Contract Reference Number: tfl_scp_001405

Date: 30th MAY 2017

Contract for Speed Awareness Training

between

Transport for London

and

DriveTech (UK) Limited

Version: 24 July 2015

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THIS CONTRACT is made the 30th day of May 2017

BETWEEN:

(1) **Transport for London** a statutory corporation whose principal place of business is at Windsor House, 50 Victoria Street, London SW1H 0TL (**"the Authority"**); and

(2) **DriveTech (UK) Limited**, a company registered in England and Wales (Company Registration Number 03636328) whose registered office is at Fanum House, Basing View, Basingstoke, Hampshire, RG1 4EA (**"the Service Provider"**).

RECITALS:

A. Under the "National Driver Offender Retraining Scheme" for drivers who have committed a speed or red light offence and following a police intervention are offered the opportunity to attend a course as an alternative to their offence being dealt with through the criminal justice system. This contract is for the provision of those courses.

B. The Authority wishes the Service Provider to provide the Services and the Service Provider is willing to provide the Services to the Authority on the terms and conditions set out in the Contract.

C. The Service Provider should be aware that the Authority does not offer any guarantee or minimum volume of the Services that may be delivered under this Contract and does not offer any exclusivity to the Service Provider.

THE PARTIES AGREE THAT:

1. **Definitions and Interpretation**

In the Contract (including the Recitals):

1.1 unless the context indicates otherwise the following expressions shall have the following meanings:

"Agency Sums"	such sums as may be collected by the Service Provider as the Authority's agent pursuant to clause 4.1;
"Authority Assets"	means any assets (whether tangible or intangible), materials, resources, systems, networks, connectivity and other equipment, machinery and facilities owned by or licensed to the Authority or any member of the Authority Group;

"Authority Group"	shall mean where the Authority is: (a) TfL, TfL in its own right and as holding company of all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any **"member of the Authority Group"** shall refer to TfL or any such subsidiary; and (b) the Greater London Authority (GLA), the GLA, TfL, the Mayor's Office for Policing and Crime and the London Fire and Emergency Planning Authority, London Legacy Development Corporation, and the Old Oak and Park Royal Development Corporation **("Functional Bodies")** each in their own right and as holding companies of all of their subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any **"member of the Authority Group"** shall refer to the GLA, any Functional Body or any such subsidiary;
"Authority Premises"	any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the Authority Group;
"Business Day"	any day excluding Saturdays, Sundays or public or bank holidays in England;
"Cessation Plan"	a plan agreed between the Parties or determined by the Authority pursuant to Clauses 28.1 to 28.5 (inclusive) to give effect to a Declaration of Ineffectiveness or Clauses 28.6 to 28.10 (inclusive) to give effect to a Public Procurement Termination Event;
"Charges"	the charges payable by the Authority, in consideration of the due and proper performance of the Services in accordance with the Contract, as specified in or calculated in accordance with Schedule 4 as the same may be varied from time to time in

	accordance with Clause 26.6 or Clause 31;
"Confidential Information"	all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Authority (or any member of the Authority Group) whether commercial, financial, technical or otherwise, and including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Authority Group);
"Contract"	this contract, including the Schedules and all other documents referred to in this contract;
"Contract Information"	(i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) 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 Manager"	the person named as such in Schedule 1 or such other person as notified to the Service Provider by the Authority;
"Contract Commencement Date"	the date for commencement of the Contract specified in Schedule 1;
"Declaration of Ineffectiveness"	a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulation 45J the Utilities Contracts Regulations 2006;
"Force Majeure Event"	any of the following: riot, civil unrest, war, act of terrorism, threat or perceived 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 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 the Contract but excluding any

such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;

"Holding Company" any company which from time to time directly or indirectly controls the Service Provider as set out by section 1159 of the Companies Act 2006;

"Insolvency Event" any of the following:

(a) either or both of the Service Provider 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 either or both of the Service Provider or the Holding Company;

(c) being a company, either or both of the Service Provider 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) either or both of the Service Provider or the Holding Company ceasing or threatening to cease to carry on its business for any reason 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;

(f) any similar event to those in (a) to (e) above occurring in relation to either or both of the Service Provider or the

	Holding Company under the law of any applicable jurisdiction for those purposes;
"Intellectual Property Rights"	any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
"Key Personnel"	the Service Provider's key personnel named in Schedule 1;
"Losses"	all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;
"Milestone"	an event which is the completion of one or more of the specified activities as may be set out in the Project Plan;
"Parties"	the Authority and the Service Provider (including their successors and permitted assignees) and **"Party"** shall mean either of them as the case may be;
"Procurement Manager"	the person named as such in Schedule 1 and referred to in Clause 7 or such other person as notified to the Service Provider by the Authority;
"Project Plan"	the plan (if any) for implementation including (without limitation) project delivery set out in Schedule 5, developed and agreed by the Parties in relation to the performance and timing of the Services under the Contract which may include Milestones;
"Public Procurement	if a court determines that one or more of the

Termination Event"	circumstances described in regulation 73(1) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25 has occurred;
"Service Commencement Date"	the date for commencement of the Services set out in Schedule 1;
"Service Provider Equipment"	the equipment and materials of whatsoever nature used by the Service Provider in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the Authority under the Contract;
"Service Provider's Personnel"	all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Service Provider, as are engaged in the performance of any of the Services and including the Key Personnel;
"Services"	(a) subject to Clause 26.6 all or any part of the services to be provided to, or activities to be undertaken and completed for, the Authority by the Service Provider under the Contract as detailed in the Specification including any variations to such services or activities pursuant to Clause 31; and (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Contract;
"Specification"	the specification and other requirements set out in Schedule 3;
"Term"	the period during which the Contract continues in force as provided in Clause 2 and Schedule 1;
"TfL"	Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
"Transparency	means the Authority's commitment to publish

Commitment"	its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Authority's own published transparency commitments;
"VAT"	means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

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 shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of the Contract;

1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of the Contract;

1.5 headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract;

1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Contract and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;

1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:

1.7.1 the conflicting part of the Schedule is explicitly expressed to take precedence; or

1.7.2 the conflict is with a provision in Schedule 2 (Special Conditions of Contract), in which case the provisions in Schedule 2 shall prevail;

1.8 the Schedules form part of the Contract and will have the same force and effect as if expressly set out in the body of the Contract;

1.9 the expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and

1.10 the words "including", "includes" and "included" will be construed without limitation unless inconsistent with the context.

2. **Commencement and Duration**

The Contract commences on the Contract Commencement Date and continues in force for the duration stated in Schedule 1 unless terminated earlier in accordance with Clause 26.

3. **The Services**

3.1 The Service Provider:

3.1.1 shall provide the Services to the Authority from the Service Commencement Date in accordance with the Contract;

3.1.2 acknowledges that it has sufficient information about the Authority and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the Contract;

3.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Contract due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Specification or otherwise to the Contract; and

3.1.4 shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services.

3.2 Notwithstanding anything to the contrary in the Contract, the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of the Contract;

3.3 The Service Provider shall provide the Services:

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

3.3.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;

3.3.3 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

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

3.4 Where reasonably requested to do so by the Authority and provided the Service Provider is willing to so contract, the Service Provider shall contract with such other member(s) of the Authority Group as on the terms of this Contract with only the necessary changes of Parties' details being made.

3.5 Throughout the term of the Contract the Service Provider shall when required give to the Authority such written or oral advice or information regarding any of the Services as the Authority may reasonably require.

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

4. **Agency Arrangements**

4.1 The Authority hereby appoints the Service Provider as its agent to:

4.1.1 form contracts (in the agreed form set out in Schedule 7 to this Contract or in such other form as may be agreed between the Authority and the Service Provider from time to time in writing) between the Authority and Course Attendees for the delivery of the relevant Training Course by the Authority to such Course Attendee; and

4.1.2 collect payments due from Course Attendees to the Authority in respect of the provision of any Training Course by the Authority to the Course Attendees; and

4.1.3 deliver all Training Courses to the Course Attendees on behalf of the Authority; and

pay to NDORS the NDORS Funds; and

4.1.4 Collect the NDORS funds owing to TfL

4.1.5 pay to RSS the RSS Funds.

on the terms of this Contract and the Service Provider hereby accepts the appointment on those terms. The Service Provider acknowledges that the scope of its agency appointment is limited to 4.1.1 – 4.1.5 above.

4.2 The Authority shall not, without the Service Provider's consent and, subject to the following, make any offer to provide any Training Course to any person, and shall refer all such requirements for a Training Course to the Service Provider.

5. Charges

5.1 The Service Provider shall invoice the Authority in accordance with the procedures set out in Clause 5 and in consideration of, and subject to the due and proper performance of the Services by the Service Provider in accordance with the Contract, the Authority shall pay the Service Provider the Charges in accordance with those procedures and with the other terms and conditions of the Contract.

5.2 The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in Schedule 4 or have been incurred with the prior written consent of the Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Authority.

5.3 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

6. Payment Procedures and Approvals

6.1 The Service Provider shall invoice the Authority in respect of the Charges monthly and shall not make any separate charge for submitting any invoice.

6.2 The Service Provider shall submit invoices to the postal address set out in Schedule 1 or, where an electronic format for submission of invoices is set out in Schedule 1, such electronic format shall, unless the Authority requires otherwise, be used. Each such invoice shall contain all information required by the Authority including the Contract Reference Number, SAP order number, Service Provider's name, address and bank account details to which payment should be made, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.

6.3 In the event of a variation to the Services in accordance with the Contract that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoices.

6.4 The Service Provider shall pay TfL the Agency Sums at the same time as it invoices TfL. The payment of the Agency Sums will be accompanied with a document setting out the number of Course Attendees, sums received from the Course Attendees and payments received from NDORS.

6.5 The Authority shall consider and verify each invoice, which is submitted by the Service Provider in accordance with this Clause 5, in

a timely manner. If the Authority considers that the Charges claimed by the Service Provider in any invoice have:

6.5.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Authority may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in Schedule 1;

6.5.2 not been calculated correctly or if the invoice contains any other error or inadequacy, the Authority shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to the Authority.

The Authority shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.

6.6 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or Contract Manager or Procurement Manager (whether related to payment or otherwise) shall:

6.6.1 indicate or be taken to indicate the Authority's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under or by virtue of the Contract; or

6.6.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to Clause 18, the Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt.

6.7 Except where otherwise provided in the Contract, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Service Provider in discharging its obligations under the Contract.

6.8 Interest shall accrue at the rate of two percent (2%) above the base rate of the Bank of England from time to time on all sums due and payable under this Contract from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The parties agree that this provision constitutes a

substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

7. Warranties and Obligations

7.1 Without prejudice to any other warranties expressed elsewhere in the Contract or implied by law, the Service Provider warrants, represents and undertakes to the Authority that:

7.1.1 the Service Provider:

7.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Contract; and

7.1.1.2 is aware of the purposes for which the Services are required and acknowledges that the Authority is reliant upon the Service Provider's expertise and knowledge in the provision of the Services; and

7.1.1.3 is entering into this Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Contract;

7.1.2 the Contract is executed by a duly authorised representative of the Service Provider;

7.1.3 all materials, equipment and goods used or supplied by the Service Provider in connection with the Contract shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Specification; and

7.1.4 all documents, drawings, computer software and any other work prepared or developed by the Service Provider or supplied to the Authority under the Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.

7.2 Each warranty and obligation in this Clause 6 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 the Contract.

8. Operational Management

8.1 The Authority authorises the Contract Manager to act as the Authority's representative for the Contract.

8.2 The Service Provider shall deal with the Contract Manager (or his or her nominated representative) in respect of all matters arising under the Contract, except as set out below or unless otherwise notified by the Authority:

8.2.1 variations to the Contract;

8.2.2 any matter concerning the terms of the Contract; and

8.2.3 any financial matter (including any issues in Schedule 4),

which shall be referred to the Procurement Manager.

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

9. **Service Provider's Personnel**

9.1 The Parties confirm that the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended do not apply on the Contract Commencement Date or the expiry or termination of this Contract.

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

9.3 The Service Provider shall provide the Service Provider's Personnel as necessary for the proper and timely performance and management of the Services in accordance with the Contract. All personnel deployed on work relating to the Contract shall have the appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Authority.

9.4 Without prejudice to any of the Authority's other rights, powers or remedies, the Authority may (without liability to the Service Provider) deny access to any Service Provider's Personnel to any Authority Premises and/or require that any Service Provider's Personnel be immediately removed from performing the Services if such Service Provider's Personnel in the Authority's view have not been properly trained in any way required by this Contract, are otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. The Authority shall notify the Service Provider of such denial and/or requirement in writing and the Service Provider shall comply with such notice and provide a suitable replacement (with the Contract Manager's prior consent in the case of Key Personnel).