, installed or used. Any items found to have failed due to user misuse will not be deemed DOA.

SCHEDULE 2

CALL OFF PROCEDURE AND TEMPLATE CALL-OFF CONTRACT

1. Call-Off Procedure

- 1.1 At any time during the Framework Period, a Contracting Authority may identify Deliverables which, at its sole discretion, it wishes to let under the terms of the Framework Agreement.
- 1.2 Where paragraph 1.1 applies, the Contracting Authority will issue to the Framework Suppliers that it assesses, in its sole discretion, are capable of providing the Deliverables to a Contracting Authority's satisfaction, a Request for Offer specifying the Deliverables to be provided.
- 1.3 For the purposes of the Framework Agreement and all Call-Off Contracts, a **"Request for Offer"** shall be construed to mean a "request issued by a Contracting Authority from time to time in writing (whether electronically and/or in hard copy) for proposals to supply one or more Deliverables under the Framework".
- 1.4 A Request for Offer may take the form of:
 - (a) an email;
 - (b) a written request for proposals accompanied by a brief specification; and/or
 - (c) a detailed invitation to tender (including a document in the form materially set out in Annex A to this Schedule); or
 - (d) such other form as the Contracting Authority considers is appropriate.
- 1.5 Any Request for Offer shall include, as a minimum:
 - (a) the Contracting Authority's requirements for the Deliverables including whether this is intended to be a one-off requirement or a series of requirements (whether by catalogue (if applicable) or otherwise) over the duration of the relevant Call-Off Contract;
 - (b) the instructions for submission of the proposals in response to the Request for Offer including the deadline for submission; and
 - (c) the assessment criteria (and any weightings) against which the proposals will be assessed. The evaluation criteria may include price, quality and KPI's but the Contracting Authority reserves the right to evaluate proposals on the basis of price alone. If the Contracting Authority identifies any material non-compliance under the Framework Agreement or one or more Call-Off Contracts or of any KPIs or SLAs (where applicable) in respect of the Service Provider such that the Contracting Authority is concerned about the Service Provider's ability to perform any future Call-Off Contract or in the event that the Service Provider is no longer able to undertake a Request for Offer, then the Contracting Authority reserves the right to refrain from placing a Request for Offer with the Service Provider and may instead place a Request for Offer with the Service Provider ranked in second place

under the process used. In the event that the Contracting Authority identifies a non-compliance in respect of the Service Provider ranked in second place, the Contracting Authority may look to award the Request for Offer to the next highest ranked Service Provider who meets the requirements of this Framework Agreement and KPIs (if applicable).

- 1.6 The form and detail included within any Request for Offer will be determined by the Contracting Authority having regard to the nature and/or volume of the Deliverables in question and the associated delivery timescales.
- 1.7 In the event that the Service Provider receives such a Request for Offer:
 - 1.7.1 the Service Provider shall (and each Framework Supplier will have been obliged to) confirm receipt of such Request for Offer and notify the Contracting Authority in writing as to whether it intends to submit a Proposal or not within two (2) Business Days;
 - 1.7.2 if the Service Provider chooses to respond to a Request for Offer, it shall submit a Proposal in accordance with the instructions set out in the Request for Offer to the Contracting Authority by the date specified in the Request for Offer or, if no such date is specified, within ten (10) Business Days of receiving the Request for Offer. A Proposal must remain valid for at least 90 Business Days from the date it is submitted to the Contracting Authority; and
 - 1.7.3 the Contracting Authority will evaluate all proposals received from Framework Suppliers (including the Proposal) in accordance with the instructions set out in the relevant Request for Offer and award the relevant Call-Off Contract to the proposal that is the most economically advantageous with reference to the against the assessment criteria set out in the relevant Request for Offer.
- 1.8 Any rates or prices submitted by the Service Provider in response to a Request for Offer shall not exceed the rates or prices set out in **Schedule 3** of the Framework Agreement (to the extent they cover the same or equivalent items) but such rates or prices may be lower than those rates or prices set out in **Schedule 3**.
- 1.9 Each Call-Off Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions of the Framework Agreement, mutatis mutandis and as may have been amended in such Call-Off Contract and such documentation shall together form a separate agreement between the Parties, unless stated to be linked to another Call-Off Contract.
- 1.10 A Request for Offer and anything prepared or discussed by the Contracting Authority shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by the Service Provider.
- 1.11 A draft Call-Off Contract shall only become a Call-Off Contract upon execution of the draft Call-Off Contract by the Contracting Authority.
- 1.12 The Contracting Authority shall not be obliged to consider or accept any Proposal submitted by the Service Provider.

- 1.13 Unless otherwise expressly agreed in writing with the Contracting Authority, the Service Provider shall not be entitled to charge under the Framework Agreement or any Call-Off Contract for any work involved in any receipt and/or confirmation of any Request for Offer, and/or any response to any Request for Offer as contemplated in this paragraph 1.
- 1.14 The Contracting Authority takes its obligations in relation to non-discrimination against disability extremely seriously. As such, from time to time, the Service Provider acknowledges and agrees that Contracting Bodies may need to source particular Deliverables to match the requirements of its staff or individual Service Providers working for it or due to work for it and sometimes these requirements will be at short notice. The Contracting Authority does not anticipate that such requirements from time to time will be high in value. If any one Request for Offer or Order at any time is for a value of more than £10,000 then TfL will run a detailed Mini-Competition process to tender the award of such Request for Offer and Order.
- 1.15 Where reasonably requested to do so by the Greater London Authority ("**GLA**") or any of its other functional bodies (currently, the London Development Agency, the Metropolitan Police, the London Fire and Emergency Planning Authority) ("**Functional Bodies**") and provided the Service Provider is willing to so contract (with such agreement not to be unreasonably withheld), the Service Provider shall contract with such other members of the GLA Group on the terms of the Framework Agreement mutatis mutandis. The GLA or the Functional Bodies cannot affect or amend the Framework Agreement and each Call-Off Contract shall be specifically between the Service Provider and the GLA or appropriate Functional Body and the TfL Group shall in no way be liable for the GLA or appropriate Functional Bodies obligations arising out of such Call-Off Contract.

Annex A

Request for Offer Form (Mini-Competition)

Framework Number:

Request for Offer Form Number:

To:

Address:

From:

Date:

This is a Request Form for the provision of Deliverables in accordance with this Framework Agreement referenced above. This is an enquiry document only, constituting an invitation to treat and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the Contracting Authority; however such acceptance will not occur unless and until the Contracting Authority posts notice of acceptance to you.

Attachment 1 of this Request Form sets out the Deliverables required by the Contracting Authority, the commercial model to be used and other relevant information.

In your Proposal, you must respond to the information requested in Attachment 1 by completing Attachment 2.

Attached to this Request Form is a draft Call-Off Contract. The Contracting Authority is under no obligation to award any Call-Off Contract as a result of this Request Form.

Your Proposal will be assessed against those submitted by other service providers as part of a Mini-Competition process. The Contracting Authority will award the relevant Call-Off Contract to the Service Provider with the Proposal that is the most economically advantageous with reference to the assessment criteria set out in Attachment 1.

You must complete and return your Proposal by []. Please e-mail your Proposal, and send a paper copy to:

Name:

Position:

e-mail address:

Postal address:

Telephone:

Fax:

Any queries regarding this Request Form should be directed to the above. Any queries regarding this Framework Agreement should be directed to the Commercial Manager named in this Framework Agreement.

Signed: _____
for and on behalf of the Contracting Authority

Attachments:

Attachment 1: Deliverables to be provided and other relevant information

Attachment 2: Service Provider's Proposal

Draft Call-Off Contract

Attachment 1

[To be completed by the Contracting Authority]

1. Deliverables to be provided and associated information

Detail here all Deliverables with full descriptions of what is required (including in relation to Goods and Services), and including the list of goods and services (or whether the list in the Framework (as amended) as it stands applies), instructions relating to pricing, the Statement of Requirements (if any), the Deliverables Requirements (if any), technical requirements and timings.

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

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

- details of any technical and/or functional specifications and/or any service levels / SLAs (as applicable)/response times/delivery times of any Deliverables required by the Contracting Authority to be delivered or achieved by the Service Provider;*
- whether an agreed Equality Policy is required;*

In relation to Services:

- Working Hours;*
- CVs of the Personnel to be working on the project;*
- Details of any Key Personnel;*
- estimated time-lines for each of the Milestones and for the overall project;*
- the Service Provider's best price offer based on charges*
- the Service Provider's proposal for staged payments or whether pro-rata monthly payments will apply;*
- any materials, equipment or goods required to provide the Deliverables, including Service Provider IPR deliverables and Third Party IPR deliverables and any the Contracting Authority will own;*
- any material assumptions or facts relied upon by the Contracting Authority in compiling it and any other material information which relates to the Deliverables required to be provided and/or performed;*
- Whether a Disaster Recovery Plan is required;*

- *Service levels, and measurement thereof;*
- *any warranties and/or representations required from the Service Provider.*
If Extended Warranties are to be requested, please state this here.

2. Any Special Conditions (see attachment 3 below)

3. Acceptance Criteria

[If the Contracting Authority requires any Deliverable (whether in isolation or in combination with other Deliverables (e.g. as a Solution, package, or system)) and/or any Service or other Deliverables to be subject to acceptance and/or service validation tests (as applicable), define the acceptance criteria which the Service Provider must ensure are met.]

4. Timetable

Commencement Date (complete only if different from the date of the Call-Off Contract):

Framework Agreement Period:

Term of the Call-Off Contract:

5. The Contracting Authority account details

Relevant account code and cost centre:

6. The Contracting Authority's Call-Off Co-ordinator and Commercial Manager

Name:

Address:

Phone:

Fax:

Email:

7. Additional or varied minimum Insurances (if any) to be held by Service Provider:

(Complete or delete as appropriate)

- Employer's liability insurance to be amended to £[X] million per incident or such higher amount as may be required by law from time to time;
- Public liability insurance to be amended to £[X] million per occurrence with financial loss extension;
- Professional indemnity insurance to be amended to £[X] million per incident and £[X] million per annum in the aggregate per annum for the duration of the Call-Off Contract/ Agreement and for six (6) years after expiry or termination of the Call-Off Contract/Agreement; and

- d) Product liability insurance to be amended to £[X] million in the aggregate per annum with financial loss extension.
- e) Tangible property damage.

Attachment 2

Proposal

[To be completed by the Service Provider]

1. Proposed Solution

The Service Provider should detail how it proposes to deliver the Deliverables set out in Attachment 1, including attaching an Implementation Plan, details of any equipment and materials required and service levels / SLAs. The Service Provider should respond to all questions and requirements asked/asked for in Attachment 1, which may include:

- *Confirm it can meet any minimum requirements as set out in the requirements provided by the Contracting Authority as part of a Mini-Competition*
- *details of ability to comply with the technical and/or functional specifications and/or any service levels / SLAs (as applicable)/response times/delivery times of any Deliverables required by the Contracting Authority to be delivered or achieved by the Service Provider;*
- *details of your Equality Policy if required;*

In relation to Services:

- *Working Hours;*
- *CVs of the Personnel to be working on the project;*
- *Details of any Key Personnel;*
- *estimated time-lines for each of the Milestones and for the overall project;*
- *the Service Provider's best price offer based on charges (see section 2 below);*
- *the Service Provider's proposal for staged payments or whether pro-rata monthly payments will apply (see section 2 below);*
- *any materials, equipment or goods required to provide the Deliverables, including Service Provider IPR deliverables and Third Party IPR deliverables and any the Contracting Authority will own;*
- *any material assumptions or facts relied upon by the Contracting Authority in compiling it and any other material information which relates to the Deliverables required to be provided and/or performed;*
- *Dependencies, Risks, Issues, Mitigations*
- *Whether a Disaster Recovery Plan is required;*
- *Service levels, and measurement thereof;*

- *the warranties and/or representations it can offer including any Standard Warranties and Extended Warranties.*
- *Exit Plan requirements if any*

2. Charges

The Service Provider should set out the Charges for the Deliverables required, their provision and the contract model as set out in Attachment 1, taking into account that, where and to the extent applicable, the rates and mechanisms used to calculate the Charges shall not exceed the rates and shall utilise the mechanisms set out in Schedule 3 of this Framework Agreement.

3. If required in Attachment 1, Service Team and Personnel

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

4. If required in Attachment 1, Experience

An outline of relevant past work or projects including references.

5. Proposed Sub-Contractors (if any)

Name and contact details of proposed Sub-Contractors and details of any proposed sub-contracted work.

6. Proposed completion date

Complete only if different from duration/expiry date stated in Attachment 1.

7. Insurance

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

8. Exit Plan.

Add suitable Exit Plan if requested as part of the Mini-Competition.

9. Other Information

Call-Off Contract Template

Call-Off Contract Number:

BETWEEN:

- RECITALS:**

- A. The Contracting Authority and the Service Provider have entered into an agreement dated [] which sets out the framework for the Service Provider to provide certain Deliverables to the Contracting Authority or the Contracting Authority ("**the Framework Agreement**").
- B. The Contracting Authority wishes the Service Provider to provide the specific Deliverables described in this Call-Off Contract pursuant to the terms of the Framework Agreement and this Call-Off Contract and the Service Provider has agreed to provide such Deliverables on those terms and conditions set out in the Call-Off Contract.

THE PARTIES AGREE THAT:

1. CALL-OFF CONTRACT

- 1.1 The terms and conditions of the Framework Agreement shall be incorporated into this Call-Off Contract.
- 1.2 In this Call-Off Contract the words and expressions defined in the Framework Agreement shall, except where inconsistent with the context requires otherwise, have the meanings given in the Framework Agreement. In this Call-Off Contract references to Attachments are, unless otherwise provided, references to attachments of this Call-Off Contract.

2. DELIVERABLES

- 2.1 The Deliverables to be supplied by the Service Provider pursuant to this Call-Off Contract are set out in Attachment 1.
- 2.2 The Service Provider acknowledges that it has been supplied with sufficient information about this Call-Off Contract and the Deliverables to be provided and that it has made all appropriate and necessary enquiries to enable it to provide the Deliverables under this Call-Off Contract. The

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Service Provider shall neither be entitled to any additional payment nor excused from any obligation or liability under this Call-Off Contract or the Framework Agreement due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Deliverables to be provided. The Service Provider shall promptly bring to the attention of the Call-Off Co-ordinator and Commercial Manager any matter that is not adequately specified or defined in the Call-Off Contract or any other relevant document.

- 2.3 The timetable for any Deliverables to be provided by the Service Provider and the corresponding Milestones (if any) and Key Milestone Dates (if any) and Implementation Plan (if any) are set out in Attachment 1. The Service Provider must provide the Deliverables in respect of this Call-Off Contract in accordance with such timings and the Service Provider must pay liquidated damages in accordance with the Framework Agreement of such an amount as may be specified in Attachment 1. The Service Provider shall be liable for the ongoing costs of providing Deliverables in order to meet a Milestone and Key Milestone Dates. Time shall be of the essence in relation to the Key Milestone Dates where stated in the Implementation Plan.
- 2.4 The Service Provider acknowledges and agrees that as at the commencement date of this Call-Off Contract it does not have an interest in any matter where there is or is reasonably likely to be a conflict of interest with the Deliverables provided to the Contracting Authority under this Call-Off Contract.

3. CALL-OFF TERM

This Call-Off Contract commences on the date of this Call-Off Contract or such other date as may be specified in Attachment 1 and subject to the provisions of the Framework Agreement, shall continue in force **[enter period]** unless terminated earlier in whole or in part in accordance with the Framework Agreement.

4. CHARGES

Attachment 2 specifies the Charges payable in respect of the Services provided under this Call-Off Contract. The Charges shall not increase during the duration of this Call-Off Contract unless varied in accordance with the Framework Agreement. The Service Provider shall submit invoices in accordance with the Framework Agreement and the Charges shall be paid in accordance with this Call-Off Contract.

5. CALL-OFF CO-ORDINATOR /COMMERCIAL MANAGER AND KEY PERSONNEL

The Contracting Authority's Call-Off Co-ordinator in respect of this Call-Off Contract is named in Attachment 1 and the Service Provider's Key Personnel in respect of this Call-Off Contract are named in Attachment 2.

This Call-Off Contract has been signed by duly authorised representatives of each of the Parties.

SIGNED

For and on behalf of the [*Contracting Authority*]

Signature: _____

Name: _____

Title: _____

Date: _____

SIGNED

For and on behalf of [*the Service Provider*]

Signature: _____

Name: _____

Title: _____

Date: _____

Attachment 1

[To be completed by the Contracting Authority. This will replicate the information from the Request for Proposal]

Attachment 2

[To be completed in the initial draft by the Service Provider and to replicate Attachment 2 in the proposal]

Attachment 3 to Call-Off Contract

Special Conditions for Call-Off Contract

[As per the request for proposal]

Annex 1 to the Call-Off Contract

1. Principles

- 1.1 Where the Contracting Authority or the Service Provider sees a need to change any of the Deliverables, the TfL Group's Service Manager may at any time request, and the Service Provider's Service Manager may at any time recommend, such amendment only in accordance with the formal Change Control Procedure ("**CCP**") as set out at paragraph 2.
- 1.2 Neither Party shall unreasonably withhold its agreement to any amendment (which includes not recommending changes to any Deliverables which are not reasonably necessary).
- 1.3 Until such time as an amendment to the Deliverables is made in accordance with this Change Control Procedure, the Contracting Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform the Services in compliance with its terms prior to such amendment.
- 1.4 Any discussions which may take place between the Contracting Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant amendment to the Deliverables shall be without prejudice to the rights of either Party.
- 1.5 Any work undertaken by the Service Provider which has not been otherwise agreed in accordance with the provisions of this Annex 1 shall be undertaken entirely at the expense and liability of the Service Provider.

2. Procedures

- 2.1 Discussion between the Contracting Authority and the Service Provider concerning an amendment to the Services shall result in any one of the following:
 - 2.1.1 no further action being taken;
 - 2.1.2 a request to amend the Services by the Contracting Authority; or
 - 2.1.3 a recommendation to amend the Services by the Service Provider.
- 2.2 Where a written request for an amendment is received from the Contracting Authority, the Service Provider shall, unless otherwise agreed, submit two (2) copies of a Change Control Note ("**CCN**") signed by the Service Provider to the Contracting Authority within seven (7) days of the date of the request or such other period as the Service Managers shall agree (acting reasonably).
- 2.3 A recommendation to amend by the Service Provider shall be submitted direct to the Contracting Authority in the form of two (2) copies of a CCN signed by the Service Provider at the time of such recommendation and the Contracting Authority shall give its response within fourteen (14) days or such other period as the Service Managers shall agree (acting reasonably).

- 2.4 Each CCN shall contain:
 - 2.4.1 the title of the amendment;
 - 2.4.2 the originator and date of the request or recommendation for the amendment;
 - 2.4.3 the reason for the amendment;
 - 2.4.4 full details of the amendment including any specifications;
 - 2.4.5 the price, if any, of the amendment;
 - 2.4.6 a timetable for implementation together with any proposals for acceptance of the amendment;
 - 2.4.7 a schedule of payments, if appropriate;
 - 2.4.8 details of the likely impact, if any, of the amendment on other aspects of the Services including to:
 - 2.4.8.1 the timetable for the provision of the amendment;
 - 2.4.8.2 the personnel to be provided;
 - 2.4.8.3 the amended charges payable under the Services (as now amended);
 - 2.4.8.4 the Documentation to be provided;
 - 2.4.8.5 the training to be provided;
 - 2.4.8.6 working arrangements; and
 - 2.4.8.7 other contractual issues;
 - 2.4.9 the date of expiry of validity of the CCN; and
 - 2.4.10 provision for signature by the Contracting Authority and by the Service Provider.
- 2.5 For each CCN submitted the Contracting Authority shall, within the period of the validity of the CCN:
 - 2.5.1 allocate a sequential number to the CCN;
 - 2.5.2 evaluate the CCN and, as appropriate:
 - 2.5.2.1 request further information, or
 - 2.5.2.2 arrange for two (2) copies of the CCN to be signed by or on behalf of the Contracting Authority and return one of the copies to the Service Provider; or
 - 2.5.2.3 notify the Service Provider of the rejection of the CCN.

- 2.6 A CCN signed by the Contracting Authority and by the Service Provider shall constitute an amendment to the Services and to the Framework Agreement and otherwise no amendment shall have been agreed.

Change Control Note

Change Request No

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

Title of Amendment.....

Originator.....

Date of request.....

The following change is requested to the Call-Off Contract identified above

Change Request (to be completed by the Contracting Authority)	
<p>Description of Change:</p> <p>Reason/Justification:</p> <p>Affected Area(s) if relevant:</p> <p>Details of the requirement:</p> <p>Price:</p> <p>Timetable for implementation:</p> <p>Schedule of Payments:</p> <p>Details of likely impact, if any, of the amendment on other aspects of the Services-</p> <ul style="list-style-type: none">• the timetable for the provision of the amendment;• the personnel to be provided;• the amended charges payable under the Services (as now amended);• the Documentation to be provided• the training to be provided;• working arrangements;• other contractual issues.	
<p>I request that the described change be considered for inclusion in the Framework Agreement</p> <p>Signature Date/...../.....</p> <p>Position</p> <p>Approved by the Contracting Authority:</p> <p>Signature Date/...../.....</p> <p>Position</p>	

SCHEDULE 3

SCHEDULE OF RATES AND CHARGING PROVISIONS

Charges, rates, discounts, rebates

1. Charges

- 1.1 Charges for Services and any other Deliverables shall be based on day rates and shall be known below as Consultancy Day Rates. The Consultancy Day Rates charging associated with the Services / Deliverables to be provided / supplied by the Service Provider pursuant to any Call-Off Contract entered into shall be as follows:
 - 1.1.1 The charges payable for the Services / Deliverables shall be calculated in accordance with the day rates as detailed in **Schedule 3 Annex 1** below;
 - 1.1.2 The Service Provider day rates detailed in **Schedule 3 Annex 1** are calculated on the basis of a seven and a half-hour day worked between 8.00am and 6.00pm on UK weekdays (excluding UK weekends and public holidays);
 - 1.1.3 The Service Provider may charge at an overtime rate of 150% of the normal day rate for part days and for time worked by members of the project team outside the days referred to in paragraph 1.1.2 on a pro-rata basis. All overtime will need to be agreed by the Contracting Authority in writing prior to being incurred; and
 - 1.1.4 The Service Provider shall ensure that all members of their project team complete time sheets recording time spent on the on the Services / Deliverables, and the Service Provider shall use these time sheets to calculate the Charges.
- 1.2 The Service Provider shall invoice the Contracting Authority monthly in arrears for its charges for time, disbursements, materials and third-party services (together with VAT where appropriate) for the month concerned, calculated as provided in this **Schedule 3**. Any invoices shall be submitted in accordance with **clause 5** or as otherwise set out in a Call-Off Contract.
- 1.3 Any consultancy day rates to be charged will be provided to the Contracting Authority by the Service Provider and agreed prior to any work being commenced. These rates are set out in **Schedule 3 Annex 1**.
- 1.4 If rates are not provided in this schedule or under any products list (whether for Goods, Services or otherwise), such charges will be tendered for and agreed under a Mini-Competition under the Call-Off Procedure with the successful service provider for a particular Mini-Competition agreeing a Call-Off Contract in accordance with the Framework Agreement.

2. **VAT**

- 2.1 The Contracting Authority shall pay the Service Provider any VAT properly chargeable on the Services in accordance with **clause 5**. Any amount expressed as payable to the Service Provider under this agreement is exclusive of VAT unless stated otherwise.

SCHEDULE 3 ANNEX 1 – CONSULTANCY DAY RATES, DELIVERABLES, CHARGES AND REBATES

Part A–DAY RATES

The Contracting Authority will be responsible for specifying the requirements for each Mini-Competition and/or Call-Off Procedure. Detailed resource requirements will be set out in any subsequent Call-Off Contract with the successful Service Provider. Any obligations associated with the identified roles will be agreed and finalised as part of the agreed Call-Off Contract.

The tables below outline the maximum Service Provider day rates that will be applicable to Call-Off contracts under this Framework:

Number	Job Role	Service Provider equivalent job title (s)	Standard Day Rate(s) Exclusive of Expenses (£'s)	Minimum Flat Rate Discount (%)	Discounted Day Rate (£'s)	Discounted Day Rate Inclusive of Expenses (£'s)
1	Programme Manager					
2	Project Manager					
3	Project Support Officer					
4	Senior Business Systems Analyst					
5	Test Analyst					
6	Senior Test Analyst					
7	Solutions Architect					
8	Solution Developer					
9	Solutions Development Team Lead					
10	Enterprise Architect					

11	Service Analyst						
12	Senior Service Transition Analyst						
13	Cyber Security Compliance Manager						
14	Cyber Investigation Manager						
15	Service Delivery Manager						
16	Service Transition Manager (Release)						
17	Principle Consultant						
18	Senior Consultant						

The Minimum Flat Rate Discount offered will be applied to all rates contained in the Service Provider's Standard Rate Card and is valid for the duration of the Framework.

Definitions and assumptions relating to the rate card are set out below:

General

Normal Working Hours are calculated on the basis of a seven and a half-hour day worked between 8.00am and 6.00pm Monday to Friday (excluding UK weekends and public holidays).

Any rates or prices submitted by the Service Provider in response to a Request for Offer shall not exceed the rates or prices set out in Schedule 3 of the Framework Agreement (to the extent they cover the same or equivalent items) but such rates or prices may be lower than those rates or prices set out in Schedule 3.

Unless otherwise agreed, and for each Call-Off, a minimum daily charge will apply. This will be four (4) hours for a call out on site, but one (1) hour if working remotely.

Any overtime will only be payable upon receipt of sufficient notice from the Service Provider and agreement with the Contracting Authority.

Travel time or subsistence is not chargeable or included in Normal Working Hours.

Any exception to the rates must be mutually agreed as part of the Call-Off Contract and before the commencement of the agreed activities.

Following expiry of the Initial Framework Period of two (2) years and with effect from each subsequent anniversary of the Commencement Date, the Charges will be adjusted upwards (or downwards as the case may be) by the amount of the change (if any) in RPI between its rate last published (as final) immediately before such anniversary and its rate published (as final) twelve months before that.

For the purposes of this Framework Agreement, "RPI" means the Retail Price Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Contracting Authority and Service Provider may agree.

Expenses:

Without prejudice to the generality of **clause 5**, except where expressly identified including as a rate exclusive of expenses, the day rates (as well as any rates charged for overtime or otherwise) shall be inclusive of expenses, travel, disbursements, congestion charging costs, subsistence and hotel costs.

If expenses become payable these must be agreed with Contracting Authority Project Manager on a case by case basis.

Expenses will be at cost with no mark-up or admin fees.

Receipts will be provided on request.

Expenses that cannot be claimed

Travel time is not chargeable or included in Normal Working Hours.

For your personnel working at locations other than Contracting Authority sites, or locations where it has not been agreed in advance with the Contracting Authority where expenses can be claimed. This to be agreed on a case by case basis in each Call-Off Contract.

Expenses cannot be claimed for your personnel if they are working remotely, at their normal place of work or at one of your site locations.

Expenses cannot be claimed relating to working within the M25.

Part B – Rebates

The following retrospective rebates are available to the Contracting Authority and each Other Contracting Party.

Rebates will be managed in accordance with the mechanism set out in the Framework Agreement, **clause 5**.

The Retrospective Rebate that applies to this Framework is [REDACTED] percent

Retrospective Rebate will be charged based on the total spend in each Contract Year. This will not include third party hardware and software that form part of the deliverables in relation to the delivery of any IT Solutions requirements unless advised otherwise by the Service Provider.

At the end of each Contract Year the spend figure will be re-set to zero.

Spend eligible for Retrospective Rebate will be based on spend excluding VAT.

SCHEDULE 4

LIST OF REQUIREMENTS

List of Policies

The list of policies below are those that the Contracting Authority requires the Service Provider to comply with in performing their obligations under this Framework Agreement and/or any and all Call-Off Contract(s):

No.	Category	Policy Title
1.	Security	Information Security Controls Framework
2.	Security	IM-D-PO-005 - Information Security
3.	Security	IM-S-PO-005 - Equipment Connection Policy
4.	Security	IM-S-PO-006 - Remote Access for 3rd Party Support Providers
5.	Security	IM-S-PO-007 - Third Party Remote Access
6.	Security	IM-S-PO-014 - TfL Equipment on Third Party Sites
7.	Security	IM-S-PO-016 - System Hardening
8.	Security	IM-S-PO-035 - Security Policy - Secure Erasure and Disposal
9.	Security	IM-S-PO-047 - Security Policy - IT Change Control
10.	Security	IM-S-PO-048 - System Data Migration and Decommissioning Policy
11.	Security	IM-S-PP-001 - ISO 27001 Section 1 Security Organisation Principles
12.	Security	IM-S-PP-002 - ISO 27001 Section 2 Asset Management Principles
13.	Security	IM-S-PP-003 - ISO 27001 Section 3 Human Resources Security Principles
14.	Security	IM-S-PP-004 - ISO 27001 Section 4 Physical and Environmental Security Principles
15.	Security	IM-S-PP-005 - ISO 27001 Section 5 Communications and Operations Management
16.	Security	IM-S-PP-006 - ISO 27001 Section 6 Access Control Principles
17.	Security	IM-S-PP-007 - ISO 27001 Section 7 Information Systems, Acquisition and Maintenance
18.	Security	IM-S-PP-008 - ISO 27001 Section 8 Information Security Incident Management Principles
19.	Security	IM-S-PP-009 - ISO 27001 Section 9 Business Continuity Management Principles
20.	Security	IM-S-PP-010 - ISO 27001 Section 10 Compliance and Legal Requirements Principles
21.	Security	IS Security Policy
22.	Operations	IM-T-ST-001 - TfL Infrastructure Hosting Standards
23.	Operations	Change Management Policy
24.	Operations	Incident Management Policy
25.	Operations	Release Management 3rd party Policy
26.	Operations	Service Catalogue Management Policy
27.	Operations	Service Level Management Policy
28.	Operations	Supplier Management Policy
29.	Operations	TfL Code of Connection Policy - Partner Edition V1.3 - TfL 3rd Party Edition
30.	Operations	TfL IM Policy Disposal of IT end of life equipment
31.	Operations	Enterprise Applications Policy
32.	Operations	ICT Testing
33.	Operations	Health, Safety and Environment Policy
34.	Operations	TSE Code of Practice

List of Industry Standards

The Service Provider shall comply with the following list of industry standards as part of the Standards in performing their obligations under this Framework Agreement and/or any and all Call-Off Contract(s):

MAYOR OF LONDON

No.	Standard Title
S_01	ISO/IEC 20000-2:2012 Information Technology. Service Management. Guidance on the application of service management systems
S_02	BS ISO/IEC 20000-3:2012 Information technology. Service management. Guidance on scope definition and applicability of ISO/IEC 20000-1
S_03	BS ISO/IEC 20000-1:2011 Information technology. Service management. Service management system requirements
S_04	BS ISO/IEC 27001:2013 Security techniques. Information security management systems. Requirements
S_05	BS ISO/IEC 27002:2013 Security techniques. Code of practice for information security controls.
S_06	BS ISO/IEC 6592:2000 Information technology. Guidelines for the documentation of computer-based application systems
S_07	BS EN ISO 9000-3:1997 Quality management and quality assurance standards. Guidelines for the application of ISO 9001:1994 to the development, supply, installation and maintenance of computer software
S_08	BS EN ISO 9001 - Quality Management
S_09	BS EN 60950-23:2006 Information technology equipment. Safety. Large data storage equipment
S_10	BS EN 60529:1992+A2:2013 Degrees of protection provided by enclosures (IP code)
S_11	BS EN 60073:2002 Basic and safety principles for man-machine interface, marking and identification. Coding principles for indicators and actuators
S_12	Department of Transport Railway Construction and Operating Requirements
S_13	The Health and Safety at Work Act 1974
S_14	Head office buildings IEC60332

List of TfL Standards

The Service Provider shall comply with the following list of TfL standards as part of the Standards in performing their obligations under this Framework Agreement and/or any and all Call-Off Contract(s):

These documents shall be made available to the Supplier on request to, and in agreement with, the Client's Representative.

No.	TfL Standard Title
TfL_S_01	C.O.P - LUL Code of Practice for Earthing Signalling and Communications Equipment 1985 Standard
TfL_S_02	1-140 - Telecommunications Philosophy and Principles
TfL_S_03	1-145 - "Wired Communications Systems"
TfL_S_04	S1622 - "Glossary of Terms and Abbreviations"
TfL_S_05	S2508 - Environmental Requirements
TfL_S_06	Head office buildings IEC60332
TfL_S_07	TfL House Rules (Facilities requirements for working in TfL buildings)
TfL_S_08	TfL Performance and Behaviours

List of Security Requirements

The Service Provider shall comply with the following list of security requirements in performing its obligations under this Framework Agreement and any and all Call-Off Contract(s):

No	Security Requirement
SR_01	The Service Provider shall be responsible for verification of everyone employed on the services identified within the specification including sub-Service Providers.
SR_02	The Service Provider shall comply with the latest issue of the Government's baseline personnel security standard. Where a new standard is produced, the Service Provider shall assess the impact and should the terms and conditions of contract need to be changed to accommodate the new standard the Service Provider shall inform the Contracting Authority's Representative providing details of the impacting changes and associated costs.
SR_03	<p>The Service Provider shall apply best practice in regular employment and pre-employment screening focussing on:</p> <ul style="list-style-type: none"> a) Verifying identity b) Verifying the right to work in the United Kingdom c) Provision of a self-declaration criminal record form d) Confirming employment history and qualifications including checking employment references and confirmation from their previous employer's employment records custodian, post and reason for leaving e) Verifying criminal record through at least a basic disclosure (criminal) f) Keeping auditable records of their screening activities.
SR_04	<p>The Service Provider shall demonstrate competence in applying best practice in their approach to screening and demonstrate how they shall comply with:</p> <ul style="list-style-type: none"> a) The requirements for pre-employment screening in accordance with the current UK legislation, including right to work, proof of identification, previous employment history and criminal record checks (where applicable) and their proposed audit regime; b) Government's baseline personnel security standard, including details of who will be responsible in its organisation for ensuring the approach to screening is effective and the internal audit regime in place.
SR_04.1	The purpose of SR_04 above is to provide assurance that the Service Provider is aware of the requirements for demonstrating an employee has a right to work and also aware of the requirements of the security requirements imposed on public sector organisations and their Service Providers by the Government. The Service Provider should provide sufficient assurance to comply with the latest revision of the Asylum and Immigration Act and mitigate any risk on the Contracting Authority's behalf by demonstrating reasonable steps have been taken to comply with the Act.
SR_05	<p>The Service Provider should identify how they shall demonstrate they:</p> <ul style="list-style-type: none"> a) have appropriate staff, trained to the required level in the requirements of immigration legislation (including how to detect that documents are fraudulent) employed on pre-employment screening; b) Have robust documented processes and procedures for managing pre-employment screening; c) Maintain appropriate records in relation to pre-employment screening, in accordance with the Data Protection Act 1998.

SR_06	The purpose of SR_06 is to provide assurance that the Service Provider is aware of the requirements for demonstrating an employee has a right to work and also aware of the requirements of the security requirements imposed on public sector organisations and their Service Providers by the Government. The Service Provider should provide sufficient assurance to comply with the latest revision of the Asylum and Immigration Act 2004 and mitigate any risk on the Contracting Authority's behalf by demonstrating reasonable steps have been taken to comply with the Act while providing evidence supporting the Service Provider's security screening process.
SR_07	The Service Provider shall allow the Contracting Authority to audit its screening process in full and provide access to records at the Service Provider's site when requested by the Contracting Authority. The Service Provider's screening process may be audited during Mini-Competition and personnel will be agreed at call of contract. An audit would be required following a suspected security breach or special event
SR_08	It shall be noted that the Contracting Authority reserves the right to carry out its own screening of the Service Provider's employees in addition to the aforementioned checks.
SR_09	It shall be noted that it is consistent with the Data Protection Act 1998 that an individual's refusal to undergo an essential check where there are no alternatives could lead to a refusal of employment. In such cases, individuals should be made aware that it will not be possible to take them on, should they refuse. This is distinct from making a particular check a condition of employment where it may not actually be necessary. From a legal point of view the important considerations are i) that checks are carried out uniformly on a non-discriminatory basis and ii) that privacy rights, where relevant, are respected.
SR_10	The Service Provider shall, when requested, describe how verification of the following four main elements for all persons working on this service shall be obtained: a) Identity b) Nationality and Immigration Status (including an entitlement to undertake the work in question) c) Employment history (past 3 years) d) Criminal record (unspent convictions only) e) A reasonable account of any significant periods (6 months or more in the past 3 years) of time spent abroad.
SR_11	Information collected at each stage of the verification process shall be reviewed and assessed, and recorded on a Baseline Personnel Security Standard Verification Record. Refusal by the individual to provide any of the required information shall exclude them from provision of this service.
SR_12	For each person working on the services provided under this framework and any and all Call-Off Contract(s), the Service Provider shall provide the Contracting Authority's Representative with a signed statement to certify that the items described in SR_11 have satisfactorily established the identity of the individual concerned and that previous employment references have been obtained and confirmed to satisfy the requirements of the standard.
SR_13	All persons employed in delivering the service shall provide a basic criminal record disclosure from a source approved by the Contracting Authority's Representative (approved disclosures are available from www.disclosurescotland.co.uk at time of writing) and evidence of this check (in the form of the supplied certificate) shall be supplied to the Contracting Authority's Representative within two months of the check being carried out before each person can be employed in the service. Certificates older than two months will be rejected. Should the certificate not be supplied and approved by the Contracting Authority's representative then the person shall not be employed on this service.

SR_14	As requested, the Service Provider shall confirm all persons employed in delivering the service described in any and all Call-Off Contract(s). The Contracting Authority reserves the right to refuse access to site for any person not confirmed in this manner at NIL cost to the Contracting Authority. This confirmation shall be supplied with the period report for the Contracting Authority's business periods 3, 6, 9 and 12 or as required
SR_15	Should a member of the Service Provider's staff be discovered in any of the Contracting Authority's secure areas, the Contracting Authority reserves the right to ask all members of the Service Provider's Team to leave site immediately and a full security check will be carried out by the Contracting Authority.
SR_16	The cost of the search described in SR_15, and any disruption to the business, shall be charged to the Service Provider's account. It should be noted the British Transport or Metropolitan Police may be called to attend in such a circumstance.
SR_17	Security of Data The Service Provider shall define their process to assure data is: a) Fairly and lawfully processed; b) Obtained for specified and lawful purposes; c) Adequate, relevant and not excessive; d) Accurate and kept up to date; e) Kept for no longer than is necessary; f) Processed in line with the rights of individuals under the Data Protection Act; g) Secure; h) Not transferred to countries without adequate protection.
SR_18	The Service Provider may be able to liaise with the various security departments within the Contracting Authority and Third Parties to produce a more streamlined clearance process based on the Service Provider providing an assurance to these parties that it has screened its employees.
SR_19	Should the Service Provider's screening process be found to have failed, or screening checks found not to be auditable, then any security process agreements shall be suspended and the Service Provider's employees will be subject to the full security checks applied by the Contracting Authority and its Third Party Service Providers.
SR_20.1	The Service Provider shall comply with the Contracting Authority's IM Security Policy: Remote Access for Third Party Support Providers and ensure all connections are encrypted and no generic accounts are used to access the Contracting Authority's network. The method of access shall be agreed by the Contracting Authority IM Security Manager. All of the Service Provider's personnel shall have individual accounts for remote access and all access attempts shall be logged including the applications being accessed via any portal used by the Service Provider.
SR_20.2	The Service Provider shall comply with the Contracting Authority's IM Security Policy: Policy for Disposal of End of Life IT Equipment. Particular attention shall be paid to the secure disposal of all hard disk drives and solid state drives, including memory sticks and memory cards, all of which shall be shredded in a secure manner. All equipment shall be disposed of in accordance with Waste Electrical and Electronic Equipment (WEEE) regulations
SR_21	All devices being connected to the Contracting Authority's assets (Laptops, network port analysers for example) shall have active antivirus software installed with on-access scanning enabled. These devices shall have their virus definition file updated within the last 30 days.
SR_22	All portable memory devices shall be virus checked immediately prior to connection to the Contracting Authority's assets. These devices shall also be scanned again immediately after use and any virus detection notification passed to the Contracting Authority's Fault Report Centre for corrective action.

SR_23	<p>All devices connected to the Contracting Authority's assets (ref SR_21 and SR_22) shall be subject to a Change Request prior to Connection. The Change request shall record:</p> <ul style="list-style-type: none"> a) the reason for the connection; b) the device used for the connection (with enough details provided to enable the device to be identified after the fact); c) the person carrying out the work; d) planned times and dates for connection and disconnection; e) confirmation that the device has been virus checked within the last hour with enough details provided to allow the virus check log to be inspected in order to confirm the check to place. <p>When the change request is closed, the following information shall be recorded:</p> <ul style="list-style-type: none"> a) the actual times and dates for connection and disconnection; b) confirmation that the device has been virus checked post connection.
SR_24	The Contracting Authority's data shall be treated as confidential information and be treated as such.
SR_24.1	Where the Contracting Authority's data is transmitted off site it shall be transmitted in a secure manner and disposed of when no longer required in a secure manner agreed with the Contracting Authority's Representative.
SR_24.2	Data shall not be taken off site on a portable device (e.g. laptop, USB memory stick, portable hard drive) without the express approval of the Contracting Authority's Information Access Compliance department (contact details available from the Contracting Authority's Representative on request).
SR_24.3	The Contracting Authority's data shall not be transmitted by email unless encrypted in a manner agreed by the Contracting Authority's Information Access Compliance department.
SR_25	Failure to carry out the checks and procedures outlined in this Schedule outlining the list of Security and Site Working Arrangements will be regarded as a material breach of Contract and treated accordingly.

List of Site Working Arrangements

This list of TfL Site working Arrangements, relating to head office, datacentre and operational area access, below are those that the Contracting Authority requires the Service Provider to comply with and with which the Service Provider shall comply if they are selected to be part of the Framework and in relation to any Call-Off Contract.

No	Site Working Arrangements Requirements
SWA_01	Building Pass Requests / access to TfL Group desktop services To facilitate access to the Contracting Authority's head offices, the Service Provider shall request secure remote access tokens from the Contracting Authority's Representative to provide access to the Contracting Authority's corporate desktop and intranet services. The Service Provider shall utilise this service to request head office building passes using the on-line Contracting Authority Group Property and Facilities Building Pass request form for all its personnel who require regular access to the Contracting Authority's head office buildings. The Service Provider shall have no expectation on the Contracting Authority's Representative to request building passes on the Service Provider's behalf.
SWA_02	IM Data Centre Access: When the Service Provider's staff are required to carry out planned or emergency work in the Contracting Authority's Data Centres, the Service Provider shall be responsible for ensuring that the Data Centre Access Request procedures and induction processes are adopted and followed. Copies of the procedures are available from the Contracting Authority's Representative. The Service Provider shall have no expectation on the Contracting Authority's Representative to request these access bookings on the Service Provider's behalf. The Service Provider may be able to negotiate local agreements with the data centre managers to allow un-escorted access into these locations.
SWA_03	The Service Provider shall follow all reasonable instructions or requests given by any employee or agent of the Contracting Authority. Where dispute arises over such instruction or request the Service Provider shall refer the matter to the Contracting Authority's Representative for adjudication
SWA_04	Safe Working: As part of their provision of the Services, the Service Provider shall, in accordance with Section 2 of the Health and Safety at Work Act and Regulation 3 of the Management of Health and Safety at Work Regulations, carry out risk analysis of Contracting Authority estate and employ mitigation so that no risks are allowed to adversely impact the response and repair times identified within this specification. Specific risks to be addressed shall include Lone Working.

SCHEDULE 5

GOVERNANCE

This Schedule 5 sets out some over-arching governance responsibilities for the Framework Agreement and the Call-Off Contracts which the parties agree to comply with.

This Schedule 5 may be supplemented and/or varied on a Call-Off basis, using the Call-Off Procedure, and then as agreed in the applicable Call-Off Contract.

1. ACCOUNT MANAGEMENT

1.1. Hours of Cover

Unless otherwise agreed as part of a Call-Off Contract, the hours for governance are 0900 – 1730 Monday to Friday, UK time, excluding English public holidays.

1.2 Key Personnel

The Service Provider will make available the following personnel who will be “Key Personnel” for the purposes of the Framework Agreement and Call-Off Contracts (together with any set out in the Call-Off Contract(s)) to deliver and manage the supply of Deliverables and the compliance by the Service Provider with the Framework Agreement and the Call-Off Contracts.

1.2.1 Account Manager

The Service Provider shall appoint an Account Manager. The Account Manager’s primary responsibilities will be:

- 1.2.1.1 to act as the point of contact for all escalated issues from the Contracting Authority and the Service Provider under the Framework Agreement and the Call-Off Contracts;
- 1.2.1.2 wherever and whenever possible resolve all operational and contractual issues unless resolved through normal channels;
- 1.2.1.3 to be responsible for measuring and reporting back on Contracting Authority satisfaction under the Call-Off Contracts;
- 1.2.1.4 to facilitate the negotiation of contractual and commercial variations;
- 1.2.1.5 to ensure that service quality and targets meet the Contracting Authority’s requirements;
- 1.2.1.6 to nominate an Acting Account Manager to undertake the same duties during any periods of absence of the Account Manager and ensure the Contracting Authority is informed of such change;
- 1.2.1.7 to provide relationship management;
- 1.2.1.8 to contribute to the development of a business partnership with the Contracting Authority;

- 1.2.1.9 to meet on a regular basis with its own Sub-Contractors and service providers in order to appraise them of developments with particular relevance to Contracting Bodies' business (to the extent not confidential);
- 1.2.1.10 to provide effective Contracting Authority liaison by maintaining regular contact with key company personnel to take feedback on the Service Provider's own performance;
- 1.2.1.11 to develop and maintain an awareness of the Contracting Bodies' business objectives and strategies;
- 1.2.1.12 to the extent permitted by this Framework Agreement, to work with the Contracting Bodies in evaluating new initiatives and development of further business opportunities with the Contracting Authority for this Framework Agreement and any Call-Off Contract(s).

1.2.2 Sales Support

The Service Provider shall appoint a Sales Support person(s). The Sales Support team's primary responsibilities will be:

To provide day to day contact to the Contracting Authority as reasonably required from the Contracting Authority for all product related requests from enquiry/Orders through to product delivery and invoice payment.

The Sales Support's team's role shall include:

- 1.2.2.1 ensuring Contracting Authority satisfaction is maintained;
- 1.2.2.2 handling product specification enquiries;
- 1.2.2.3 ensuring quotations are processed within any agreed times set out in the Call-Off Contract(s);
- 1.2.2.4 accurately processing Contracting Authority orders within any agreed times set out in the Call-Off Contract(s);
- 1.2.2.5 monitoring and managing Contracting Authority orders to ensure delivery within any agreed times set out in the Call-Off Contract(s);
- 1.2.2.6 dealing with any escalations in accordance with paragraph 1.4 below;
- 1.2.2.7 dealing with any delivery and returns issues in accordance with a relevant Call-Off Contract; and
- 1.2.2.8 promptly resolving invoicing issues

1.2.3 Sales Team Leader

The Service Provider shall appoint a Sales Team Leader who shall be responsible for ensuring that Sales Support/the Service Provider carries out the day to day functions required of them to manage an account effectively. The Sales Team Leader shall also be an escalation point for queries and issues from the Contracting Authority and shall ensure the person who escalated the issue will

receive an e-mail acknowledgement and shall deal with such queries and issues expeditiously and in a timely manner.

1.2.4 Internal Sales Manager

The Service Provider shall appoint an Internal Sales Manager who shall manage the Sales Support and Team Leader to ensure that accounts under the Call-Off Contracts are managed correctly. They are also an escalation point.

1.2.5 Credit Controller

The Service Provider shall (if required) appoint a Credit Controller. The Credit Controller's primary responsibilities will be:

- 1.2.5.1 prompt payment collection;
- 1.2.5.2 ascertaining details relating to the Contracting Authority's queries preventing payment;
- 1.2.5.3 understanding and aiding the Contracting Authority's payment process;
- 1.2.5.4 developing improved payment processes in conjunction with the Contracting Authority; and
- 1.2.5.5 developing and maintaining excellent Contracting Authority relationships.

1.3 Organisational Structure

The organisational structure related to the Contracting Authority account is as detailed below. The Contracting Authority shall be informed of any change to the Sales Support Team personnel:

Contact details of all current members of the organisational structure shall be set out below:

Role	Contact Details	Guidelines
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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Role	Contact Details	Guidelines
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

1.4 Escalation Route

The escalation route for the organisational structure set out above is as detailed below. Two (2) Business Days should be allowed at each point along the escalation route from the time at which an enquiry is raised or escalated (as applicable) to allow for the provision of a response before escalation to the subsequent level.

1.5 Reporting

1.5.1 The Service Provider shall provide the Contracting Authority with a written and comprehensive report on a calendar monthly basis in respect of the Deliverables performed in the preceding month or at the intervals set out in a Call-Off Contract, if different. Such report shall be provided within five (5) Business Days of the end of the relevant calendar month or interval set out in a Call-Off Contract. Unless agreed otherwise in writing, a review meeting shall be held within no less than five (5) Business Days of the comprehensive report being provided thereafter, as set out below, between representatives of the Parties to discuss such report and any other matters relating to the status and performance of this Framework Agreement generally and the Call-Off Contracts.

1.5.2 Any reports to be provided to the Contracting Authority under this section will contain at least the following and any other agreed items:

- written status summary;
- requests for action from the Contracting Authority;
- activities completed during the period;

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- activities to be completed in the next period and by whom;
- perceived risk factors and the strategies being used to minimise them;
- where applicable to the relevant Service(s) being provided, measurement of the Service Provider's performance against any agreed timings (including against the Implementation Plan(s) and any Key Milestone Dates) and service levels / SLAs and details of any service credits accrued.

Report content may also include:

- Price Trending
- Run rates
- Road maps and technical data (on an ad-hoc basis)
- Constraints
- Issues log
- Summary of daily back request reports
- Any known support/maintenance renewals
- Delay issues – Periodic service report
- Delay issues – Daily service report
- DOA (Dead On Arrival)
- EOL (End Of Life)
- Outstanding Payments/Queries
- A report providing resolution of any issues identified
- A report providing details of service levels / SLAs maintained
- Continuous Improvement Plan (CIP) that captures innovation and increased efficiency from the Service Provider
- The percentage amount of recycled material within the products that the Contracting Authority purchases
- The percentage amount of reduction in consumption related to the products that the Contracting Authority purchases.

The Reports to be presented in a form to be agreed between the Contracting Authority and the Service Provider.

1.5.3 Service Reporting

The service reports will form part of the Call-Off Contract. It is documented here to provide clarity of what information may be reported on, based on previous requests placed by the Contracting Authority. The Contracting Authority expects to receive this information on an ad hoc/weekly/period basis.

- A progress report providing details all activities carried out
- Work orders
- Projects.

1.5.4 Service Measurement

The Service Provider will be responsible for the provision of regular, periodic, management information (MI) which will include warranty information, asset information, stock delivery reports and product specifications (including energy information) to allow the Contracting Authority to accurately assess its current estate.

- 1.5.5 The Service Provider shall, at the Contracting Authority's request, provide promptly to the Contracting Authority at no additional cost such reports on the provision of the Services as the Contracting Authority may reasonably request.

1.6 Meetings

The Service Provider will facilitate a formal quarterly review of the reports provided in accordance with section 1.5 above and the services being provided by the Service Provider to the Contracting Authority and review service adherence to agreed procedures and service levels / SLAs.

The Service Provider shall be responsible for its own incidental expenses (travel, telephone, photocopying) and on-going management/supervisory costs involved in administering its responsibilities under this **Schedule 5** and any subsequent variations.

Frequency: Quarterly (unless otherwise stipulated in Call-Off Contract). The Contracting Authority reserves the right to meet and review account management on a periodic basis as reasonably requested by the Contracting Authority.

Location: TfL, 14 Pier Walk, London, SE10 0ES or an address agreed at the Contracting Authority's premises in London

The Parties agree to adhere to the following service review meetings:

- Commercial Supplier Review Board
- Supplier Service Review Meeting

The Commercial Supplier Review Board and the Supplier Service Review meeting may be combined at the Contracting Authority's discretion.

1.6.1 Commercial Supplier Review Meetings

1.6.1.1 The Commercial Supplier Review Meeting is a formal process at which the Service Provider reports to the Contracting Authority on overall contract compliance, improvements, planning escalation issues and the wider commercial aspects of the services.

1.6.1.2 The Commercial Supplier Review Meeting is where periodic planning is provided to the Service Provider, changes to contracts and deliverables are presented and longer term decisions are agreed. Each meeting will include a detailed review of costs, requests for change, impact assessments and any other financial reporting.

1.6.1.3 These quarterly meetings, chaired by the Contracting Authority's commercial representative are a high level review and planning function for the service. The meeting format will include:

- Previous minutes and actions including outstanding issues from previous meetings
- Service review for previous month and monthly trends from service measures
- Review operational achievements and issues
- Review financial arrangements including cost / spend, and payment analysis
- Forthcoming changes in the Contracting Authority business or ICT services
- Any required changes to the List of Types of Services for the Framework or other lists under Call-Off Contracts (as permitted)
- Contracting Authority feedback
- Annual review of services and charges
- Review of the Risk Management Plan
- Review of current main problem areas
- AOB.

1.6.1.4 The Contracting Authority will be responsible for arranging this meeting, venue and the production of minutes and action lists.

1.6.1.5 The Service Provider will be represented by the named Account Manager, Business Development Manager and the relevant service and technical staff. The Contracting Authority's client team representatives may also attend these meetings.

Typical attendees that should be present or represented at the quarterly Service Review Meetings if required are:

Contracting Authority Staff	Service Provider Staff
Senior TfL Management (e.g. TfL CIO)	Managing Director Head of Public Sector
Account Manager	Account Manager
Business Development Manager	Account Manager
Senior Technical Manager	Head of Technology
Subject Matter Experts and Project Managers as and when requested	Subject Matter Experts and Project Managers as appropriate
	Consortia members Account Managers as and when appropriate.

1.6.2 Supplier Service Review Meeting

1.6.2.1 The Supplier Service Review Meeting is focussed on service delivery and is a formal process at which the Service Provider reports to the Contracting Authority on operational service performance, planning, issues, escalations and their resolution and cost control.

1.6.2.2 Day to day operational decisions and actions are agreed at these meetings.

1.6.2.3 The Service Provider will be responsible for providing clear comprehensive and detailed reports, information and action plans covering all aspects of the service. Supplier Service Review meeting is

to be held ten (10) days following Period end, unless otherwise mutually agreed.

1.6.2.4 The Supplier Service Review Meeting format will include:

- Previous minutes and actions
- Service review for previous four (4) weeks, trends and KPI data
- Review operational achievements and issues
- Review of current main problem areas
- Review of Operational Service Improvement process and deliverables
- Joint prioritisation of the Selected Service Provider service improvement activities
- Review impact of changes in service during the previous period
- Review of service changes
- Review of the Risk Management Plan
- Items for Change Management
- Results of Customer Satisfaction monitoring
- Review impact of changes in service during the previous reporting period

1.6.2.5 The Service Provider will be responsible for arranging these meetings at twelve (12) week intervals at TfL Group premises, they will also be responsible for the production of the agenda, minutes and action lists etc. (at no additional cost to the Contracting Authority).

1.6.2.6 The Service Provider will be responsible for organising and facilitating the meetings as follows:

- Agreeing the venue and attendees
- Agreeing and issuing the agenda
- Chairing the meeting

1.6.2.7 The Service Provider is expected to email minutes of meetings to the Contracting Authority no later than one (1) week after the meeting for approval and it is expected that they be distributed within one (1) week of approval by the Contracting Authority.

1.6.2.8 As a minimum the Service Provider will be represented by the service manager and relevant technical staff, and will include representation from the Contracting Authority's client team, and be chaired by the Contracting Authority.

Typical attendees that should be present or represented at the quarterly Service Review Meetings if required are:

Contracting Authority Staff	Service Provider Staff
Senior TfL Management (e.g. TfL CIO)	Senior Management (e.g. MD)
Commercial Contract Manager	Commercial Contract Manager
Procurement Manager	Account Manager
Senior Technical Manager	Head of Technology
Subject Matter Experts and	Subject Matter Experts and

Project Managers as and when requested	Project Managers as and when requested
Supplier Performance and Assurance Analyst	Performance Analyst

1.6.3 Ad-hoc meetings

- 1.6.3.1 Account or Operational meetings can be requested by either Party if they believe it is required for a special purpose or for a reactive situation (e.g. multiple DOA occurrences within a Period). The Service Provider must attend these meetings and bring the necessary levels of representation and information or reports to cover the areas to be discussed.

Typical attendees are:

Contracting Authority Staff	Service Provider Staff
Senior TfL Management (e.g. TfL CIO)	Senior Management (e.g. MD, Head of Public Sector)
IMIS Operations management	Operations management
IMIS Maintenance Management	Maintenance Management
Senior Technical Manager	Head of Technology
Subject Matter Experts and Project Managers as and when requested	Subject Matter Experts and Project Managers as and when requested

1.6.4 Standard Operation

- 1.6.4.1 The Service Provider shall provide the Contracting Authority unrestricted access to the Service Provider's Account Manager and a range of appropriate technical staff will be available for interface with the Contracting Authority's client team, on a day to day basis. This will include communication by e-mail, phone and where necessary face to face meetings.
- 1.6.4.2 The Service Provider will be required to provide the Contracting Authority with an 'Operations Manual' that provides all the details of the Service and day to day operations.
- 1.6.4.3 It is expected that the Service Provider will be able to provide ad hoc information, data and special reports as requested, over and above the standard set of information. Such requests will be made at a reasonable point in time and delivery of the reports will be agreed by both Parties'.
- 1.6.4.4 The Service Provider will be required to provide the provision of quotes, cost free to the Contracting Authority.

1.6.5 Escalation procedure

- 1.6.5.1 The Service Provider shall provide a suitable escalation process for the Contracting Authority to review, revise and agree as part of the contract.
- 1.6.5.2 The process must contain the following touch points:
- Service Provider's authorised representative interface with Commercial Contract Manager
 - Account Manager interface with Contracting Officer
 - Managing Director interface with the Contracting Authority CIO
- 1.6.5.3 The process must also:

- Provide all those involved in the service governance process, and the account and contract management process with notice of all escalation issues raised.
- Maintain a log for review of all escalation issues throughout the life-time of the Agreement.

1.7 Measuring Contracting Authority Service

- 1.7.1.1 If required by the Contracting Authority, the Service Provider shall measure its service delivery to the customers by way of electronic questionnaire.
- 1.7.1.2 In such case, the Service Provider shall ensure that any dissatisfaction is investigated within one (1) Business Day and that all feedback captured shall, where relevant, be taken into account by the Service Provider in delivery going forwards in order to continuously improve.

2. Service Level Agreement (SLA) Requirements

- 2.1 The Service Provider shall collaborate with the Contracting Authority to recommend, manage and maintain effective minimum levels of standards for the services, being Service Level Agreements (SLAs), with the Contracting Authority and other service providers with whom it is required to interact. Support may be required in the below instances:
 - 2.1.1. For existing solutions and/or Contracting Authority's Goods or TfL Group's existing goods, software or services where support is required which could be the same as the existing support or varied to meet revised requirements.
 - 2.1.2. For new Solutions, goods, software, and/or services where there is a support requirements but no support is in place.
 - 2.1.3. For new Solutions, goods, software, and/or services where there is a support requirements which is to be undertaken under an existing support agreement i.e. where an existing application is added to, or the manufacturer or Third Party is better placed to support the requirements.
 - 2.1.4. For short term requirements to cover development of a Solution of software where support may be required i.e. one off development and roll-out of new application
 - 2.1.5. To maintain, fix, implement changes, ensure compliance with current legislation and carry out any upgrades.
- 2.2 It is most likely that second and third line support would be required with the Contracting Authority providing first line support via own service desk. If the Contracting Authority requires the Service provider to be responsible for first line support this would be specified in each Mini-Competition and included in any Call-Off Contract
- 2.3 Support may, inter alia, include on-site hand holding and problem solving.
- 2.4 The table below outlines non-exhaustive but indicative potential support options that could be considered by the Contracting Authority. Where support and maintenance is required specific details will be included in each Call-Off Procedure and/or Mini-Competition and agreed at any subsequent Call-Off Contract.

Description		Call-out Only Option 1	SLA Option 2	SLA Option 3	SLA Option 4	SLA Option 5	SLA option 6	Target	Guaranteed
Characteristics		Determined on a case by case basis	Non critical application used during business hours.	Key application used during business hours		Typically operational application for a service which is critical to TfL Group and may affect its customers.	Key application used during business hours or out of hours when support is undertaken during engineering hours to maintain uptime during the day.		
Hours SLA measured		To be determined based on specific requirement.	Monday to Friday 09.00 to 17.00	Monday to Friday 08:00 to 18:00	24 x 7 x 365(6)	24 x 7 x 365(6)	Engineering Hours 20:00 to 06:00		
Availability Target (i.e. uptime)		To be determined based on specific requirement.	99.50%	99.50%	99.50%	Range between 99.50% and 99.99%	Range between 99.50% and 99.99%		
Including UK public holidays		To be determined based on specific requirement.	No	Yes	No	Yes	Yes		
Excluding UK public holidays		To be determined based on specific requirement.	No	No	Yes	No	No		
Severity	Response and Resolution Time SLA								
Severity 1: See Severity	Response Time SLA	To be determined	Between 15 mins	Between 15 mins	Between 15 mins	Between 15 mins	Between 15 mins	Target	Guaranteed

Definitions set out below		based on specific requirement.	and 2 hours	and 2 hours	and 30 mins	and 30 mins	and 30 mins		
	Resolution Time SLA	To be determined based on specific requirement.	Between 4 hours and 24 hours	Between 4 hours and 24 hours	Between 1 and 2 hours	Between 1 and 2 hours	Between 1 and 2 hours	Service is restored or a work-around is agreed within 1 hour for 95% of Incidents and within 2 hours for 98% of Incidents	Service is restored or a work-around is agreed within 2 hours for 95% of Incidents
	Frequency of Update SLA	To be determined based on specific requirement.	30 mins	30 mins	30 mins	30 mins	30 mins		
Severity 2: See Severity Definitions set out below	Response Time SLA	To be determined based on specific requirement.	Between 15 mins and 2 hours	Between 15 mins and 2 hours	Between 15 mins and 30 mins	Between 15 mins and 30 mins	Between 15 mins and 30 mins		
	Resolution Time SLA	To be determined based on specific requirement.	Between 4 hours and 24 hours	Between 4 hours and 24 hours	Between 4 hours and 4 hours	Between 4 hours and 4 hours	Between 4 hours and 4 hours	Service is restored or a work-around is agreed within 2 hours for 90% and within hours for 95% of Incidents	Service is restored or a work-around is agreed within 4 hours for 95% of Incidents
	Frequency of Update SLA	To be determined based on specific requirement.	Every hour	Every hour	30 mins	30 mins	30 mins		
Severity 3: See Severity	Response Time SLA	To be determined	Between 15 mins and 2	Between 15 mins and 2	Between 15 mins and 30	Between 15 mins and 30	Between 15 mins and 30		

Definitions set out below		based on specific requirement.	hours	hours	mins	mins	mins		
	Resolution Time SLA	To be determined based on specific requirement.	Between 4 hours and 48 hours	Between 4 hours and 48 hours	N/A	N/A	Between 4 hours and 48 hours	Service is restored or a work-around is agreed within 8 hours for 90%-98% of Incidents	Service is restored or a work-around is agreed within 8 hours for 95% of Incidents
	Frequency of Update SLA	To be determined based on specific requirement.	Every hour	Every hour	N/A	N/A	Every hour		
Severity 4: See Severity Definitions set out below	Response Time SLA	To be determined based on specific requirement.	Between 15 mins and 2 hours	Between 15 mins and 2 hours	Between 15 mins and 2 hours	Between 15 mins and 2 hours			
	Resolution Time SLA	To be determined based on specific requirement.	No SLA	No SLA	N/A	N/A			
	Frequency of Update SLA	To be determined based on specific requirement.	N/A	N/A	N/A	N/A			
Levels of Support	To be specified in each call-off requirement	Potential to include a combination of 1 st , 2 nd and 3 rd Line	Potential to include a combination of 1 st , 2 nd and 3 rd Line	Potential to include a combination of 1 st , 2 nd and 3 rd Line	Potential to include a combination of 1 st , 2 nd and 3 rd Line	Potential to include a combination of 1 st , 2 nd and 3 rd Line	Potential to include a combination of 1 st , 2 nd and 3 rd Line		

Preventative Maintenance		N/A	Potential to include up to 4 preventative maintenance visits	Potential to include up to 4 preventative maintenance visits	Potential to include up to 4 preventative maintenance visits	Potential to include up to 4 preventative maintenance visits	Potential to include up to 4 preventative maintenance visits		
Management and administration		Potential to include management and administration services including but not limited to: service desk, update, returns, rollout and issue replacement goods and services.	Potential to include management and administration services including but not limited to: service desk, update, returns, rollout and issue replacement goods and services.	Potential to include management and administration services including but not limited to: service desk, update, returns, rollout and issue replacement goods and services.	Potential to include management and administration services including but not limited to: service desk, update, returns, rollout and issue replacement goods and services.	Potential to include management and administration services including but not limited to: service desk, update, returns, rollout and issue replacement goods and services.	Potential to include management and administration services including but not limited to: service desk, update, returns, rollout and issue replacement goods and services.		
Service Credits		Potential to include service credits which will be agreed on a case by case basis in accordance with the Agreement.	Potential to include service credits which will be agreed on a case by case basis in accordance with the Agreement.	Potential to include service credits which will be agreed on a case by case basis in accordance with the Agreement.	Potential to include service credits which will be agreed on a case by case basis in accordance with the Agreement.	Potential to include service credits which will be agreed on a case by case basis in accordance with the Agreement.	Potential to include service credits which will be agreed on a case by case basis in accordance with the Agreement.		
Liquidated Damages		Potential to include Liquidated Damages which will be agreed on a	Potential to include Liquidated Damages which will be agreed on a case by	Potential to include Liquidated Damages which will be agreed on a	Potential to include Liquidated Damages which will be agreed on a	Potential to include Liquidated Damages which will be agreed on a case by	Potential to include Liquidated Damages which will be agreed on a case by		

		case by case basis in accordance with the Agreement.	case basis in accordance with the Agreement.	case by case basis in accordance with the Agreement.	case by case basis in accordance with the Agreement.	case basis in accordance with the Agreement.	case basis in accordance with the Agreement.		
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- 2.5 Any costs associated with meeting the Service Level Agreements / SLAs will be provided within the Service Providers proposal in response to any Mini-Competition and/or Call-Off Procedure.
- 2.6 All Service Level Agreements / SLAs must meet the minimum Contracting Authority requirements. The Service Provider must confirm that they can comply with the Service Level Agreements / SLAs set out in any Call-Off Procedure and/or Mini-Competition or, if appropriate, suggest alternatives.
- 2.7 The Service Provider shall implement Service Level Agreements / SLAs commensurate with each of the areas of service responsibility that will be undertaken. These Service Level Agreements / SLAs will be aligned to requirements detailed within the Call-Off Contract competition. The Service Provider will take part in discussions to have these agreed and documented within a Service Support Model.
- 2.8 The Service Provider will agree with the Contracting Authority what, if any, plans and actions they will undertake if performance drops below agreed Service Level Agreements / SLAs.
- 2.9 If requested as part of a Call-Off Contract the Service Provider shall maintain Operational Level Agreements (OLAs) with their appropriate resolver groups for management of Incidents to ensure expectations on Incident response and resolution times are met. The Service Provider in their response shall describe how such operational interfaces would be defined, agreed and implemented
- 2.10 If required the Service Provider will use the Contracting Authority's Service Management tool.

3. Severity Definitions

- 3.1. The severity of the request shall be determined by the Contracting Authority, in accordance with the following scale (the Contracting Authority reserves the right to use this for problems as well as incidents also):

Severity	Definition
1	<ul style="list-style-type: none"> All or any part of the service is unavailable resulting in failure of business critical activities. Business critical activities include client services which cannot be mitigated (mitigation shall include the use of other available services); and/or The Incident affects the overall security of the TfL Group estate; and/or The Incident has a detrimental impact on the IM operations of TfL Group declared by designated individuals within TfL IM (IM Duty Managers (IMLT), Major Incident Managers, the IM Service Delivery Manager or the IM Security Manager). And/or The Incident affects users at a critical site or more than 50% of users across all sites.

2	<p>Business activities are adversely affected resulting in some impact on business operations where;</p> <ul style="list-style-type: none"> • The Incident prevents at least one department from effectively performing key business activities; or • The Incident causes a failure to redundant services that increases the risk to business critical activities.
3	<p>Business activities are adversely affected resulting in some impact on business operations where:</p> <ul style="list-style-type: none"> • The Incident prevents users from effectively performing non key business activities; and/or • The Incident is limited in scope and scale. This includes equipment failures where due to redundancy and resilience, non critical services are unaffected;
4	<ul style="list-style-type: none"> • The service is not affected, e.g. queries; or • The Incident affects a service component that has a dependency on support parties that are not managed by TfL IM; and/or • The Incident affects a service component that cannot be fully supported.

SCHEDULE 6

PARENT COMPANY GUARANTEES AND BONDS

Appendix A - Form of Parent Company Guarantee

(Letterhead of Parent Company)

To: [insert name and address of the Contracting Authority]

Date:

Dear Sir/Madam

We, [insert name of Guarantor] ("**the Guarantor**"), understand that you have agreed to enter into Contract No [insert contract number] ("**the Contract**") with [insert name of Service Provider] ("**the Service Provider**") in respect of [briefly describe nature of contract] on the condition that the obligations of the Service Provider under the Contract be guaranteed by a Guarantor.

We are [recite the relationship of the Guarantor to the Service Provider], and we warrant to you that this description of our relationship with/to the Service Provider is true and accurate in all material respects.

WE HEREBY AGREE AND UNDERTAKE with you as follows: -

- (a) We unconditionally guarantee on demand:
- (i) the proper, complete and punctual performance by the Service Provider of any and all its obligations, undertakings and responsibilities under the Contract and we shall forthwith make good any default thereunder on the part of the Service Provider; and
 - (ii) the due and punctual payment by the Service Provider of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable to you under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Service Provider,
- when and as the same shall become due for performance or payment (as the case may be).
- (b) As a separate and primary obligation we unconditionally guarantee to you that in the case of default by the Service Provider in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in paragraph (a) above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Service Provider were the primary obligor. Any payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.
- (c) This Guarantee shall be a continuing security and shall remain in full force and effect until all obligations to be performed or observed by the Service Provider under or arising out of the Contract have been duly and completely performed

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and observed and the Service Provider shall have ceased to be under any actual or contingent liability to you thereunder.

- (d) Any demand or other notice made by you under this Guarantee shall be duly made if sent by first class recorded delivery post to us.
- (e) You shall be entitled to enforce this Guarantee without first notifying the Service Provider of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Service Provider or any other person or taking any action to enforce any other security, bond or guarantee held by you or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Service Provider or any person.
- (f) If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to you, such sum shall still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.

PROVIDED THAT:

- 1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Contract if we had been named as the Service Provider in the Contract.
- 2. Our obligations hereunder are those of primary obligor and shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Contract made by agreement between you and the Service Provider (including, without limitation, any increase in the Service Provider's obligations under the Contract or any alteration in the extent or nature or sequence or method or timing of the Services to be carried out under the Contract) or any novation of the Contract (in whole or in part); or
 - (b) any time being given to the Service Provider or any other indulgence, waiver, concession, forbearance or forgiveness to the Service Provider (whether express or by conduct) or any other thing done, omitted or neglected to be done under the Contract; or
 - (c) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Service Provider under the Contract; or
 - (d) the release or waiver of any such bond, security or guarantee referred to in paragraph 2(c) above; or
 - (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Service Provider; or
 - (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Service Provider; or
 - (g) any legal limitation, disability or incapacity relating to the Service Provider or discharge by operation of law or any change in the constitution, name or style of the Service Provider or any other person (whether or not known to you); or

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- (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Service Provider under the Contract; or
 - (i) the termination or partial termination of the Contract or the cessation of any Services for any reason or the making of any variation to the Services in accordance with the Contract; or
 - (j) any claim or enforcement of payment from the Service Provider or any other person; or
 - (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.
3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Service Provider in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Service Provider in competition with you for any sums or liabilities owing or incurred to us by the Service Provider in respect of any such payment by or recovery from us or take or hold any security from the Service Provider in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you.
 4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provision of this Guarantee.
 5. This Guarantee is irrevocable.
 6. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.

[For non-UK resident Guarantors only:

7. For the purposes of this Guarantee we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.]
8. You will be entitled to assign the benefit of this Guarantee in whole or in part but we may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
9. If any provision (in whole or in part) of this Guarantee is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent

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required, be severed from this Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

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

SIGNED by [NAME]

Print Name

Position)

duly authorised to sign)

for and on behalf of)

[Insert TfL Group's Full Company]

Date:

SIGNED by [NAME]

Print Name

Position)

duly authorised to sign)

[for and on behalf of])

[NAME])

Date:

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Appendix B - Form of Legal Opinion for use with Guarantee

To: [insert name and address of the Contracting Authority]

Date:

Dear Sir/Madam

I am counsel to and I am giving this legal opinion in connection with the making by of the Guarantee (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the "Guarantee") dated made between..... (the "Guarantor") and [insert name of Contracting Authority] ("the Contracting Authority"). Terms defined in or for the purpose of the Guarantee have the same meanings in this opinion.
2. Having considered the Guarantee and examined any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of..... I am pleased to advise that in my opinion:
 - (a) the Guarantor was incorporated in on as a [company with limited liability] and validly exists under the laws of as a separate legal entity possessing the capacity to sue or be sued in its own name. To the best of my knowledge having carried out [DESCRIBE APPLICABLE SEARCHES] today, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
 - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including, without limitation, approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) has been taken to enable the Guarantor to enter into the Guarantee and to perform the obligations of the Guarantor and the transactions contemplated thereby; and
 - (c) The entry into and performance of the Guarantee and the transactions contemplated thereby will not cause:
 - (i) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute, regulation, agreement or otherwise) to be exceeded;
 - (ii) any law or order or constitutional document in respect of the Guarantor to be contravened;
 - (iii) any default under, or give rise to an obligation to create or impose any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us after due enquiry to which the Guarantor is a party or by which it or any of its assets is bound. Further, no event has occurred that, with the giving of notice, lapse of time, determination of materiality or other conditions might constitute a default under or in respect of such agreement, instrument or judgment;
 - (c) the Guarantee has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in

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the Guarantee, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid, legally binding on and enforceable against the Guarantor under the laws of and in the courts of

- (d) the signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
- (e) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other requirements of governmental, judicial and public bodies and authorities of or in [COUNTRY] required or advisable in connection with the entry into, performance, validity and enforceability of the Guarantee and the transactions contemplated thereby have been obtained or effected and are in full force and effect;
- (f) the obligations of the Guarantor under the Guarantee rank at least equally and rateably (*pari passu*) in point of priority and security with any and all other unsecured obligations of the Guarantor;
- (g) all amounts payable by the Guarantor under the Guarantee may be made free and clear of, and without deduction for, or on account of, any taxes imposed, assessed or levied by [COUNTRY] or any authority of or in [COUNTRY];
- (h) there are no registration, stamp or other taxes or duties of any kind payable in in connection with the Guarantor including its signature, performance or enforcement by legal proceedings;
- (i) The Contracting Authority will not violate any law or regulation in nor become liable to tax in by reason of entering into the Guarantee or performing its obligations thereunder. It is not necessary to establish a place of business in in order to enforce any provisions of the Guarantee;
- (j) the choice of English law to govern the Guarantee will be upheld as a valid choice of law in any action in respect of the Guarantee in the Courts;
- (k) the consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation;
- (l) any judgment obtained in the courts of England against the Guarantor would be recognised and accepted by the courts without re-trial or re-examination of the merits of the case;
- (m) neither the Guarantor nor any of its assets enjoys any right or immunity from set-off, suit or execution in respect of its obligations under the Guarantee;
- (n) so far as I am aware after due enquiry, no litigation, arbitration or administrative proceedings are at present current, pending or threatened that might, if adversely determined, have a material effect on the business, assets or financial condition of the Guarantor.

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3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of and accordingly express no legal opinion herein based upon any law other than the laws of

Signed

SIGNED by [NAME])
duly authorised to sign)
for and on behalf of)
[Insert TfL Group's Full Company]

Date:

SIGNED by [NAME])
duly authorised to sign)
[for and on behalf of])
[NAME])

Date:

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Appendix C - Form of Performance Bond

(Letterhead of Bank)

To: [insert name and address of the Contracting Authority]

Date:

Dear Sir/Madam

IN CONSIDERATION of you entering into Contract No [] ("**the Contract**") with [insert name of Service Provider] ("**the Service Provider**") in respect of [insert brief description of scope of contract] we [insert name of Bank] ("**the Bank**") hereby undertake upon first demand in writing made by you upon us from time to time or at any time to pay on each occasion the sum demanded by you on the terms and conditions set out in this letter ("**this Bond**").

PROVIDED THAT:

1. This Bond shall come into force on the date of this Bond.
2. Any demand under this Bond shall be substantially in the form of either Annex 1 or Annex 3 to this Bond as required by the circumstances in which such demand is made, and as between you and us the facts set out in that demand shall (a) be deemed to be true and (b) shall be accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due to you under this Bond.
3. Any demand in the form of Annex 1 shall be accompanied by a copy of a letter from you sent to the Service Provider by first class recorded post 14 or more days before the date of the demand, substantially in the form of Annex 2 of this Bond.

* Delete as appropriate

* **(Option 1 - No reduction in amounts payable under the Bond.)**

4. Our liability under this Bond shall be limited so as not to exceed the aggregate sum of £[] [e.g. the total Charges under the Contract or a percentage thereof] and we shall have no liability under this Bond in respect of any demand dated after the expiry date of the Contract.

* **(Option 2 - Reducing amounts payable under the Bond.)**

4. Our liability under this Bond shall be limited as follows: -
 - (a) in respect of a demand or demands dated before the date of [e.g. on the completion of a Milestone] under the Contract, our liability shall not exceed in aggregate the sum of _____ [e.g. 20% of the total Charges];
 - (b) in respect of a demand or demands dated after the date of [e.g. completion of a Milestone] under the Contract but before the expiry date of the Contract, our liability shall not exceed an amount equal to the aggregate sum of _____ [e.g. 10% of the total Charges] less the aggregate of sums already paid by us in respect of demands made pursuant to paragraph 4(a) above; and

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- (c) we shall have no liability under this Bond in respect of any demand dated after the expiry date of the Contract.
- 5. Our obligations under this Bond shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Contract made by agreement between you and the Service Provider including, without limitation, any alteration in the extent or nature or sequence or method or timing of the Services to be carried out under the Contract or any novation of the Contract (in whole or in part); or
 - (b) any defence, counterclaim, withholding, set off or other deduction available to the Service Provider under the Contract or otherwise; or
 - (c) any time being given to the Service Provider or any other indulgence, waiver, concession, forbearance or forgiveness to the Service Provider whether express or by conduct or any other thing done, omitted or neglected to be done under the Contract; or
 - (d) any other bond, security or guarantee now or subsequently held by you for all or any part of the obligations of the Service Provider under the Contract; or
 - (e) the release or waiver of any such bond, security or guarantee referred to in paragraph 5(e) above; or
 - (f) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Service Provider;
 - (g) the termination of the Contract for any reason; or
 - (h) any other event which would or might operate to discharge a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish your liability under this Bond; or
 - (i) the winding-up, bankruptcy, administration, receivership or insolvency of the Service Provider; or
 - (j) any legal limitation, disability, incapacity, discharge by operation of law, change in the constitution, name or style of the Service Provider or any other person relating to the Service Provider (whether or not known to you); or
 - (k) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Service Provider.
- 6. Any payment under this Bond shall be made by us in pounds sterling [or in any currency which may from time to time replace pounds sterling].
- 7. This Bond is irrevocable.
- 8. Terms defined in the Contract and not otherwise defined in this Bond shall have the same meaning in this Bond.

9. This Bond, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Bond except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.
10. You will be entitled to assign the benefit of this Bond in whole or in part but we may not assign the benefit and/or delegate the burden of this Bond in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
11. If any provision (in whole or in part) of this Bond is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Bond and shall be ineffective, without, so far as is possible, modifying any other provision of this Bond and this shall not affect any other provisions of this Bond which shall remain in full force and effect.
12. Any demand or other notice made by you under this Bond shall be duly made if sent by first class recorded delivery post to us.

[For non-UK resident banks with only a branch or office in the UK:

10. For the purposes of this Bond we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us and we hereby irrevocably agree not to revoke or terminate such appointment.

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

SIGNED by [NAME])
duly authorised to sign)
for and on behalf of)
[Insert TfL Group's Full Company]

Date:

SIGNED by [NAME])
duly authorised to sign)
[for and on behalf of])
[NAME])

Date:

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Annex 1
Form of Demand from the Contracting Authority to [the bank]

Dear Sirs

Contract No [] in respect of services for []

We refer to the Bond given by you to us dated []. We enclose a copy of a letter from us to [*insert name of Service Provider*] ("**the Service Provider**") which was sent to the Service Provider by first class recorded post on [] which is more than 14 days before the date of this demand.

The Service Provider has not taken steps which we consider adequate to remedy the breaches.

* Delete as appropriate

* **(Option 1** - No reduction in amounts payable under the bond.)

The expiry date under the Contract has not been reached.

* **(Option 2** - Reducing amounts payable under the bond.)

[*e.g. a Milestone*] has/has not been achieved and the expiry date under the Contract has not been reached.

We hereby demand from you the sum of £[] under your Bond. Please make payment by your cheque in sterling payable to [*insert name of Contracting Authority*].

Yours faithfully

On behalf of [*insert name of Contracting Authority*]

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Annex 2
Form of letter from the Contracting Authority to the Service Provider

To be sent by first class Recorded Delivery post

Dear Sirs

Contract No [] in respect of services for []

As explained in [previous letters to you/our letter dated to you] you are in breach of your obligations under Contract No. [], and you have neither remedied nor implemented sufficient steps to remedy, those breaches.

This letter therefore notifies you that unless within 14 days from the date of this letter you take steps which we consider adequate to remedy the breaches we shall be entitled without further notice to you to call for payment under the Bond given on your behalf by [name of bank] dated [DATE].

Yours faithfully

On behalf of [*insert name of Contracting Authority*]

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Annex 3

Alternative form of demand from the Contracting Authority to [the bank]

Dear Sirs

Contract No [] in respect of services for []

We refer to the Bond given by you to us dated [].

* Delete as appropriate

* **(Option 1** - No reduction in amounts payable under the Bond.)

An event has occurred which entitles us (inter alia) to terminate the Contract in accordance with that clause.

The expiry date under the Contract has not been reached.

* **(Option 2** - Reducing amounts payable under the Bond.)

An event has occurred which entitles us (inter alia) to terminate the Contract in accordance with that clause.

[e.g. a Milestone] has/has not been achieved and the expiry date under the Contract has not been reached.

We hereby demand payment from you of the sum of £[] under your Bond. Please make payment by your cheque in sterling payable to *[insert name of Contracting Authority]*.

Yours faithfully

On behalf of *[insert name of Contracting Authority]*

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SCHEDULE 7

INSURANCES

1. The following Insurances shall be held by Service Provider in accordance with **clause 19**, unless and to the extent varied by a Call-Off Contract (in relation to that particular Call-Off Contract only):
 - (a) Employer's liability insurance in respect of the Service Provider's liability for death, personal injury or occupational disease of any person in the Service Provider's employment in the sum of not less than five million pounds (£5,000,000) per incident or such other minimum level as may from time to time be required by law (whichever is the higher);
 - (b) (i) Public liability; and (ii) Product liability insurance in respect of the Service Provider's liability for loss or damage to property (including property of the Contracting Authority or for which it is responsible), breach of any Intellectual Property Rights and against liability for death or injury in the sum of not less than two million pounds (£2,000,000) per occurrence and shall be endorsed to provide that no act or omission on the part of the Service Provider shall prejudice the TfL Group's rights under such policy as principal and shall contain a financial loss extension;
 - (c) In the event that the services to be provided under a Call-Off contract concern or are connected with the provision and/or operation of safety critical systems, transport or with any interface with TfL's customers (whether such interface is physical or virtual) the indemnity limit of £2,000,000 (two million pounds) in Condition (c) above shall be increased to an amount specified by TfL in the Call-Off (acting reasonably) and shall be commensurate with the possible risk exposure.
 - (d) Professional indemnity insurance in a sum normal and customary for a Service Provider in the business of providing services of a similar scope, nature and complexity to the Services but not less than two million (£2,000,000) pounds per incident and not less than ten million (£10,000,000) in the aggregate per annum for the Framework Period and for six (6) years after expiry or termination of this Framework Agreement; the level of indemnity will be no lower than four times the total fees payable under the Call-Off, except where the Call-Off relates to safety critical systems, transport, customers, in which case it increases to an amount specified in the Call-Off and which for the avoidance of doubt may exceed such level;
 - (e) Property Theft for the full replacement value of any and all TfL property under the Service Provider's care, custody or control, including the cost to install and commission; and all risks of loss or damage to permanent works and materials or equipment for incorporation therein, any temporary works (i.e. other works erected or constructed for the purpose of making possible the erection or installation of permanent works), constructional plant and equipment, temporary buildings and other property owned by or supplied by TfL; and
 - (f) Tangible property damage All Risks cover for its replacement values

SCHEDULE 8

CHANGE CONTROL PROCEDURE FOR THE FRAMEWORK AGREEMENT

1. Principles

- 1.1 Where the Contracting Authority sees a need to change this Framework Agreement and such change may have a technical, commercial or financial impact (a **"Change"**) then the Parties shall follow the formal Change Control Procedure (**"CCP"**) as set out in this **Schedule 8** below.
- 1.2 The Service Provider shall not unreasonably withhold its agreement to any Change.
- 1.3 Until such time as a Change is made in accordance with this Change Control Procedure, the Contracting Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform its obligations under the Framework Agreement in compliance with its terms prior to such Change.
- 1.4 Any discussions which may take place between the Contracting Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.5 Any work undertaken by the Service Provider which has not been otherwise agreed in accordance with the provisions of this **Schedule 8** shall be undertaken entirely at the expense and liability of the Service Provider.

2. Procedures

- 2.1 Discussion between the Contracting Authority and the Service Provider concerning a Change shall result in any one of the following:
 - no further action being taken;
 - a request to amend the Framework Agreement by the Contracting Authority; or
 - a recommendation to amend the Framework Agreement by the Service Provider.
- 2.2 Where a written request for an amendment is received from the Contracting Authority, the Service Provider shall, unless otherwise agreed, submit two (2) copies of a Change Control Note (**"CCN"**) signed by the Service Provider to the Contracting Authority within seven (7) days of the date of the request or such other period as the Service Managers shall agree (acting reasonably).
- 2.3 A recommendation to amend by the Service Provider shall be submitted direct to the Contracting Authority in the form of two (2) copies of a CCN signed by the Service Provider at the time of such recommendation and the Contracting Authority shall give its response within fourteen (14) days or such other period as the Service Managers shall agree (acting reasonably).

2.4 Each CCN shall contain:

- the title of the amendment;
- the originator and date of the request or recommendation for the amendment;
- the reason for the amendment;
- full details of the amendment including any specifications;
- the price, if any, of the amendment;
- a timetable for implementation together with any proposals for acceptance of the amendment;
- a schedule of payments, if appropriate;
- details of the likely impact, if any, of the amendment on other aspects of the Deliverables and the Framework Agreement;
- the date of expiry of validity of the CCN; and

provision for signature by the Contracting Authority and by the Service Provider.

2.5 For each CCN submitted the Contracting Authority shall, within the period of the validity of the CCN:

- allocate a sequential number to the CCN;
- evaluate the CCN and, as appropriate:
 - request further information, or
 - arrange for two (2) copies of the CCN to be signed by or on behalf of the Contracting Authority and return one of the copies to the Service Provider; or
 - notify the Service Provider of the rejection of the CCN.

2.6 A CCN signed by the Contracting Authority and by the Service Provider shall constitute an amendment to the Framework Agreement and otherwise no amendment shall have been agreed.

Change Control Note

Change Request No

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

Title of Amendment.....

Originator.....

The following change is requested to the Agreement identified above

Change Request (to be completed by the Contracting Authority)	
Description of Change:	
Reason/Justification:	
Affected Area(s) (where appropriate):	
Details of likely impact, if any, of the amendment:	
I request that the described change be considered for inclusion in the Agreement	
Signature	Date/...../.....
Approved by the Contracting Authority:	
Signature	Date/...../.....

SCHEDULE 9

EXIT OBLIGATIONS

This Schedule sets out the Parties' respective rights and obligations and the procedures with which they shall each comply on termination or expiry of each and any Call-Off Contract, but subject to any agreed amendments hereto or additional requirements as may be set out in the relevant Call-Off Contract.

1. Overview

The Service Provider is required to ensure the orderly transition of the Services from the Service Provider to the Contracting Authority and/or any Replacement Service Provider in the event of termination (including partial termination) or expiry of the Call-Off Contract. This Schedule sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition and which shall form the basis of the Exit Plan. For the avoidance of doubt and unless the Contracting Authority requires otherwise in writing, the Service Provider shall be responsible for the overall management of the exit and service transfer arrangements in accordance with this **Schedule 9** and the Exit Plan.

1.1 Scope of Exit Strategy

The Service Provider shall ensure that the exit strategy deals, as a minimum, with those areas set out below, together with such other provisions as the Service Provider deems necessary or the Contracting Authority may reasonably request, as part of an agreed Call-Off Contract, from time to time:

- 1.1.1 The name and contact details of each party's representative who will act as the primary point of contact for all exit related matters;
- 1.1.2 The timing and process for jointly establishing an Exit Team of suitably skilled representatives of the parties to manage the implementation of the exit strategy, and replacements thereof including without limitation the following information:
 - a) the name and contact details for each member of the exit team and his/her role;
 - b) the exit team shall consist of no more than five (5) representatives from each party;
 - c) reporting lines;
 - d) liaison lines between the Contracting Authority and the Service Provider and any other Service Provider or Third Party;
 - e) responsibilities for approval of documentation; and
 - f) escalation processes;
- 1.1.3 Unless both the Contracting Authority and Service Provider agree otherwise, the Exit Strategy shall cover the period commencing on the trigger date and ending on the termination date or expiry date (as appropriate);
- 1.1.4 A project plan detailing the timeframes for implementation of each part of the Exit Strategy and any milestones that need to be met by

the Service Provider or the Contracting Authority or any new Service Provider;

- 1.1.5 Details of the management processes and controls to be used in the implementation of the Exit Strategy;
- 1.1.6 A list of the meetings that shall take place during the implementation of the Exit Strategy. Unless agreed otherwise in writing between the Contracting Authority and Service Provider, the Exit Team shall meet at least once a week;
- 1.1.7 A list of the assets that are capable of delivery by leaving those assets in situ in a safe and secure condition at the relevant Premises, and any other assets that are to be transferred to the Contracting Authority or to a new Service Provider including without limitation the following information;
 - a) an outline of the process and timeframes for the transfer of the assets to the Contracting Authority; and
 - b) the procedure and timeframe for the transfer back of assets owned by the Contracting Authority or leased to the Service Provider by the Contracting Authority, if appropriate;
- 1.1.8 A list of the design documents that are capable of delivery and any other documents and specifications that are to be transferred to the Contracting Authority or to a new Service Provider including, without limitation, an outline of the process, timeframes and terms of the transfer of the items listed in accordance with paragraph six (6) of this schedule to the Contracting Authority;
- 1.1.9 A list of all active in-flight projects that would be affected;
- 1.1.10 An outline of the procedures for the transfer and/or removal of data from the service systems and any other systems of the Service Provider;
- 1.1.11 An outline of any special transition provisions relating to the transfer or removal of any software or the transfer or termination of any software licences;
- 1.1.12 The procedure and timeframe for the hand back or destruction of assets and/or any other documents containing the other party's intellectual property rights or confidential information as expressly required by this Framework Agreement;
- 1.1.13 A list of all Service Provider internal and Third Party support arrangements used in the delivery of the Services;
- 1.1.14 A list of the Service Provider personnel on an anonymous/grade basis who are or may be involved in the provision of the Services and a summary of their terms of employment;
- 1.1.15 A list of all sub-contracts or other relevant contracts (if any);
- 1.1.16 The procedure, structure and timeframe for training the employees of the Contracting Authority or the New Service Provider as the case may be;
- 1.1.17 A list of any and all approvals, consents, licences, permissions, certificates and statutory agreements, permits or authorisations which are necessary, desirable or required by Law or by any competent authority obtained, or to be obtained by the Service Provider for the performance of the services, the occupation and use of the premises, the performance of services replacing the

services or any other transfer or hand-back envisaged under this paragraph;

- 1.1.18 A full list of the information relevant to the Service Provider's provision of the services including, but not limited to, volumes processed, data volumes stored, performance against the SLAs, maintenance statistics and fault statistics; and
 - 1.1.19 Any other information or action pertaining to the exit strategy required by the Contracting Authority to ensure a smooth and timely transfer to the Contracting Authority or new Service Provider as the case may be.
- 1.2 The Service Provider will review and (if appropriate) update the Exit Plan in the first month of each Contract Year (commencing with the second Contract Year) to reflect any and all changes in the Services. Following such update the Service Provider will submit the revised Exit Plan to the Contracting Authority for review. Within thirty (30) days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in this Schedule and the changes that have occurred in the Services since the Exit Plan was last agreed. The Service Provider shall draft the final version of the updated agreed Exit Plan taking into account the TfL Group's required changes, if any. If the parties are unable to agree the contents of the revised Exit Plan within that thirty (30) day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

SCHEDULE 10

TRANSFER OF EMPLOYEES

1. Transfer of Employees to Service Provider

1.1 For the purposes of this paragraph 1 and paragraph 2, unless the context indicates otherwise, the following expressions shall have the following meanings:

1.1.1 **"Current Service Provider(s)"** means the provider or providers of services substantially similar to the Deliverables immediately before the Transfer Date;

1.1.2 **"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;

1.1.3 **"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);

1.1.4 **"Final Staff List"** has the meaning set out in **paragraph 2.4**;

1.1.5 **"Further Transfer Date"** means the date on which the Deliverables (or any part of them) cease to be provided by the Service Provider and start to be provided by the Contracting Authority or any Replacement Service Provider when the transfer of employment of the Re-Transferring Personnel from the Service Provider to the Contracting Authority or any Replacement Service Provider occurs;

1.1.6 **"Relevant Period"** means the period starting on the earlier of:

- (a) the date falling 3 calendar months before the date of expiry of the Call-Off Contract; or
- (b) if the Call-Off Contract is terminated by the Contracting Authority in accordance with **clause 25.2 or 25.5** or by the Service Provider in accordance with **clause 25.4** of the Framework Agreement, the date of the relevant termination notice;

and ending on the Further Transfer Date;

1.1.7 **"Replacement Service Provider"** means any replacement supplier or provider to the Contracting Authority of the Deliverables (or any part of the Deliverables) and any Sub-Contractor to such replacement supplier or provider;

1.1.8 **"Re-Transferring Personnel"** means any Service Provider's Personnel who are assigned (for the purposes of TUPE) to the

relevant Deliverables immediately before the Further Transfer Date and whose employment contract will transfer to the Contracting Authority or the Replacement Service Provider pursuant to TUPE with effect from the Further Transfer Date;

1.1.9 **"Staff List"** has the meaning set out in **paragraph 2.1**;

1.1.10 **"Staffing Information"** has the meaning set out in **paragraph 2.1**;

1.1.11 **"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 Deliverables or any part of them (or services substantially similar to the Deliverables or any part of them);

1.1.12 **"Transfer Date"** means the date of the applicable Call-Off Contract or (if different) the Commencement Date being the date on which the Deliverables (or any part of them) start to be provided by the Service Provider when the transfer of employment of the Transferring Staff from the Current Service Provider to the Service Provider occurs;

1.1.13 **"Transfer of Deliverables"**; means the transfer of the provision of the Deliverables from the Current Service Provider and any Sub-Contractor to the Service Provider and any Sub-Contractor;

1.1.14 **"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 Deliverables the names of whom as at the date of the applicable Call-Off Contract are listed in Appendix 1 to this **paragraph A20**; and

1.1.15 **"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.2 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 Transfer 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 paragraph 1.3).

1.3 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 Transfer Date.

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

1.4.1 the Current Service Provider(s) will be responsible for any Employment Costs relating to the period up to Transfer Date; and

- 1.4.2 the Service Provider will be responsible for any Employment Costs relation to the period on and after the Transfer Date,
- and Employment Costs will if necessary be apportioned on a time basis between the Current Service Provider(s) and the Service Provider.
- 1.5 The Contracting Authority warrants to the Service Provider that none of the Contracting Authority's employees will transfer to the Service Provider under TUPE as a result of the Transfer of Service.
- 1.6 The Service Provider will indemnify and keep indemnified the Contracting Authority and the Current Service Provider(s) (and its Sub-Contractors) from and against all Employment Liabilities which the Contracting Authority or the Current Service Provider(s) (or its Sub-Contractors) incur or suffer arising out of or in connection with:
- 1.6.1 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 Transfer Date;
- 1.6.2 any failure by the Service Provider (or its Sub-Contractors) to comply with Regulation 13 of TUPE;
- 1.6.3 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 Transfer Date;
- 1.6.4 the employment or termination of employment by the Service Provider (or its Sub-Contractors) of any Transferring Staff on or after the Transfer Date;
- 1.6.5 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.
- 1.7 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 Transfer 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 Contracting Authority when it has done so and provide a copy to the Contracting Authority.
- 1.8 The Service Provider warrants and undertakes to the Contracting 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.

- 1.9 Clause 41.1 and 41.2 of the Framework Agreement shall be deemed and shall be amended so that benefits conferred on the Current Service Provider or its Sub-Contractors under this paragraph 1 shall be enforceable by them.

Appendix 1 to paragraph 1
List of Transferring Staff

The Parties agree that they shall set out and agree in a Call-Off Contract the relevant list of transferring staff that shall apply to that Call-Off Contract (if any)

[To be completed in each Call-Off Contract, where and to the extent applicable]

2. Transfer of Employees on Expiry or Termination

2.1 The Service Provider will promptly provide (and procure that its Sub-Contractors provide) when requested by the Contracting 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 the applicable Call-Off Contract given by either Party, the following information to the Contracting Authority:

2.1.1 an anonymised list of current Service Provider's Personnel and employees and workers of its Sub-Contractors engaged in the provision of the Deliverables (each identified as such in the list) (the "**Staff List**");

2.1.2 such of the information specified in Appendix 1 to this **paragraph 2** as is requested by the Contracting Authority in respect of each individual included on the Staff List;

2.1.3 in the situation where notice to terminate a Call-Off 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 Deliverables, 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**".

2.2 The Service Provider will notify the Contracting 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.

2.3 The Service Provider warrants to the Contracting 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.

2.4 Subject to **paragraph 2.5**, the Service Provider will provide the Contracting 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.

2.5 If the Call-Off Contract is terminated by the Contracting Authority in accordance with **clause 25.2** or **25.5** or by the Service Provider in accordance with **clause 25.4** of the Framework Agreement then the Final Staff List will be provided by the Service Provider to the Contracting Authority as soon as practicable and no later than 14 days after the date of termination of the Contract.

2.6 The Service Provider warrants that as at the Further Transfer Date:

2.6.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;

2.6.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and

- 2.6.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Contracting Authority.
- 2.7 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 Contracting Authority (such consent not to be unreasonably withheld or delayed):
 - 2.7.1 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 Contracting Authority is informed promptly of such termination);
 - 2.7.2 deploy or assign any other person to perform the Deliverables who is not included on the most recent Staff List;
 - 2.7.3 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List or any Re-Transferring Personnel;
 - 2.7.4 increase to any significant degree the proportion of working time spent on the Deliverables by any of the Service Provider's Personnel; or
 - 2.7.5 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 Staff List or any Re-Transferring Personnel.
- 2.8 The Service Provider will promptly notify the Contracting Authority of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in **paragraph 2.7** regardless of when such notice takes effect.
- 2.9 The Service Provider agrees that the Contracting Authority will be permitted to disclose any information provided to it under this **paragraph 2** in anonymised form to any person who has been invited to tender for the provision of the Deliverables (or similar services) and to any Third Party engaged by the Contracting Authority to review the delivery of the Deliverables and to any Replacement Service Provider.
- 2.10 If TUPE applies on the expiry or termination of the Call-Off Contract or the appointment of a Replacement Service Provider, the following will apply:
 - 2.10.1 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 Contracting 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).
 - 2.10.2 During the Relevant Period the Service Provider will:

- 2.10.2.1 provide the Contracting Authority or Replacement Service Provider (as appropriate) with access to such employment and payroll records as the Contracting 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 Contracting Authority or Replacement Service Provider (as appropriate);
- 2.10.2.2 allow the Contracting Authority or Replacement Service Provider (as appropriate) to have copies of any of those employment and payroll records;
- 2.10.2.3 provide all original employment records relating to the Re-Transferring Personnel to the Contracting Authority or Replacement Service Provider (as appropriate); and
- 2.10.2.4 co-operate with the Contracting 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 Contracting Authority or Replacement Service Provider (as appropriate) with the same level of access, information and cooperation.

2.10.3 The Service Provider warrants to each of the Contracting 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 Contracting Authority and the Replacement Service Provider (if appointed) in writing to the contrary) to the Service Provider's knowledge:

- 2.10.3.1 is under notice of termination;
- 2.10.3.2 is on long-term sick leave;
- 2.10.3.3 is on maternity, parental or adoption leave;
- 2.10.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;
- 2.10.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Contracting Authority or Replacement Service Provider (as appropriate);
- 2.10.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;
- 2.10.3.7 has received a written warning (other than a warning that has lapsed);

- 2.10.3.8 has taken or been the subject of a grievance procedure within the previous two years; or
 - 2.10.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Contracting Authority or Replacement Service Provider (as appropriate) under TUPE.
- 2.10.4 The Service Provider undertakes to each of the Contracting Authority and any Replacement Service Provider that it will (and will procure that its Sub-Contractors will):
- 2.10.4.1 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;
 - 2.10.4.2 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;
 - 2.10.4.3 to pay to the Contracting 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 **paragraph 2.10.5**; and
 - 2.10.4.4 to comply in all respects with its information and consultation obligations under TUPE and to provide to the Contracting Authority or Replacement Service Provider (as appropriate) such information as the Contracting Authority or Replacement Service Provider may request in order to verify such compliance.
- 2.10.5 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:
- 2.10.5.1 the Service Provider will be responsible for any Employment Costs relating to the period up to and including the Further Transfer Date;
 - 2.10.5.2 the Contracting 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.
- 2.10.6 The Service Provider will indemnify and keep indemnified each of the Contracting Authority and any Replacement Service Provider from and against all Employment Liabilities which the Contracting Authority or the Replacement Service Provider incurs or suffers arising directly or indirectly out of or in connection with:

- 2.10.6.1 any failure by the Service Provider to comply with its obligations under this **paragraph 2.10**;
 - 2.10.6.2 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;
 - 2.10.6.3 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 Contracting Authority or the Replacement Service Provider to comply with Regulation 13 of TUPE);
 - 2.10.6.4 any claim or demand by HMRC or any other statutory Contracting 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 Transfer Date to the Further Transfer Date;
 - 2.10.6.5 any claim or demand or other action taken against the Contracting 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 Contracting 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.
- 2.11 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 Contracting Authority against all Employment Liabilities which the Contracting 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.
- 2.12 The Service Provider will procure that whenever the Contracting Authority so requires on reasonable notice at any time during the continuance in force of the applicable Call-Off Contract and for 2 years following the date of expiry or earlier termination of the Call-Off Contract the Contracting Authority will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:
- 2.12.1 is still an employee or sub-contractor of the Service Provider or any of the Service Provider's associated companies; and
 - 2.12.2 was at any time employed or engaged by the Service Provider in order to provide the Deliverables to the Contracting 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 Contracting Authority's requests.

- 2.13 Clause 41 of the Framework Agreement shall be deemed amended so that benefits conferred on the Replacement Service Provider under this paragraph 2 shall be enforceable by them.

Appendix 1 to paragraph 2
Information to be provided in respect of those on the Staff List

- Amount of time spent on the Deliverables (or any part of the Deliverables specified by the Contracting 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 Contracting 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 Contracting 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

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

SIGNED by (NAME)

Print Name

Position)

duly authorised to sign)

for and on behalf of)

Transport for London

Date:

SIGNED by (NAME)

Print Name

Position)

duly authorised to sign)

for and on behalf of)

(NAME)

Date: