13th January 2014

TRANSPORT FOR LONDON

and

CAPITA BUSINESS SERVICES LIMITED

SERVICES AGREEMENT
for the provision of services in relation to Enforcement Operations

Service Operations Directorate
Transport for London
Palestra
197 Blackfriars Road
London SE1 8NJ

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TABLE OF CONTENTS

Clause	Headings	Page
1.	DEFINITIONS AND INTERPRETATION	1
2.	DURATION	3
3.	SCOPE OF SERVICES	3
4.	TFL OBJECTIVES	4
5.	STANDARD OF SERVICES	5
6.	SERVICE PROVIDER'S SOLUTION	7
7.	IMPLEMENTATION AND MIGRATION	7
8.	OPERATIONAL COMMENCEMENT	9
9.	DELIVERABLES	17
10.	TESTING	18
11.	SERVICE LEVELS	18
12.	SERVICE MANAGEMENT	19
13.	CONTRACT MANAGEMENT	20
14.	SUSPENSION	20
15.	CO-OPERATION WITH TFL AND OTHERS	20
16.	TFL OR OTHER SERVICE PROVIDER EQUIPMENT AND HARDWARE	21
17.	AS-BUILT PHYSICAL ARCHITECTURE AND CAPACITY PLANNING	22
18.	TECHNOLOGY COMPATIBILITY AND FLEXIBILITY	23
19.	SYSTEMS, SUPPORT AND MAINTENANCE	24
20.	INTERFACES	25
21.	CONTINUOUS IMPROVEMENTS	26
22.	TRAINING	26
23.	ADDITIONAL SERVICES	27
24.	INVOICING AND PAYMENT	27
25.	VALUE FOR MONEY REVIEW	28
26.	GAINSHARING	28
27.	COMMERCIAL EXPLOITATION AND MARKETING	29
28.	INTEREST	29
29.	REVENUE	29
30.	EMPLOYEES AND KEY PERSONNEL	29
31.	PENSIONS	29
32.	COMPLIANCE WITH POLICIES	29
33.	SUB-CONTRACTORS AND KEY SUB-CONTRACTORS	30
34.	CHANGE CONTROL	30
35.	TFL MONITORING STAFF	31
36.	AUDIT AND INSPECTION	32

37. OPEN BOOK 36
38. OWNERSHIP AND ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS 37
39. LICENSING OF INTELLECTUAL PROPERTY RIGHTS 38
40. GENERAL PROVISIONS RELATING TO INTELLECTUAL PROPERTY RIGHTS 40
41. INTELLECTUAL PROPERTY RIGHTS INDEMNITY 41
42. SOURCE CODE 43
43. NOVATION OR MANAGEMENT OF SUPPLY CONTRACTS 45
44. BUSINESS CONTINUITY 47
45. SECURITY 47
46. TESTING OF THE BUSINESS CONTINUITY PLAN AND SECURITY PLAN DURING THE OPERATIONAL PHASE 49
47. INDEMNITIES AND LIMITATIONS OF LIABILITY 50
48. INSURANCE 52
49. INFORMATION GOVERNANCE 54
50. HEALTH AND SAFETY 60
51. REPRESENTATIONS AND WARRANTIES 61
52. ETHICS, BRIBERY AND CORRUPTION 63
53. FRAUD 64
54. PREMISES 65
55. ASSETS 65
56. RELIEF EVENTS 66
57. FORCE MAJEURE 69
58. REMEDY PLANS 70
59. ENHANCED CO-OPERATION 71
60. STEP-IN 72
61. TERMINATION 75
62. CONSEQUENCES OF TERMINATION, PARTIAL TERMINATION OR EXPIRY 78
63. SURVIVAL OF CLAUSES 80
64. EXIT MANAGEMENT 80
65. CRIME AND DISORDER ACT 1998 82
66. WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS 2006 82
67. LONDON LIVING WAGE 82
68. WAIVER 83
69. ENTIRE AGREEMENT 83
70. VARIATION 83
71. SEVERABILITY 83
72. NOTICES 83
73. PUBLICITY 84

74. CONFIDENTIALITY 85
75. ASSIGNMENT 88
76. RELATIONSHIP 88
77. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 88
78. RECOVERY OF SUMS DUE AND SET-OFF 89
79. FURTHER ASSURANCE 89
80. PARENT COMPANY GUARANTEE 89
81. CONFLICT OF INTEREST 89
82. CHANGE OF CONTROL AND CHANGE OF OWNERSHIP 90
83. COUNTERPARTS 90
84. DISPUTES, GOVERNING LAW AND JURISDICTION 90
SCHEDULE 1 DEFINITIONS 92
SCHEDULE 2 STATEMENT OF REQUIREMENTS 93
SCHEDULE 3 MILESTONES AND DELIVERABLES 94
SCHEDULE 4 TESTING REGIME 95
SCHEDULE 5 SERVICE LEVEL AGREEMENT 96
SCHEDULE 6 TERMINATION COMPENSATION 97
SCHEDULE 7 CHARGING AND OPERATIONAL PRICING 98
SCHEDULE 8 NOT USED 99
SCHEDULE 9 CHANGE CONTROL REQUEST PROCEDURE 100
SCHEDULE 10 CONTRACT MANAGEMENT AND REPORTING 101
SCHEDULE 11 EMPLOYEES AND KEY PERSONNEL 102
SCHEDULE 12 ASSET MANAGEMENT 103
SCHEDULE 13 SERVICE PROVIDER CONFIDENTIAL INFORMATION 104
SCHEDULE 14 SECURITY 105
SCHEDULE 15 DATA DESCRIPTIONS 106
SCHEDULE 16 EXIT PLAN 107
SCHEDULE 17 AGREED FORM OF GUARANTEE 108
SCHEDULE 18 PREMISES 109
SCHEDULE 19 DEED OF CONFIDENTIALITY 110
SCHEDULE 20 MANAGEMENT SERVICES 111
SCHEDULE 21 DISPUTE RESOLUTION PROCEDURE 112
SCHEDULE 22 COLLATERAL DEED 113
SCHEDULE 23 GAINSHARING 114
SCHEDULE 24 RESPONSIBLE PROCUREMENT 115
SCHEDULE 25 BUSINESS CONTINUITY 116
SCHEDULE 26 KEY SUB-CONTRACTORS 117
SCHEDULE 27 DEED OF NOVATION 118
SCHEDULE 28 SERVICE PROVIDER'S SOLUTION 119
SCHEDULE 29 NOT USED 120

SCHEDULE 30 OPEN BOOK TEMPLATE 121
SCHEDULE 31 NOT USED 122
SCHEDULE 32 REVENUE COLLECTION AND PAYMENT 123
SCHEDULE 33 ADDITIONAL SERVICES 124
SCHEDULE 34 TFL POLICIES 125
SCHEDULE 35 NOT USED 126
SCHEDULE 36 VALUE FOR MONEY REVIEW PROCESS 127

THIS AGREEMENT is entered into on the day of 2014

PARTIES:

(1) **TRANSPORT FOR LONDON** 5 Endeavour Square, London E20 1JN (**"TfL"**); and

(2) **CAPITA BUSINESS SERVICES LIMITED**, a company incorporated in England and Wales with registered address 30 Berners Street, London, W1T 3LR and registered number 02299747 (the **"Service Provider"**).

RECITALS

(A) TfL has implemented a fully functioning road user charging enforcement and traffic enforcement system and associated services.

(B) Prior to the date of this Agreement, the road user charging enforcement and traffic enforcement system and services had been operated on behalf of TfL by third party service providers.

(C) TfL requires the Service Provider to design, build, migrate data to, test and transition to, operate and maintain new systems and processes for the provision of services to TfL in relation to the road user charging enforcement and traffic enforcement and, at its option, a broader range of road user services.

(D) TfL may require the Service Provider to provide additional services (including other similar services and other services in relation to transport pricing).

(E) The parties have agreed to contract with each other in accordance with the terms and conditions set out below.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the definitions set out in Schedule 1 (*Definitions*) shall apply.

1.2 In this Agreement, words and expressions defined in the Companies Act 2006 shall bear the same meaning as in that Act unless expressly stated otherwise.

1.3 In this Agreement, except where the context otherwise requires:

1.3.1 any reference to this Agreement includes the Schedules, Annexes and Appendices to it each of which forms part of this Agreement for all purposes;

1.3.2 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;

1.3.3 words in the singular shall include the plural and vice versa;

1.3.4 references to one gender include other genders;

1.3.5 a reference to a person includes all forms of legal entity including an individual, company, body corporate (wherever incorporated or carrying on business), unincorporated association, governmental entity and a partnership and, in relation to a party who is an individual, his legal personal representative(s);

1.3.6 a reference:

(A) to a Clause shall be a reference to a clause of this Agreement;

(B) to a Schedule (other than to a schedule to a statutory provision) shall be a reference to a schedule of this Agreement;

(C) within a Schedule of this Agreement to a paragraph, shall be a reference to a paragraph of that Schedule;

(D) within a Schedule to a Part shall be a reference to a Part of that Schedule;

(E) within a Schedule to an Annex or Appendix shall be a reference to an Annex or Appendix to that Schedule; and

(F) within an Annex or Appendix to a section (other than to a schedule to a statutory provision), shall be a reference to a section of that Annex or Appendix;

1.3.7 references to dates which do not fall on a Working Day shall be construed as references to the immediately subsequent Working Day;

1.3.8 references to the time of day shall be a reference to the time in London, England;

1.3.9 other than in respect of periods of time expressed in Working Days, if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;

1.3.10 in respect of periods of time expressed in Working Days, if a period of time is specified from a given day, or from the day of an act or event, it shall be calculated as inclusive of such day unless such act or event occurs after Working Hours during that day;

1.3.11 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;

1.3.12 references to **"writing"** and **"written"** shall include any modes of reproducing words in any legible, non-transitory form, and includes electronic mail except:

(A) where expressly stated otherwise; or

(B) in respect of notice given under this Agreement;

1.3.13 a reference to a balance sheet or profit and loss account shall include a reference to any note forming part of it;

1.3.14 a reference to **"includes"** or **"including"** shall mean "includes without limitation" or "including without limitation";

1.3.15 the words **"other"** and **"otherwise"** are not to be construed as being limited by any words preceding them;

1.3.16 the word "**property**" includes choses in action and other intangible property;

1.3.17 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation; and

1.3.18 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms.

1.4 If there is any conflict or inconsistency between any provision contained in the Clauses, and any of the Schedules, Appendices or Annexes or any other documents incorporated herein by reference, the following order of precedence will apply, but only in so far as is necessary to resolve that conflict or inconsistency:

1.4.1 the Clauses;

1.4.2 Schedule 1 (*Definitions*);

1.4.3 the other Schedules to this Agreement, except for Schedule 28 (*Service Provider's Solution*);

1.4.4 an Annex or Appendix to a Schedule except for an Annex or Appendix to Schedule 28 (*Service Provider's Solution*);

1.4.5 Schedule 28 (*Service Provider's Solution*);

1.4.6 an Annex or Appendix to Schedule 28 (*Service Provider's Solution*); and

1.4.7 any other documents incorporated into this Agreement by reference.

1.5 Any reference to TfL being required to act reasonably or to exercise its discretion acting reasonably shall be construed as if the terms **"reasonably"** and **"reasonable"** were an objective test of the reasonableness of TfL, but subject always to the following exception: TfL shall be entitled to take into account, and to give such weight as it shall in good faith consider proper as to the requirement (which shall be regarded as paramount) to discharge its statutory functions and deliver safe, integrated, reliable, efficient and economic transport facilities and services to, from and within Greater London, provided that such exception shall not be used by TfL to unreasonably impose on the Service Provider any additional obligations which are not set out in this Agreement.

1.6 The term "**remedy**" or "**remedied**" shall include, in respect of a breach or default on the part of the Service Provider, that the Service Provider has corrected all the technical, procedural and management errors and failures that led directly to the breach or default and has taken all appropriate corrective steps to minimise the possibility of any similar breach or default occurring again in the future and that the Service Provider has restored the affected service, system or activity to the level of service required by this Agreement and that the Service Provider has cured all adverse consequences resulting from such breach or default, such that none of TfL or any other member of the TfL Group is in any worse position than it would have been had that breach or default not occurred and that any similar breach is unlikely to occur in the future.

1.7 The Exchanged CD contains the following documents, each of which is incorporated into this Agreement:

1.7.1 Schedule 2 (*Statement of Requirements*) and its Annexes and Appendices

1.7.2 Schedule 7 Annex A (*Billing Model*)

1.7.3 Schedule 7 Annex D (*Pricing Template*)

1.7.4 Schedule 24 Annex 3 (*Initial SLNT Plan*)

1.7.5 Schedule 28 (*Service Provider's Solution*) and its Annexes and Appendices

1.7.6 Schedule 34 (*TfL Policies*) and its Annexes and Appendices

1.8 This Agreement (including the documentation referred to in Clause 1.7) has been, and will continue to be updated via the Change Control Request Procedure throughout its Term and Extended Term. The Parties shall agree and document a process (the “Contract Update Process”) no later than 30/09/2020 to ensure that all updates to this Agreement and the Schedules are formally shared and agreed between the Parties in accordance with Schedule 9 (Change Control Request Procedure).

2. DURATION

2.1 This Agreement will come into force on the Effective Date and shall, subject to termination in accordance with Clause 61 (*Termination*), continue until 23:59:59 on the Expiry Date when it shall terminate automatically without notice.

2.2 The Parties acknowledge that, pursuant to the ULEX, DVS & LEZ 20 Change, TfL has exercised its right (as set out under the Agreement at the Effective Date) to extend the Term for a period of five (5) years from the date of expiry of the Initial Term and ending at 23:59:59 on the Expiry Date (such total period of extension being the "**Extended Term**").

3. SCOPE OF SERVICES

3.1 The Service Provider shall:

3.1.1 design the Service Systems and the processes and procedures to be followed by the Service Provider in order to meet the Requirements from the Operational

Commencement Date (and so as to achieve the associated Milestones on or before the relevant Milestone Dates);

3.1.2 build the Service Systems and create and implement the processes and procedures to be followed by the Service Provider in order to meet the Requirements from the Operational Commencement Date (and so as to achieve the associated Milestones on or before the relevant Milestone Dates);

3.1.3 migrate Data, and achieve cutover, from the Incumbent Service Provider Systems to the Service Systems on or before the Planned Operational Commencement Date (and so as to achieve the associated Milestones on or before the relevant Milestone Dates);

3.1.4 from the Operational Commencement Date, operate the Service Systems and provide services as necessary to meet the Requirements;

3.1.5 update the Service Systems and create and implement the processes and procedures to be followed by the Service Provider in order to meet the Requirements introduced by the ULEZ Central Change from the ULEZ Operational Commencement Date (and so as to achieve the associated ULEZ Central Change Milestones on or before the relevant Milestone date);

3.1.6 from the ULEZ Operational Commencement Date, operate the Service Systems and provide services as necessary to meet the Requirements introduced or amended as a result of the ULEZ Central Change. For the avoidance of doubt, should there be any conflict and/or gap between Requirements introduced or amended as a result of the ULEZ Central Change and the ULEZ element of the LEZ Scheme Order, then the Requirements introduced or amended as a result of the ULEZ Central Change shall prevail.

3.1.7 update the Service Systems and create and implement the processes and procedures to be followed by the Service Provider in order meet the Requirements introduced by LEZ 20 from the LEZ 20 Operational Commencement Date (and so as to achieve the associated Milestones in respect of LEZ 20 on or before the relevant Milestone Date);

3.1.8 update the Service Systems and create and implement the processes and procedures to be followed by the Service Provider in order meet the Requirements introduced by DVS Enforcement from the DVS Enforcement Operational Commencement Date (and so as to achieve the associated Milestones in respect of DVS on or before the relevant Milestone Date);

3.1.9 update the Service Systems and create and implement the processes and procedures to be followed by the Service Provider in order meet the Requirements introduced by ULEX from the ULEX Operational Commencement Date (and so as to achieve the associated Milestones in respect of ULEX on or before the relevant Milestone Date); and

3.1.10 provide Additional Services (subject to Clause 22),

in each case in accordance with this Agreement (the **"Services"**).

4. TFL OBJECTIVES

4.1 The Service Provider acknowledges that the purpose of this Agreement is to provide a world class road user charging enforcement and traffic enforcement service and system that enhances London's reputation and achieves the following objectives in relation to the Services and Service Systems:

4.1.1 delivering a solution that enables Customers to interact efficiently with TfL and the Service Provider in relation to the Schemes;

4.1.2 ensuring timely and accurate records processing including PCNs;

4.1.3 in relation to Customers:

(A) moving Customers to lower cost and automated channels;

(B) protecting all Customer Data;

(C) maintaining Customer satisfaction; and

(D) achieving first time enquiry and problem resolution for Customers;

4.1.4 ensuring that the Service Systems:

(A) maximise the use of COTS and low cost, well supported systems;

(B) deliver the services defined in the Requirements;

(C) offer high System availability to meet the Requirements;

(D) offer redundancy to assure continuity of service and data integrity;

(E) support automated service management processes;

(F) require a minimum of hands-on management or control;

(G) require a minimum of specialist training for operations and service management;

(H) provide auditing processes for automated system alerting and performance management;

(I) provide automated logging and auditing for security management and intervention; and

(J) enable robust automated reporting;

4.1.5 improving the handling of Representations and Appeals;

4.1.6 maintaining and improving income whilst ensuring compliance with Law; and

4.1.7 protecting Revenue and reducing fraud,

(together, the **"TfL Objectives"**).

4.2 The Service Provider shall provide the Services and perform its obligations under this Agreement in a manner that is consistent with and supports and delivers the TfL Objectives.

5. STANDARD OF SERVICES

5.1 The Service Provider shall provide the Services:

5.1.1 in a manner which meets the TfL Objectives;

5.1.2 in a manner consistent with the Service Provider's Solution;

5.1.3 in a professional, workman like manner and with reasonable care and skill;

5.1.4 using appropriately experienced, trained and qualified personnel;

5.1.5 in accordance with Good Industry Practice;

5.1.6 so as to achieve or exceed the Acceptable Service Levels;

5.1.7 in a timely, economic, efficient and reliable manner;

5.1.8 in accordance with all applicable Laws;

5.1.9 in manner that does not hinder or prevent TfL's compliance with all applicable Laws;

5.1.10 in accordance with "ISO/IEC 20000: IT Services Management" as updated, amended or replaced from time to time; and

5.1.11 in accordance with the standards set out in the Information Technology Infrastructure Library (**"ITIL"**) framework published by the United Kingdom Office of Government Commerce as updated, amended or replaced from time to time,

The Service Provider shall ensure that certification of the Service Provider and each Sub-Contractor under ITIL is achieved and maintained in connection with the Services, and the Service Provider shall perform each Change in accordance with, and shall ensure that the Change Control Request Procedure it undertakes is consistent and complies with, ITIL).

5.2 Without limitation and in addition to the Service Provider's other obligations set out in this Agreement, the Service Provider shall:

5.2.1 in performing its obligations under this Agreement, not do or omit to do or permit or suffer to be done anything which might be or become a danger to any persons or cause damage to any property;

5.2.2 at all times act with good faith in its dealings with TfL, Customers, its Sub-Contractors or agents and Other Service Providers and shall ensure that its Personnel shall act in such a way that the name and good reputation of TfL is not brought into disrepute or otherwise becomes adversely affected; and

5.2.3 ensure that, unless otherwise agreed in writing by TfL, at all times throughout the duration of this Agreement, all Sub-Contracts, (excluding the Cloud Agreement), equipment rental or lease agreements, licences of Intellectual Property Rights (subject to Clause 39 (*Licensing of Intellectual Property Rights*)), and all other Non-Employment Contracts which are necessary for the performance of the Services, are assignable to TfL (without any transfer charge) upon the occurrence of any of the events described in Clause 61 (*Termination*). In respect of the Cloud Agreement the Service Provider shall, on TfL's request, upon the occurrence of the events described in Clause 61 (Termination), subject to TfL having in place its own agreement with **REDACTED** for the use of **REDACTED**, on terms and pricing agreed between TfL and **REDACTED**, transfer to TfL any Service Provider subscriptions for Cloud Services that have been entered into for the performance of the Services under this Agreement, and shall otherwise use its reasonable endeavours to support TfL in obtaining equivalent services to the Cloud Services following Termination or Partial Termination of this Agreement including, for the avoidance of doubt, by complying with its obligations in Clause 39.6, Clause 64.5.8, and Schedule 16 (Exit Plan).

5.3 Without limiting the generality of Clause 5.1.8, the Service Provider:

5.3.1 shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities; and

5.3.2 acknowledges that TfL is under a duty under section 76A of the Sex Discrimination Act 1975, section 71 of the Race Relations Act 1976 and under section 49A of the Disability Discrimination Act 1995 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex or marital status, race or disability (as the case may be) and to promote equality of opportunity between persons of different racial groups and between disabled people and other people (as the case may be); in providing the Services, the Service Provider shall assist and cooperate with TfL where possible in satisfying this duty.

5.4 The Service Provider shall ensure (and shall ensure that all Documentation shows) that, all development work, all development of Documentation, and any other item or thing done by the Service Provider or any Sub-Contractor in connection with the Services:

5.4.1 has been or is (as applicable) carried out or conducted only at the Service Provider Premises or Cloud Premises and not at any other site, premises, facility, location or jurisdiction; and

5.4.2 save in respect of the Cloud Assets, the Service Systems are not used by or on behalf of any other customer of the Service Provider (or otherwise in relation to the Service Provider's business) without TfL's prior written consent.

The Service Provider agrees that any breach of this Clause 5.4 shall be deemed to be a material breach of this Agreement.

6. SERVICE PROVIDER'S SOLUTION

6.1 The report produced, and the designs, solutions and proposals developed, by the Service Provider prior to the Effective Date are attached hereto as Schedule 28 (*Service Provider's Solution*) (the **"Service Provider's Solution"**).

6.2 The Service Provider acknowledges and agrees that:

6.2.1 the Service Provider has full knowledge and understanding of the Requirements and warrants on a continuous basis throughout the Term that:

(A) the Service Provider's Solution (as may be varied pursuant to the Change Control Request Procedure from time to time):

(1) is Fit for Purpose for the provision of the Services required under this Agreement;

(2) meets the Requirements; and

(3) meets the TfL Objectives; and

(B) the Requirements set out sufficient functional requirements to enable the Service Provider to deliver an IT platform from which to operate the Services in accordance with this Agreement.

6.2.2 the Service Provider's Solution and any other ideas, methods, concepts or theories (including without limitation any "proof of concept" synopsis, milestone or feasibility demonstration in connection with the Services) will be verifiable, verified, demonstrable, demonstrated and capable of use and used for the purposes of this Agreement;

6.2.3 the Hardware, Software and Systems (including without limitation any relevant Assets) provided or used in connection with the BOps or Business Operations Systems will be completely separate and distinct from any Hardware, Software and Systems provided or used in connection with the EOps or Enforcement Operations Systems, save for the Service Systems Interfaces between BOps, or Business Operations Systems, on the one hand, and EOps, or Enforcement Operations Systems, on the other hand, and save as set out in Appendix DbA (Shared Systems) to Module Db of Schedule 28 (*Service Provider's Solution)* and shall ensure that all Documentation reflects this.

7. IMPLEMENTATION AND MIGRATION

7.1 The Service Provider shall ensure that:

7.1.1 each Milestone is achieved by the relevant Milestone Date;

7.1.2 Milestone T4 ("TE Transition to Live Operations Complete") is Accepted on or before the TE Planned Operational Commencement Date; and

7.1.3 Milestone T9 ("CC/LEZ Transition to Live Operations Complete") is Accepted on or before the CC/LEZ Planned Operational Commencement Date.

7.2 During the Implementation Phase, the Service Provider shall (without prejudice to Clause 7.1):

7.2.1 develop the Implementation Plan;

7.2.2 comply with the Implementation Plan; and

7.2.3 report on its progress against the Implementation Plan,

in each case in accordance with Schedule 3 (*Milestones and Deliverables*).

7.3 During the Implementation Phase, the Service Provider shall:

7.3.1 carry out Data checking, verification, cleansing, review, quality analysis and assurance, integrity testing and migration in accordance with the General Statement of Requirements and the Data Migration Strategy (and any associated Documentation) and so as to ensure that:

(A) Data or Data extracts from any Other Service Provider or Third Party are Tested by the Service Provider or relevant Sub-Contractors by the relevant Milestone Date or as otherwise agreed in writing by the Parties using the Change Control Request Procedure;

(B) all Data the subject of Data Migration remains available to and useable by TfL, Other Service Providers and Third Parties during Data Migration;

(C) Data Migration does not result in Data loss, corruption or impairment;

(D) all Data have been migrated and are accurate (insofar as it is possible for the Service Provider to verify such accuracy, including without limitation by meeting, as a minimum, the requirements of the Statement of Requirements and the Service Provider's Solution in this regard), up to date and complete as a result of Data Migration, including without limitation as agreed in writing by the Parties using the Change Control Request Procedure;

(E) all Data the subject of Data Migration are imported into the Service System(s) in accordance with the Data Migration Strategy (and associated Documentation) or as otherwise agreed in writing by the Parties using the Change Control Request Procedure;

(F) all Data the subject of Data Migration are subject to referential integrity checks to ensure that links between coupled tables in a database are consistent, correct and not broken once Data are migrated in respect of the Service Systems and between each part of the Service Systems; and

(G) all Data are Fit for Purpose for their use and processing in connection with the Services and by Other Service Providers or Third Parties; and

7.3.2 ensure that the cut-over, phase-in, transfer, migration or transition from the Other Service Provider Systems to the Service Systems envisaged under the Statement of Requirements is performed in accordance with the Implementation Plan, on the relevant Milestone Dates and without any interruption, disruption, non-availability, outage or Incident.

7.4 The Service Provider shall:

7.4.1 submit the Migration Strategy and the Data Migration Strategy to TfL for Approval by the relevant Milestone Dates; and

7.4.2 comply with the provisions of the Migration Strategy and the Data Migration Strategy once they are Approved.

7.5 TfL shall be entitled at all times to monitor and review the Service Provider's performance during the Implementation Phase, including its progress against the Implementation Plan and any associated activities, in accordance with Clause 35 (*TfL Monitoring Staff*).

7.6 The Service Provider agrees that without limiting Clause 68 (*Waiver*):

7.6.1 there shall be no transfer of risk by the Service Provider to TfL in connection with the Service Systems, the delivery of the Services, or any parts thereof, arising from any Testing, Test Witnessing, Assurance by TfL or issue by TfL of a Notice of Approval or a Milestone Acceptance Notice (and consequently any such Testing, Assurance, Approval and/or Acceptance by TfL shall be without prejudice to TfL's rights or remedies in relation to the Service Provider's breach of its obligations under this Agreement);

7.6.2 all risk in the Service Systems and the delivery of the Services shall remain with the Service Provider at all times;

7.6.3 any Approval or Assurance of a Deliverable by TfL or the issue of a Milestone Notice shall not affect TfL's right to later reject any part of the Service Systems or the Services which is the subject of such Approval or Assurance or notice, to later withdraw any such Approval, Assurance or notice (in circumstances where TfL

subsequently becomes aware of facts or circumstances that would have entitled it to withhold the relevant Approval, Assurance or Milestone Notice) or to reject any other part of the Service Systems or the Services, whether or not any notice has been issued in respect of, or is otherwise in connection with, such other part of the Service Systems and/or the Services, in which case:

(A) any resulting Change shall not result in any increase in the Service Charges or any One-off Charge whether pursuant to the Change Control Request Procedure or otherwise; and

(B) where such withdrawal of Approval, Assurance or Milestone Notice in respect of a Milestone occurs prior to the Acceptance of Milestone T10 ("CC/LEZ Initial Operations Review Complete"), a proportion (as determined by TfL, in its absolute discretion, by reference to the reasons for and impact of TfL withdrawing an Approval or Milestone Notice and any representations of the Service Provider) of any sums paid by TfL as a result of such notice such Milestone Notice shall be recovered by TfL as an abatement from the next payment due from TfL and each subsequent payment until the amount is fully recovered by TfL, provided that if TfL subsequently reissues such Approval or Milestone Notice sums recovered by TfL under this Clause 7.6.3(B) in respect of such reissued Approval or Milestone Notice shall again become payable by TfL to the Service Provider (excluding any amounts recovered in respect of an On-Time Delivery Payment if such subsequent Approval or Milestone Notice occurs after the original Milestone Date).

8. OPERATIONAL COMMENCEMENT

8.1 The Service Provider acknowledges that:

8.1.1 given that:

(A) the services provided by the Incumbent Service Providers in relation to the Schemes and Contraventions are scheduled to terminate on the TE Planned Operational Commencement Date or the CC/LEZ Planned Operational Commencement Date (as the case may be); and

(B) TfL receives significant revenues in relation to Contraventions and the Schemes,

if

(C) Milestone T4 ("TE Transition to Live Operations Complete") is not achieved on or before the TE Planned Operational Commencement Date; and/or

(D) Milestone T9 ("CC/LEZ Transition to Live Operations Complete") is not achieved on or before the CC/LEZ Planned Operational Commencement Date,

TfL will incur significant costs and/or liabilities (including loss of revenue); and

8.1.2 if:

(A) Milestone I5 ("TE System Development & Configuration Complete") or Milestone T3 ("TE Service Proving Complete") is not achieved on or before the relevant Milestone Date, this will create a significant risk that Milestone T4 ("TE Transition to Live Operations Complete") will not be achieved on or before the TE Planned Operational Commencement Date and that Milestone T9 ("CC/LEZ Transition to Live Operations Complete")

will not be achieved on or before the CC/LEZ Planned Operational Commencement Date; and

(B) Milestone T6 ("Ready for Service Integration Testing for Lot 1 and Lot 2") is not achieved on or before the relevant Milestone Date, this will create a significant risk that Milestone T9 ("CC/LEZ Transition to Live Operations Complete") will not be achieved on or before the CC/LEZ Planned Operational Commencement Date,

and (in each case) in such circumstances, in order to mitigate that risk, various steps (including some or all of those described in Clause 8.3) are likely to be required to be taken.

8.2 In such circumstances, in order to mitigate the risk to TfL of incurring costs and/or liabilities (including loss of revenue) associated with the TE Operational Commencement Date occurring after the TE Planned Operational Commencement Date and/or the CC/LEZ Operational Commencement Date occurring after the CC/LEZ Planned Operational Commencement Date, the Parties have agreed the arrangements set out in this Clause 8.

Indemnities

8.3 The Service Provider shall indemnify and keep indemnified TfL and each member of the TfL Group against (and shall pay on demand, including any Compensation Demand) all Losses which may be incurred or otherwise suffered by TfL or any member of the TfL Group arising from or in connection with the failure of the Service Provider to ensure that Milestone I5 ("TE System Development & Configuration Complete"), Milestone T3 ("TE Service Proving Complete") or Milestone T6 ("Ready for Service Integration Testing for Lot 1 and Lot 2") is Accepted on or before the relevant Milestone Date, including any and all costs relating to such steps as TfL and/or each member of the TfL Group may (acting reasonably) deem necessary (provided that if such failure is caused by TfL or its agents or an Other Service Provider, the Service Provider may claim a Relief Event in accordance with Clause 56 (Relief Events)). It is acknowledged and agreed that such steps are likely to include:

8.3.1 additional TfL internal resource to manage the delay to relevant activities in the Implementation Plan;

8.3.2 payments to an Incumbent Service Provider to retain the option to extend relevant services provided by the Incumbent Service Provider beyond the Planned Operational Commencement Date; and/or

8.3.3 payments to Other Service Providers (including for the avoidance of doubt the BOps Service Provider) for services required in relation to relevant additional activity required up to the relevant Operational Commencement Date.

8.4 The Service Provider shall indemnify and hold harmless TfL and each member of the TfL Group in full against (and shall pay on demand, including any Compensation Demand) all Losses incurred or otherwise suffered by TfL or any member of the TfL Group arising from or in connection with the failure of the Service Provider to ensure that:

8.4.1 Milestone T4 ("TE Transition to Live Operations Complete") is Accepted on or before the CC/LEZ Planned Operational Commencement Date (provided that if such failure is caused by TfL or its agents or an Other Service Provider, the Service Provider may claim a Relief Event in accordance with Clause 56 (Relief Events)); and

8.4.2 Milestone T9 ("CC/LEZ Transition to Live Operations Complete") is Accepted on or before the CC/LEZ Planned Operational Commencement Date (provided that if such failure is caused by TfL or its agents or an Other Service Provider, the Service Provider may claim a Relief Event in accordance with Clause 56 (Relief Events)) ,

including any and all costs relating to:

8.4.3 the procurement of services similar to the Services (or part thereof) from the Incumbent Service Providers (at a price which may be greater than the price for which such services are currently provided);

8.4.4 the procurement of services similar to the Services (or part thereof) from Third Parties;

8.4.5 payments to Other Service Providers (including for the avoidance of doubt the BOps Service Provider) to perform services which relate to the Services;

8.4.6 loss of revenue suffered by TfL;

8.4.7 TfL's internal costs in relation to management of this Agreement and participation in any workaround activities;

8.4.8 TfL's external lawyers and consultants; and/or

8.4.9 TfL's public relations and public communications activities.

Compensation Escrow Account

8.5 The Parties have set up the Compensation Escrow Account for the receipt of Compensation Escrow Deposits and the drawdown of Compensation Payments in accordance with Clauses 8 to 8.20 (inclusive), and the Service Provider agrees that TfL shall be entitled to have recourse to the Compensation Escrow Amount in accordance with the following provisions.

8.5A Each Party (in relation to this Clause 8.5A, "the first Party") shall indemnify the other Party against any liability incurred by the other Party pursuant to clause 9 (Indemnification of Escrow Agent) of the Compensation Escrow Agreement that arises from the failure by the first Party (and not the other Party) to fulfil any of its obligations under the Compensation Escrow Agreement.

8.6 If, in respect of Milestone I5 ("TE System Development & Configuration Complete"):

8.6.1 at any time after the Milestone Date for such Milestone TfL issues a Milestone Rejection Notice in accordance with paragraph 5 of Schedule 3 (*Milestones and Deliverables*); or

8.6.2 on the deadline identified in the Implementation Plan for the Service Provider to submit such Milestone to TfL for Acceptance (or, if no such deadline is identified in the Implementation Plan, on the date which is ten (10) Business Days before the relevant Milestone Date):

(A) the Service Provider has not requested TfL to confirm whether it Accepts such Milestone in accordance with paragraph 5 of Schedule 3 (*Milestones and Deliverables*); or

(B) the Service Provider has not submitted to TfL all materials identified in the Implementation Plan (or, if relevant, an associated Remedy Plan) as being required to accompany such request,

and TfL has not Accepted such Milestone within fifteen (15) Working Days of the Milestone Date then, subject to Clause 8.12, upon written request from TfL the Service Provider shall pay Compensation Escrow Deposits into the Compensation Escrow Account as required pursuant to paragraph 9 of Schedule 3 (Milestones and Deliverables).

8.7 If, in respect of Milestone T3 ("TE Service Proving Complete"):

8.7.1 at any time after the Milestone Date for such Milestone TfL issues a Milestone Rejection Notice in accordance with paragraph 5 of Schedule 3 (*Milestones and Deliverables*); or

8.7.2 on the deadline identified in the Implementation Plan for the Service Provider to submit such Milestone to TfL for Acceptance (or, if no such deadline is identified in the Implementation Plan, on the date which is ten (10) Business Days before the relevant Milestone Date):

(A) the Service Provider has not requested TfL to confirm whether it Accepts such Milestone in accordance with paragraph 5 of Schedule 3 (*Milestones and Deliverables*); or

(B) the Service Provider has not submitted to TfL all materials identified in the Implementation Plan (or, if relevant, an associated Remedy Plan) as being required to accompany such request,

and TfL has not Accepted such Milestone within fifteen (15) Working Days of the Milestone Date then, subject to Clause 8.10 upon written request from TfL the Service Provider shall pay Compensation Escrow Deposits into the Compensation Escrow Account as required pursuant to paragraph 9 of Schedule 3 (Milestones and Deliverables).

8.8 If, in respect of of Milestone T6 ("Ready for Service Integration Testing for Lot 1 and Lot 2"):

8.8.1 at any time after the Milestone Date for such Milestone TfL issues a Milestone Rejection Notice in accordance with paragraph 5 of Schedule 3 (*Milestones and Deliverables*); or

8.8.2 on the deadline identified in the Implementation Plan for the Service Provider to submit such Milestone to TfL for Acceptance (or, if no such deadline is identified in the Implementation Plan, on the date which is ten (10) Business Days before the relevant Milestone Date):

(A) the Service Provider has not requested TfL to confirm whether it Accepts such Milestone in accordance with paragraph 5 of Schedule 3 (*Milestones and Deliverables*); or

(B) the Service Provider has not submitted to TfL all materials identified in the Implementation Plan (or, if relevant, an associated Remedy Plan) as being required to accompany such request,

and TfL has not Accepted such Milestone within fifteen (15) Working Days of the Milestone Date then, subject to Clause 8.10 upon written request from TfL the Service Provider shall pay Compensation Escrow Deposits into the Compensation Escrow Account as required pursuant to paragraph 9 of Schedule 3 (Milestones and Deliverables).

8.9 Without prejudice to TfL's other rights and remedies under this Agreement, the maximum aggregate amount of Compensation Escrow Deposits which the Service Provider shall be required to make pursuant to Clauses 8.6 to 8.8 is **REDACTED**.

8.10 Subject to Clauses 8.11 to 8.20 (inclusive), the Compensation Escrow Amount shall be applied in paying to TfL any amounts in relation to which the Service Provider has agreed to indemnify TfL pursuant to Clauses 8.3 or 8.4 and any amount so paid shall pro tanto satisfy the liability concerned.

8.11 If TfL incurs or suffers a Loss in relation to which the Service Provider has agreed to indemnify TfL pursuant to Clauses 8.4 or 8.5, TfL shall, upon sending to the Compensation Escrow Agent a Demand setting out the amount of such Loss and a summary of the particulars of such Loss, receive from the Compensation Escrow Account within three (3) Working Days a Compensation Payment equal to the amount of such Loss.

8.12 If Milestone T4 ("TE Transition to Live Operations Complete") has been Accepted on or before the TE Planned Operational Commencement Date, then, subject to the prior payment of any Compensation Payments pursuant to Clause 8.13, TfL shall within five (5) Working Days after the TE Planned Operational Commencement Date instruct the Compensation Escrow Agent to release to the Service Provider from the Compensation Escrow Account an amount equal to:

8.12.1 the sum of all Compensation Escrow Deposits made by the Service Provider pursuant to paragraphs 8.6, 8.7 and 8.8 (as at the TE Planned Operational Commencement Date); less

8.12.2 the sum of all Compensation Escrow Payments paid to TfL in relation to a failure of the Service Provider to ensure that Milestone I5 ("TE System Development Complete") was Accepted on or before the relevant Milestone Date; less

8.12.3 the sum of all Compensation Escrow Payments paid to TfL in relation to a failure of the Service Provider to ensure that Milestone T3 ("TE Service Proving Complete") was Accepted on or before the relevant Milestone Date; less

8.12.4 any amounts reasonably estimated and claimed in good faith by TfL in relation to any Losses that have been notified to the Compensation Escrow Agent and the Service Provider prior to such date but which have not yet been the subject of a Demand (on the basis that they have not yet been or cannot yet be quantified) for which recourse to the Compensation Escrow Amount would (had a Demand been made) be permitted (a **"Scenario 1 Pending Claim"**).

8.13 If Milestone T4 ("TE Transition to Live Operations Complete") has not been Accepted on or before the TE Planned Operational Commencement Date then, subject to the prior payment of any Compensation Payments pursuant to Clause 8.11, TfL shall within five (5) Working Days of the date on which is three (3) months after the date MilestoneT4 ("TE Transition to Live Operations Complete") is Accepted (subject to paragraph 10.4 of Schedule 3) instruct the Compensation Escrow Agent to release to the Service Provider from the Compensation Escrow Account an amount equal to:

8.13.1 the sum of all Compensation Escrow Deposits made by the Service Provider pursuant to paragraphs 8.6, 8.7 and 8.8 (as at such date); less

8.13.2 the sum of all Compensation Escrow Payments paid to TfL in relation to a failure of the Service Provider to ensure that Milestone I5 ("TE System Development & Configuration Complete") was Accepted on or before the relevant Milestone Date; less

8.13.3 the sum of all Compensation Escrow Payments paid to TfL in relation to a failure of the Service Provider to ensure that Milestone T3 ("TE Service Proving Complete") was Accepted on or before the relevant Milestone Date; less

8.13.4 the sum of all Compensation Escrow Payments paid (or payable) to TfL in relation to a failure of the Service Provider to ensure that Milestone T4 ("TE Transition to Live Operations Complete") was Accepted on or before the relevant Milestone Date; less

8.13.5 any amounts reasonably estimated and claimed in good faith by TfL in relation to any Losses that have been notified to the Compensation Escrow Agent and the Service Provider prior to such date but which have not yet been the subject of a Demand (on the basis that they have not yet been or cannot yet be quantified) for which recourse to the Compensation Escrow Amount would (had a Demand been made) be permitted (a **"Scenario 2 Pending Claim"**).

8.14 If Milestone T9 ("CC/LEZ Transition to Live Operations Complete") has been Accepted on or before the CC/LEZ Planned Operational Commencement Date, TfL shall, subject to the prior payment of any Compensation Payments pursuant to Clause 8.11, within five (5) Working Days after the CC/LEZ Planned Operational Commencement Date instruct the Compensation Escrow Agent to release to the Service Provider from the Compensation Escrow Account an amount equal to:

8.14.1 the remaining Compensation Escrow Amount (as at the CC/LEZ Planned Operational Commencement Date); less

8.14.2 any amounts reasonably estimated and claimed in good faith by TfL in relation to any Losses that have been notified to the Compensation Escrow Agent and the Service Provider prior to such date but which have not yet been the subject of a Demand (on the basis that they have not yet been or cannot yet be quantified) for which recourse to the Compensation Escrow Amount would (had a Demand been made) be permitted (a **"Scenario 3 Pending Claim"**).

8.15 If Milestone T9 ("CC/LEZ Transition to Live Operations Complete") has not been Accepted on or before the CC/LEZ Planned Operational Commencement Date then, subject to the prior payment of any Compensation Payments pursuant to Clause 8.11, TfL shall within five (5) Working Days of the date on which Milestone T10 ("CC/LEZ Initial Operations Review") is Accepted instruct the Compensation Escrow Agent to release to the Service Provider from the Compensation Escrow Account an amount equal to:

8.15.1 the remaining balance of the Compensation Escrow Amount (as at the date on which Milestone T10 ("CC/LEZ Initial Operations Review") is Accepted); less

8.15.2 any amounts reasonably estimated and claimed in good faith by TfL in relation to any Losses that have been notified to the Compensation Escrow Agent and the Service Provider prior to such date but which have not yet been the subject of a Demand (on the basis that they have not yet been or cannot yet be quantified) for which recourse to the Compensation Escrow Amount would (had a Demand been made) be permitted (a **"Scenario 4 Pending Claim"**).

8.16 Within five (5) Working Days following the Loss associated with a Pending Claim being incurred by TfL, TfL shall issue a Demand to the Compensation Escrow Agent for an amount equal to such Loss and, following receipt by TfL of the Compensation Escrow Payment in respect of such Demand, any excess amount previously held back in respect of such Pending Claim shall within three (3) Working Days be released to the Service Provider in accordance with the terms of the Compensation Escrow Agreement.

8.17 Interest earned on the Compensation Escrow Amount shall be for the benefit of the Service Provider, and any balance of such interest net of any tax required by Law to be deducted therefrom shall be released to the Service Provider on a monthly basis in accordance with the terms of the Compensation Escrow Agreement.

8.18 Each Party shall promptly give instructions to the Compensation Escrow Agent as may be required to give effect to the terms of this Clause 8. If the Compensation Escrow Agent serves a valid notice of termination of the Compensation Escrow Agreement then the Parties shall appoint a replacement escrow agent on substantially the same terms and shall direct transfer of the funds in the Compensation Escrow Account to the replacement escrow account.

8.19 The Parties acknowledge and agree that:

8.19.1 the Compensation Escrow Deposits have been calculated to compensate for the losses that TfL and/or members of the TfL Group are likely to suffer as a result of:

(A) Milestone I5 ("TE System Development & Configuration Complete"), Milestone T3 ("Service Proving Complete") and/or Milestone T6 ("Ready for Service Integration Testing for Lot 1 and Lot 2") not being Accepted on or before the relevant Milestone Date, including in relation to the losses described in Clause 8.3;

(B) Milestone T4 ("TE Transition to Live Operations Complete") not being Accepted on or before the TE Planned Operational Commencement Date, including in relation the losses described in Clause 8.4; and

(C) Milestone T9 ("CC/LEZ Transition to Live Operations Complete") not being Accepted on or before the CC/LEZ Planned Operational Commencement Date, including in relation the losses described in Clause 8.4; and

8.19.2 TfL's right to receive Compensation Payments is without prejudice to its right to claim for additional Losses under the indemnities given by the Service Provider pursuant to Clauses 8.3, 8.4 and 47.1.

No double-recovery

8.20 Notwithstanding any provision in this Clause 8, TfL shall not be entitled to an indemnity in respect of a Loss under the indemnity provisions in this Clause 8 or to receive a Compensation Payment in respect of such Loss to the extent that TfL has already been compensated under this Agreement for such Loss.

Operational Commencement

8.21 Notwithstanding the prior Acceptance of Milestone T4 ("TE Transition to Live Operations Complete"), and subject to Clause 0, the Service Provider shall not commence operation of the Service Systems (and the associated Services) until the date specified for such operation in a TE Notice to Commence Operations or a TE Notice to Commence Reduced Operations issued by TfL.

8.22 If:

8.22.1 the Service Provider has submitted Milestone T4 ("TE Transition to Live Operations Complete") for Acceptance in accordance with the Implementation Plan and Schedule 3 (*Milestones and Deliverables*);

8.22.2 all Milestone Acceptance Criteria have been met in respect of such Milestone; and

8.22.3 the TE Planned Operational Commencement Date has passed and TfL has not issued a TE Notice to Commence Operations or a TE Notice to Commence Reduced Operations,

then, for the purpose of this Clause 8.22 only, TfL's decision not to issue a Notice to Commence Operations or Notice to Commence Reduced Operations shall be treated as a Relief Event so that the Service Provider may claim associated Relief Event Costs in accordance with Clause 56. For the avoidance of doubt, upon receipt of a Notice to Commence Operations or Notice to Commence Reduced Operations, the Service Provider shall commence operation of the Service Systems (and the associated Services).

8.23 Notwithstanding the prior Acceptance of Milestone T4 ("TE Transition to Live Operations"), the Service Provider shall not commence operation of the Service Systems (and the associated Services) in relation to the Congestion Charging Scheme or the LEZ Scheme until the date specified for such operation in a CC/LEZ Notice to Commence Operations or a CC/LEZ Notice to Commence Reduced Operations issued by TfL.

8.24 If:

8.24.1 the Service Provider has submitted Milestone T9 ("CC/LEZ Transition to Live Operations Complete") for Acceptance in accordance with the Implementation Plan and Schedule 3 (*Milestones and Deliverables*);

8.24.2 all Milestone Acceptance Criteria have been met in respect of such Milestone; and

8.24.3 the CC/LEZ Planned Operational Commencement Date has passed and TfL has not issued a CC/LEZ Notice to Commence Operations or a CC/LEZ Notice to Commence Reduced Operations,

then, for the purpose of this Clause 8.24 only, TfL's decision not to issue a Notice to Commence Operations or Notice to Commence Reduced Operations shall be treated as a Relief Event so that the Service Provider may claim associated Relief Event Costs in accordance with Clause 56. For the avoidance of doubt, upon receipt of a Notice to Commence Operations or Notice to Commence Reduced Operations, the Service Provider shall commence operation of the Service Systems (and the associated Services).

ULEZ Operational Commencement

8.25 Notwithstanding the ULEZ Operational Commencement Date, the Service Provider shall not commence operation of the ULEZ element of the Services without prior written instruction from TfL.

8.26 Failure by the Service Provider to commence operation of the ULEZ element of the Services on the ULEZ Operational Commencement Date (howsoever arising), shall not constitute a material breach of this Agreement.

8.27 If:

8.27.1 the Service Provider has failed to achieve the Milestone Acceptance Criteria associated with any ULEZ Central Change Milestone, due prior to the ULEZ Operational Commencement Date; and

8.27.2 TfL confirm they wish to commence operation of the ULEZ element of the Services in accordance with Clause 8.25;

then, for the purpose of this Clause 8.27 only,TfL's decision to commence operation of the ULEZ element of the Services shall be treated as a Dependency Failure and Relief Event and the Service Provider shall be entitled to associated Relief Event Costs. In addition, TfL shall grant the Service Provider relief from its obligations under Schedule 5 of this Agreement, including, for the avoidance of doubt granting relief from all Service Failure Deductions for the duration of the Relief Event insofar as they directly result from the TfL Dependency Failure. For the avoidance of doubt, the Service Provider shall not be entitled to relief from its obligations under Schedule 5 of this Agreement to the extent that such failure is not directly attributable to the TfL Dependency Failure.

DVS Enforcement Operational Commencement

8.28 Notwithstanding the DVS Enforcement Operational Commencement Date, the Service Provider shall not commence operation of the DVS Enforcement element of the Services without prior written instruction from TfL.

8.29 Failure by the Service Provider to commence operation of the DVS Enforcement element of the Services on the DVS Enforcement Operational Commencement Date (howsoever arising), shall not constitute a material breach of this Agreement.

8.30 If:

8.30.1 the Service Provider has failed to achieve the Milestone Acceptance Criteria associated with any DVS Enforcement Milestone, due prior to the DVS Enforcement Operational Commencement Date; and

8.30.2 TfL confirm they wish to commence operation of the DVS Enforcement element of the Services in accordance with Clause 8.24,

then, for the purpose of this Clause 8.26 only, TfL's decision to commence operation of the DVS Enforcement element of the Services shall be treated as a Dependency Failure and Relief Event and the Service Provider shall be entitled to associated Relief Event Costs. In addition, TfL shall grant the Service Provider relief from its obligations under Schedule 5 of this Agreement, including, for the avoidance of doubt granting relief from all Service Failure Deductions for the duration of the Relief Event insofar as they directly result from the TfL Dependency Failure. For the avoidance of doubt, the Service Provider shall not be entitled to relief from its obligations under Schedule 5 of this Agreement to the extent that such failure is not directly attributable to the TfL Dependency Failure.

LEZ 20 Operational Commencement

8.31 Notwithstanding the LEZ 20 Operational Commencement Date, the Service Provider shall not commence operation of the LEZ 20 element of the Services without prior written instruction from TfL.

8.32 Failure by the Service Provider to commence operation of the LEZ 20 element of the Services on the LEZ 20 Operational Commencement Date (howsoever arising), shall not constitute a material breach of this Agreement.

8.33 If:

8.33.1 the Service Provider has failed to achieve the Milestone Acceptance Criteria associated with any LEZ 20 Milestone, due prior to the LEZ 20 Operational Commencement Date; and

8.33.2 TfL confirm they wish to commence operation of the LEZ 20 element of the Services in accordance with Clause 8.27;

then, for the purpose of this Clause 8.29 only, TfL's decision to commence operation of the LEZ 20 element of the Services shall be treated as a Dependency Failure and Relief Event and the Service Provider shall be entitled to associated Relief Event Costs. In addition, TfL shall grant the Service Provider relief from its obligations under Schedule 5 of this Agreement, including, for the avoidance of doubt granting relief from all Service Failure Deductions for the duration of the Relief Event insofar as they directly result from the TfL Dependency Failure. For the avoidance of doubt, the Service Provider shall not be entitled to relief from its obligations under Schedule 5 of this Agreement to the extent that such failure is not directly attributable to the TfL Dependency Failure.

ULEX Operational Commencement

8.34 Notwithstanding the ULEX Operational Commencement Date, the Service Provider shall not commence operation of the ULEX element of the Services without prior written instruction from TfL.

8.35 Failure by the Service Provider to commence operation of the ULEX element of the Services on the ULEX Operational Commencement Date (howsoever arising), shall not constitute a material breach of this Agreement.

8.36 If:

8.36.1 the Service Provider has failed to achieve the Milestone Acceptance Criteria associated with any ULEX Milestone, due prior to the ULEX Operational Commencement Date]; and

8.36.2 TfL confirm they wish to commence operation of the ULEX element of the Services in accordance with Clause 8.30;

then, for the purpose of this Clause 8.32 only, TfL's decision to commence operation of the ULEX element of the Services shall be treated as a Dependency Failure and Relief Event and the Service Provider shall be entitled to associated Relief Event Costs. In addition, TfL shall grant the Service Provider relief from its obligations under Schedule 5 of this Agreement, including, for the avoidance of doubt granting relief from all Service Failure Deductions for the duration of the Relief Event insofar as they directly result from the TfL Dependency Failure. For the avoidance of doubt, the Service Provider shall not be entitled to relief from its obligations under Schedule 5 of this Agreement to the extent that such failure is not directly attributable to the TfL Dependency Failure.

9. DELIVERABLES

9.1 Each Party shall have the relevant rights and obligations set out in Part D of Schedule 3 (*Milestones and Deliverables*) in relation to the preparation, submission, Approval and Assurance of Deliverables.

9.2 In relation to Documentation, the Service Provider shall:

9.2.1 submit such Documentation to TfL for Approval or Assurance when required pursuant to this Agreement;

9.2.2 (subject to any specific requirements under this Agreement in respect of the periodic updating of specific Documentation) submit to TfL for Approval or Assurance such updated versions of Documentation as are required to ensure that each such document is at all times accurate, up to date and complete

9.2.3 comply with the terms of all Documentation that have been Approved, or Assured (or deemed to be Assured).

9.3 The Service Provider shall establish and maintain an electronic repository of up-to-date information, records, documentation, standards and procedures relating to this Agreement, the Services and Service Systems (the **"Document Library"**). The Document Library shall:

9.3.1 be hosted by TfL(or, if requested in writing by TfL, by the Service Provider or such Third Party as is nominated by TfL in writing from time to time);

9.3.2 be accessible at all times and access-controlled by TfL and its authorised agents and sub-contractors;

9.4 The Service Provider shall when requested by TfL submit to TfL a list of the documents contained within the Document Library for Approval by TfL, which shall include:

9.4.1 all Documentation developed or used by the Service Provider during the Implementation Phase; and

9.4.2 all other documents required to be in the Document Library.

10. TESTING

The Service Provider shall (at no additional cost to TfL) comply with Schedule 4 (*Testing Regime*) in relation to the testing of the Services and the Service Systems.

11. SERVICE LEVELS

11.1 If the Service Provider does not meet the Acceptable Service Levels, then except as provided in Clause 11.1.1 below, the Service Provider shall incur Service Failure Deductions in accordance with Schedule 5 (*Service Level Agreement*) which shall be deducted from the Service Charges in accordance with Schedule 7 (*Charging and Operational Pricing*) as an abatement of the Service Charges.

11.1.1 Where, from the ULEZ Operational Commencement Date the Service Provider is unable to meet the Acceptable Service Level(s), from the:

(A) ULEZ Operational Commencement Date, then, to the extent that the Service Provider is able to reasonably demonstrate that its failure to meet the Acceptable Service Level(s) is as a direct result of the Actual ULEZ Operational Volumes being greater than the Projected ULEZ Operational Volumes, the Service Provider shall not incur Service Failure Deductions;

(B) DVS Enforcement Operational Commencement Date then, to the extent that the Service Provider is able to reasonably demonstrate that its failure to meet the Acceptable Service Level(s) is as a direct result of the Actual DVS Enforcement Operational Volumes being greater than the Projected DVS Enforcement Operational Volumes; and

(C) LEZ 20 Operational Commencement Date then, to the extent that the Service Provider is able to reasonably demonstrate that its failure to meet the Acceptable Service Level(s) is as a direct result of the Actual LEZ 20 Operational Volumes being greater than the Projected LEZ 20 Operational Volumes,

The Service Provider shall not incur Service Failure Deductions.

11.1.2 For the avoidance of doubt, the above Clause 11.1.1 shall not apply in circumstances where the Actual ULEZ Operational Volumes, Actual DVS Enforcement Operational Volumes or Actual LEZ 20 Operational Volumes are greater than the Projected ULEZ Operational Volumes, Projected DVS Enforcement Operational Volumes or Projected LEZ 20 Operational Volumes, as applicable, as a result of any act or omission by the Service Provider.

11.1.3 Notwithstanding Clause 11.1.1 above, where the Actual ULEZ Operational Volumes, Actual DVS Enforcement Operational Volumes or Actual LEZ 20 Operational Volumes received by the Service Provider are greater than the Projected ULEZ Operational Volumes, Projected DVS Enforcement Operational Volumes or Projected LEZ 20 Operational Volumes, as applicable, the Service Provider shall use reasonable endeavours to achieve the Acceptable Service Level(s).

11.2 The Parties agree that Service Failure Deductions:

11.2.1 are not intended as a penalty for non-performance, but are instead an abatement to the Service Charges to reflect reduced quality of performance;

11.2.2 may not quantify the full extent of TfL's Losses in relation to a failure by the Service Provider to meet or exceed the Acceptable Service Levels, and so are (with the exception of Clause 11.1.1 above) without prejudice to TfL's other rights or remedies under this Agreement in relation to such failure. For the avoidance of doubt, TfL shall have no right to make a claim for Losses should Clause 11.1.1 above apply.

12. SERVICE MANAGEMENT

12.1 The Service Provider shall manage all:

12.1.1 service and operational issues that arise in relation to the Services, including those that arise as a result of the actions or omissions of a Sub-Contractor, an Other Service Provider or TfL;

12.1.2 Incidents; and

12.1.3 Defects,

in accordance with the Requirements set out in the General Statement of Requirements and Schedule 4 (*Testing Regime*).

12.2 If there is an Incident, a Defect or other failure in the provision of the Services; or any irregularity or unexpected System behaviour or failure of the Service Systems (a **"Service Failure"**) then, without prejudice to TfL's other rights or remedies under this Agreement or at Law, the Service Provider shall (at no additional cost to TfL):

12.2.1 promptly notify TfL of the Service Failure;

12.2.2 perform a root cause analysis to identify the cause of the Service Failure and advise TfL of possible actions to prevent a reoccurrence of the same or similar Service Failure;

12.2.3 be responsible and accountable for the management of such Service Failure to resolution in accordance with the Incident Management Process and other relevant procedures and timescales set out in this Agreement;

12.2.4 co-operate with TfL and Other Service Providers as necessary to resolve such Service Failure, in accordance with Clause 15;

12.2.5 if the Service Failure is attributable to the Service Provider or a Sub-Contractor, take the necessary steps to remedy the Service Failure; and

12.2.6 if the Service Failure is attributable to an Other Service Provider or TfL:

(A) identify any dependencies on such Other Service Provider or TfL which must be met in order for the Service Provider to remedy the Service Failure; and

(B) in relation to such Other Service Provider, provide TfL with all necessary information so that TfL can enforce its rights and remedies against such Other Service Provider.

12.3 If there is a disagreement between the Service Provider and an Other Service Provider in relation to the responsibility for, or the resolution of, a Service Failure, the Service Provider shall:

12.3.1 notify TfL of such disagreement as soon as possible, but no later than the next Working Day; and

12.3.2 if requested by TfL, provide TfL with a full explanation of the nature of that disagreement (including all relevant parties' views),

and if such disagreement is not resolved within five (5) Working Days, for the purposes of such resolution and without prejudice to the Service Provider's rights under this Agreement, comply with TfL's decision in relation to the subject matter of such disagreement (provided that TfL shall act reasonably when determining its decision). While any such disagreement continues, the Service Provider shall continue to comply with its obligations under this Clause 12.

13. CONTRACT MANAGEMENT

The Parties shall have the relevant rights and obligations set out in Schedule 10 (*Contract Management and Reporting*).

14. SUSPENSION

During the Operational Phase, TfL may at any time issue a written notice to the Service Provider, requiring the Service Provider to suspend some or all of the Services. The Service Provider shall immediately implement the request in such notice as a Mandatory Change, and the effect of such suspension on the remaining Services and the Service Charges shall be determined in accordance with the Change Control Request Procedure.

15. CO-OPERATION WITH TFL AND OTHERS

15.1 The Service Provider shall (and shall procure that all Sub-Contractors shall) co-operate fully and promptly with TfL and TfL's employees, agents and representatives and, where requested by TfL, Other Service Providers and Third Parties in relation to all activities relating to the subject matter of this Agreement and any points of integration, interoperability, interface or dependency between: (i) the Service Systems and/or the Services; and (ii) either (a) TfL's Systems or associated activities or (b) the services to be provided by or to the Other Service Providers and Third Parties, in each case including:

15.1.1 the development of the Documentation;

15.1.2 in connection with transition from the Incumbent Service Providers to the Services and the Service Systems (including Data Migration);

15.1.3 in connection with the Implementation Plan;

15.1.4 the design, build, operation and maintenance of any Interfaces with TfL, any Other Service Provider or any Third Party;

15.1.5 interactions and Data flows between the Services and the services to be provided by one or more Other Service Providers or Third Parties;

15.1.6 Testing or any other testing by TfL, an Other Service Provider or Third Party;

15.1.7 performance measuring and monitoring;

15.1.8 the resolution of Incidents and Defects;

15.1.9 delivery and testing of the Business Continuity Plan and any other business continuity or disaster recovery services and business continuity or disaster recovery plans of any Other Service Provider or Third Party;

15.1.10 implementing Changes;

15.1.11 the introduction of Additional Services;

15.1.12 compliance with all applicable Laws, standards and codes of practice from time to time; and

15.1.13 claims or actions brought by Third Parties.

15.2 The co-operation referred to in Clause 15.1 shall include promptly providing TfL and TfL's employees, agents and representatives and, where applicable, Other Service Providers or Third Parties with:

15.2.1 information or data requested by them (to the extent within the Service Provider's control or possession);

15.2.2 access to operational and technical staff to answer questions (including their attendance at TfL meetings if required);

15.2.3 the opportunity to attend meetings of the Service Provider at which the Services will be discussed;

15.2.4 access to the Service Provider's Systems and Materials;

15.2.5 access to the Service Provider's software (which will include granting or procuring the grant (as appropriate) of the necessary licences to use such software); and

15.2.6 participation in any joint testing initiatives.

15.3 The Service Provider shall in accordance with Schedule 3 (*Milestones and Deliverables*) develop Process Definitions which describe the processes to be followed by the Service Provider for interacting with Other Service Providers, and shall

15.3.1 submit such Process Definitions to TfL for Approval (including when amended); and

15.3.2 comply with such Process Definitions unless otherwise instructed by TfL.

15.4 The Service Provider shall give TfL at least one (1) Working Day's prior notice of all meetings it has with Other Service Providers and TfL shall be entitled to attend all such meetings.

15.5 In performing the Services, the Service Provider shall (and shall procure that all Sub-Contractors shall) take all necessary steps to avoid prejudicing TfL's relationship with any Other Service Provider or Third Party.

16. TFL OR OTHER SERVICE PROVIDER EQUIPMENT AND HARDWARE

16.1 The Service Provider shall permit any TfL Systems or Other Service Provider Systems identified by TfL (subject to the technical and cost impact being determined in accordance with the Change Control Request Procedure), to be sited or situated on the Service Provider Premises for the purpose of interconnecting the Service System(s) to the TfL Systems or Other Service Provider Systems.

16.2 In relation to any TfL Systems or Other Service Provider Systems sited or situated on the Service Provider Premises pursuant to Clause 16.1, the Service Provider shall:

16.2.1 at its own cost, provide a suitable operating environment (including without limitation air temperature and humidity, heat extraction, electricity and other features, functions and facilities) for the TfL Systems and Other Service Provider Systems at the Premises save to the extent TfL is expressly required to do so in this Agreement;

16.2.2 ensure at all times that it does not do, omit to do, or permit any Third Party to do or omit to do, anything which:

(A) prevents TfL or the Other Service Providers from logically accessing (by way of connectivity) the TfL Systems or Other Service Provider Systems (including without limitation by electronic remote management); or

(B) otherwise terminates or disrupts the connectivity of the TfL Systems or Other Service Provider Systems with the Service Systems; and

16.2.3 at its own cost and expense, ensure that it has in place insurance adequate to cover:

(A) loss or damage to the relevant TfL Systems or Other Service Provider Systems while on the Premises, to the extent that the Service Provider has control over, or possession of, them; and

(B) business losses incurred by the Service Provider arising out of the circumstances described at Clause 16.2.3(A).

16.3 Nothing in this Clause 16 reduces or qualifies the Service Provider's obligation to provide all aspects of the Service System(s), including all the Hardware, Software or Systems for use in the Service System(s).

17. AS-BUILT PHYSICAL ARCHITECTURE AND CAPACITY PLANNING

17.1 The Service Provider shall prepare, maintain and keep up to date from time to time (and in any event within ten (10) Working Days of any change) a document detailing the physical architecture of each technical environment used for each Service Element (the **"As-Built Physical Architecture"**). The As-Built Physical Architecture shall include the following:

17.1.1 where every Service Provider Asset used exclusively in the provision of the Services is physically deployed; and

17.1.2 what function each Asset supports,

and shall identify Assets by reference to the Asset Register.

17.2 The Service Provider shall on and at all times following the Operational Commencement Date:

17.2.1 ensure that the Service Systems have at all times sufficient Capacity and process and deal with all Data and other requirements provided to or required of the Service Provider in providing the Services to enable the Services to be supplied in accordance with the Service Levels; and

17.2.2 carry out Capacity Planning to identify potential gaps between the Capacity available and the Capacity required with a view to ensuring that the Service Systems will have Capacity (including but not limited to sufficient processing power, Data storage capacity and network bandwidth) to cope with all foreseeable contingencies and with all anticipated or planned expansion of the Services, including without limitation in connection with the implementation of the Service System(s), any Additional Services and new Services introduced in accordance with the Change Control Request Procedure.

17.3 The Service Provider shall during the Operational Phase prepare and keep updated during the Term Capacity Plans supported by spreadsheets and shall submit a current version of such plans, together with current versions of the Asset Register and As-Built Physical Architecture, to TfL:

17.3.1 every six (6) months;

17.3.2 at any other time when TfL requests it or the Service Provider wishes to raise a Capacity Planning issue of concern with TfL; and

17.3.3 as part of the Change Control Request Procedure and promptly following the issue of a Change Authorisation where such Change requires an amendment to the Capacity Plan(s); and

17.3.4 no later than twelve (12) months prior to the expiry of the Agreement or (if earlier) promptly following the issue of a notice of termination or a Partial Termination Notice.

17.4 The Capacity Plans shall be prepared by the Service Provider in respect of each Asset or logical group of Assets as specified in the As-Built Physical Architecture, and shall include the following:

17.4.1 actual utilisation of the Asset;

17.4.2 1, 2, 3, 4 and 5 year Capacity predictions based on observable trends, foreseeable contingencies and anticipated or planned expansion of the Services (including without limitation in connection with the implementation of the Service System(s) and any Additional Services); and

17.4.3 required or recommended changes to each Asset to enable the Service Provider to achieve the Service Levels.

17.5 The Parties shall meet to discuss Capacity Planning:

17.5.1 on a six-monthly basis; or

17.5.2 with greater regularity on the request of TfL or Service Provider if that Party wishes to raise a Capacity Planning issue of concern with the other Party.

17.6 The Capacity Plans are intended as a means of communicating expected Capacity but are non-binding and should not be relied upon by the Service Provider in complying with its obligations under Clause 17.2.

18. TECHNOLOGY COMPATIBILITY AND FLEXIBILITY

18.1 In relation to technology (including without limitation Hardware, Software and Systems) in or comprising any part of the Service Systems, the Service Provider shall:

18.1.1 consult with TfL (including where applicable its agents and representatives) and (if and only to the extent required by TfL in writing) with the Other Service Providers and Third Parties, throughout the Term (and as a minimum once every six (6) months) on all questions of technology strategy and policy affecting TfL or the Other Service Providers and Third Parties in relation to the Services and Service Systems;

18.1.2 liaise with TfL (including where applicable its agents and representatives) and (if and only to the extent required by TfL in writing) the Other Service Providers, Third Parties and on an throughout the Term and (without limiting any other provision of this Agreement) will negotiate in good faith to agree upon the technology standards required in relation to the Services and Service Systems;

18.1.3 conduct joint meetings and establish and manage joint boards (including without limitation as reasonably required by TfL) together with Other Service Providers, Third Parties and TfL (as reasonably required by TfL) at regular intervals (and as a minimum at least once every six (6) months following the Effective Date) in connection with the Service Provider's obligations under this Clause 18 in each case at a location specified by TfL, and the Service Provider shall:

(A) give TfL, Other Service Providers and Third Parties reasonable advanced notice of such meetings or boards;

(B) circulate an agenda for such meetings or boards to TfL, Other Service Providers and Third Parties in advance of such meetings and boards, including without limitation any agenda items requested by TfL; and

(C) take detailed minutes of such meetings and boards and promptly following such meetings or boards submit those minutes to TfL;

18.1.4 ensure that the Service Systems are compatible for use with, work in combination with, and integrate, interoperate and interface with the Other Service Provider Systems, Systems provided by or on behalf of Third Parties and any Systems

used by TfL or Third Parties (to the extent that such Systems are referred to in the Requirements, the Service Provider Solution, the Design Documents or otherwise under this Agreement) (together **"Compatibility"** and **"Compatible"** shall have a corresponding meaning);

18.1.5 as soon as possible, notify TfL in writing if the Service Systems are not, or are anticipated not to be, at any time fully Compatible and/or are not, or are anticipated not to be, Fit for Purpose of providing the Services efficiently and effectively;

18.1.6 not make any change to the Service Systems which affects Compatibility without TfL's prior written consent (whether or not such change is a Change); and

18.1.7 provide TfL at its request with Data and other information regarding the operating environment, Hardware, Software or System constraints and other operating parameters applicable to the Service Systems and any Other Service Provider Systems, TfL Systems, or Systems provided by or on behalf of any Third Party.

19. SYSTEMS, SUPPORT AND MAINTENANCE

19.1 The Service Provider shall:

19.1.1 ensure that all Service Systems and Service System Interfaces:

(A) adequately perform and fulfil their respective requirements and functionality and interface, integrate and interoperate appropriately and are compatible with each other, in each case in accordance with the Requirements (or as agreed from time to time in accordance with the Change Control Request Procedure);

(B) are Fit for Purpose;

(C) are installed, used and maintained in accordance with the relevant manufacturers', authors' or suppliers' technical specifications;

(D) are free from material defects in materials, workmanship and installation; and

(E) without limiting Clause 50 (*Health and Safety*), comply (and the Service Provider shall ensure that the Service Provider and relevant Third Party complies) with the Restriction of the use of certain Hazardous Substances Directive 2002/95/EC and the Waste Electrical and Electronic Equipment Directive 2002/96/EC as implemented under applicable Law (including the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Regulations 2005 in the United Kingdom),

and the Service Provider shall devote such additional resource (at no cost to TfL) to ensure any non-compliance with this Clause 19.1.1 is promptly remedied in accordance with Clause 12;

19.1.2 ensure that the Service System(s) and Service System Interfaces are maintained and supported by the Service Provider including as envisaged under the Statement of Requirements;

19.1.3 without limiting Clause 19.1.1 or 19.1.2, provide Full Support. Full Support shall apply, but not be limited to local and wide area network infrastructure, desk-tops, servers, storage, databases, access and storage media, voice infrastructure, and all other items comprising the Service System(s) and Interfaces. As part of providing such Full Support, the Service Provider shall (at no cost to TfL):

(A) ensure that the System, Hardware and Software used as part of the Service System(s) and Interfaces shall throughout the Term use models of that System or Hardware and versions of that Software then currently supported by the licensor or supplier of the System, Hardware or Software (and promptly upgrade at its own cost to a supported model or

version where the model or version it uses ceases to be supported by the licensor or supplier); and

(B) if it wishes to change a System, Hardware or Software included in the Service Systems because it is no longer supported by the licensor or supplier of the System, Hardware or Software (other than where it wishes to upgrade to a supported model or version as envisaged in Clause 19.1.3(A)) it shall do so in accordance with the relevant Requirements.

20. INTERFACES

20.1 The Service Provider shall design and at all times maintain the Interface Specification in an up-to-date form, so as to include:

20.1.1 Interfaces with any of TfL's Systems (including the Interface with the TfL Website);

20.1.2 the Customer Interfaces;

20.1.3 Interfaces between the Services Databases and any other part of the Services System(s);

20.1.4 Interfaces between each of the Service Elements and any other part of the Services System(s);

20.1.5 Interfaces between the Service System(s) and Other Service Provider Systems (including the BOps Service Systems);

20.1.6 Interfaces between the Service System(s) and Third Party Systems;

20.1.7 any other Interfaces specified in the Interface Catalogue as at the date of this Agreement; and

20.1.8 such other Interfaces agreed between the Parties in writing from time to time (including without limitation using the Change Control Request Procedure) or implemented pursuant to the relevant Requirements,

(such Interfaces being the **"Service Systems Interfaces"**) and shall ensure that any changes to the Interface Specification after the date on which Milestone I2 (Design Complete) is Accepted are submitted to TfL for Assurance.

20.2 The Service Provider shall build, maintain and operate (including without limitation pursuant to Clause 20.4) the Service Systems Interfaces.

20.3 Without limitation to Clause 20.2, the Service Provider:

20.3.1 is responsible for the planning, design, development, testing, operation, maintenance, monitoring, incident resolution, and Change of all Service Systems Interfaces and the co-ordination of TfL's and the Other Service Providers' activities in relation thereto;

20.3.2 shall proactively plan for, manage and update TfL in relation to any dependencies on TfL and Other Service Providers in relation to its activities pursuant to Clause 20.3.1 (it being acknowledged by TfL that the development, operation and maintenance of the TfL Systems and the Systems of Other Service Providers is not within the Service Provider's control and therefore dependencies in relation thereto are capable of giving rise to a Relief Event in accordance with Clause 56 (*Relief Events*));

20.3.3 shall, subject to Clause 20.5, organise and lead all meetings and agreements with TfL, Other Service Providers and relevant Third Parties which are required to deliver the Service Systems Interfaces and associated Documentation;

20.3.4 shall ensure that all Documentation associated with the Service Systems Interfaces is complete; and

20.3.5 shall ensure that TfL is invited to all meetings between the Service Provider and any Other Service Provider or Third Party in relation to the above activities.

20.4 The Service Provider shall ensure that each Service Systems Interface at all times (including without limitation during design, development, implementation, Testing and acceptance or Approval) complies with (and all Documentation shows that each Interface complies with) this Agreement, the relevant Interface Specification and any relevant Third Party Specifications. The impact of any changes to the Third Party Specifications shall be considered and implemented in accordance with the Change Control Procedure.

20.5 In relation to the Interface between the Service Systems and the BOps Service Systems, the BOps Service Provider shall lead all meetings and agreements with TfL and the BOps Service Provider which are required to deliver such Interface.

21. CONTINUOUS IMPROVEMENTS

21.1 The Service Provider shall throughout the Term identify:

21.1.1 improvements to the Services and Service Systems to reflect the requirements of then current Good Industry Practice;

21.1.2 improvements to the Services and the Service Systems to meet the TfL Objectives;

21.1.3 improvements to the Services and Service Systems to achieve the proposed improvements set out in the Service Provider's Solution; and

21.1.4 continuous improvements to the Service Levels and Service Charges,

(**"Service Improvements"**).

21.2 The Service Provider shall implement the Service Improvements set out in the Service Provider's Solution.

21.3 The Service Provider shall quarterly in the first twelve (12) Months from the Operational Commencement Date and thereafter every six (6) Months for the remaining Term identify and advise TfL on, inter alia, new or potential Service Improvements including the quality, responsiveness, procedures, likely performance mechanisms and cost reduction.

21.4 The Service Provider shall throughout the Term introduce Service Improvements to provide continuous improvement of the Services (subject always to compliance with the relevant Requirements and the Change Control Request Procedure).

21.5 As part of identifying Service Improvements referred to in Clause 21.1, the Service Provider shall inform TfL of other technology that could be used for delivering the Services, emerging standards and evolving technology and of potential new Services which would in each case improve the operational efficiency of the Services if implemented.

22. TRAINING

22.1 The Service Provider, at the request of TfL and without additional charge to TfL (it being acknowledged that the costs of training are taken into account in the Service Charges or, in relation to a Change, any One-Off Charge) shall provide:

22.1.1 introductory and ongoing training on a regular basis to TfL's Personnel in relation to the use of the Service Systems, as set out in the Requirements;

22.1.2 if TfL has, by the Change Control Request Procedure (or otherwise), requested an upgrade or replacement to any Hardware or Software used in the Service Systems, introductory and ongoing training for the Service Provider's own Personnel and those Personnel of TfL nominated by TfL in relation to such Hardware or Software; and

22.1.3 ongoing appropriate training for each of the Service Provider's Personnel including ensuring that all Personnel are trained in the security policies and procedures applicable to their roles and that all Service Provider Personnel are provided with training on Data Protection Law and FOI Legislation issues, obligations and procedures and any other dealing with Data in accordance with the provisions of Clause 49 (*Information Compliance*).

22.2 The Service Provider shall ensure that all training of TfL's Personnel is provided during Working Hours, at a such time and location as is specified by TfL.

22.3 The Service Provider shall provide suitably qualified and trained Personnel to deliver such training.

22.4 The Service Provider shall ensure that all of its Personnel are appropriately trained to provide the Services.

23. ADDITIONAL SERVICES

23.1 TfL may require the Service Provider to provide Additional Services in accordance with Schedule 33 (*Additional Services*).

23.2 The implementation of the Additional Services, and the impact of the Additional Services on the Service Charges and the other Services, including any associated:

23.2.1 Milestones, Milestone Acceptance Criteria and Milestone Payments;

23.2.2 Deliverables;

23.2.3 Testing;

23.2.4 new Service Levels (or amendments to the current Service Levels),

shall be determined in accordance with the Change Control Request Procedure and, following the relevant Change Authorisation, shall be performed in accordance with this Agreement.

24. INVOICING AND PAYMENT

24.1 In consideration for the provision of the Services by the Service Provider in accordance with this Agreement, TfL shall pay:

24.1.1 the Milestone Payments

24.1.2 the On-time Delivery Payments;

24.1.3 the Service Charges;

24.1.4 the Customer Satisfaction Incentive Payments;

24.1.5 any One-off Charges; and

24.1.6 Relief Event Costs (if any),

in each case in accordance with Schedule 7 (*Charging and Operational Pricing*).

24.2 The Service Provider shall invoice for amounts due pursuant to Clause 24.1 in accordance with the invoicing requirements set out in Schedule 7 (*Charging and Operational Pricing*).

24.3 The Parties agree:

24.3.1 all sums payable under or pursuant to this Agreement are exclusive of VAT (if any). Accordingly, where any taxable supply for VAT purposes is made under or in connection with this Agreement by one Party to another, the recipient of that supply shall, in addition to any payment due for that supply, pay to the supplier such VAT as is chargeable in respect of the supply at the same time as payment is made or in any other case when demanded by the supplier, provided that the payee has provided the payer with a valid VAT invoice in respect of any payment of VAT; and

24.3.2 if any payment in respect of VAT is made under this Agreement in circumstances where VAT was not properly chargeable, then, where the supplier has accounted for such VAT to HM Revenue & Customs, the supplier’s obligation to repay any amount to the payer shall be limited to such amount as the supplier is entitled to recover (by way of credit, repayment or otherwise) from HM Revenue & Customs in respect of the VAT wrongly paid.

24.4 Subject to the following, TfL shall pay the amount set out in a correct and complete Invoice within thirty (30) days of receipt of the Invoice:

24.4.1 if any part of an Invoice is disputed by TfL, TfL shall only be obliged to pay the amount which is not in dispute; and

24.4.2 if any supporting information which was or should have been submitted with an Invoice is missing or incomplete, including but not limited to performance reporting information, TfL shall notify the Service Provider. If the required information has not been received within ten (10) Working Days from the date of the notice served by TfL, TfL shall be entitled to suspend payment of the relevant amounts until it has received all of the required information from the Service Provider. Once the required information has been provided, unless TfL disputes the amount of the Invoice, in which case the provisions of Clause 24.4.1 shall apply, TfL shall pay to the Service Provider the amount set out in the Invoice within thirty (30) calendar days of receipt of the required information.

24.5 If any amount paid or due to TfL from the Service Provider under this Agreement (but excluding any amount which might become payable under Schedule 23 (*Gainsharing*)) is a taxable receipt of TfL then the amount so paid or due (the **"Net Amount"**) shall be increased to an amount which, after subtraction of the amount of any tax on such increased amount which arises, taking into account the availability of any relief from tax on TfL, shall equal the Net Amount provided that if any payment is initially made on the basis that the amount due is not taxable in the hands of TfL and it is subsequently determined that it is, or vice versa, appropriate adjustments shall be made between TfL and the Service Provider.

24.6 If any dispute arises in relation to an Invoice, a Milestone Payment, an On-time Delivery Payment, the Service Charges, or the Customer Satisfaction Incentive Payments, such dispute shall be resolved in accordance with the Dispute Resolution Procedure. If it is determined that all or part of the disputed amount is payable TfL shall pay such amount within thirty (30) days of such determination provided that for the purposes of Clause 28 (*Interest*), interest on such amount shall be calculated from the date that the relevant invoice originally fell due and payable.

24.7 For any payments payable by the Service Provider TfL shall have, at its discretion, the option to receive such payments in either pounds Sterling or Euro, provided that TfL can only receive such payments in a currency that is legal tender in the UK (or any part thereof) at the time of payment.

25. VALUE FOR MONEY REVIEW

25.1 Subject to Clause 25.1.1, TfL shall be entitled during the Operational Phase, at its option, to require the Service Provider to undertake value for money reviews in accordance with Schedule 36 (*Value for Money Review Process*), by giving notice to the Service Provider, provided that:

25.1.1 TfL shall not require the Service Provider to undertake more than twovalue for money reviews that commence within the Initial Term; and

25.1.2 During the Extended Term, TfL may not require the Service Provider to undertake value for money reviews more frequently than one every two years.

25.2 If TfL serves a notice pursuant to Clause 25.1, both Parties shall comply with their obligations set out in Schedule 36 (*Value for Money Review Process*).

26. GAINSHARING

In respect of each Service Provider Financial Year, the Service Provider shall pay to TfL the Gainshare, if any, calculated in accordance with Schedule 23 (*Gainsharing*).

27. COMMERCIAL EXPLOITATION AND MARKETING

27.1 The Service Provider shall use its reasonable endeavours to identify opportunities for commercial exploitation of Intellectual Property owned by, or assigned to, TfL under this Agreement and the Service Provider shall discuss with TfL an appropriate strategy for pursuing such opportunities. The Service Provider shall not enter into any agreements in relation to, or otherwise exploit, any such opportunities unless and until it shall have agreed in writing with TfL the basis on which such opportunities shall be exploited and TfL's rights in relation thereto.

27.2 The Service Provider shall provide such assistance and co-operation to TfL in relation to the marketing of the Schemes as TfL may expressly in writing require from time to time.

28. INTEREST

Interest shall accrue at the Interest Rate on all sums due and payable under this Agreement 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.

29. REVENUE

29.1 In relation to Revenue, the Service Provider shall comply with the provisions of Schedule 32 (*Revenue Collection and Payment*) and the Statement of Requirements.

29.2 The Service Provider agrees that all Revenue is owned by TfL (and when in possession of the Service Provider is held by the Service Provider on trust for TfL).

30. EMPLOYEES AND KEY PERSONNEL

The Parties shall have the rights and comply with their obligations set out in Schedule 11 (*Employees and Key Personnel*).

31. PENSIONS

The Service Provider shall make available an arrangement (the **"Service Provider Pension Plan"**) for the provision of relevant benefits to the Service Provider Personnel in accordance with applicable Laws. The terms of the Service Provider Pension Plan (including the benefits provided under it) shall be made available to TfL on request.

32. COMPLIANCE WITH POLICIES

32.1 The Service Provider (subject to Clause 32.3 at no cost to TfL) shall, and shall procure that all the Service Provider's Personnel shall, comply with:

32.1.1 all of TfL's policies and standards that are relevant to the performance of the Services, including but not limited to the provisions set out in Schedule 34 (*TfL Policies*) and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by TfL for personnel working at TfL's premises or accessing TfL's computer systems from time to time in place (TfL shall provide the Service Provider with copies of such policies and standards on request); and

32.1.2 the provisions of Schedule 24 (*Responsible Procurement*).

32.2 In providing the Services, the Service Provider shall (taking into account best available techniques not entailing unreasonable cost) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) to the need to:

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

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

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

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

32.3 If, in relation to a change to the TfL Policies after the date of this Agreement, the Service Provider considers that its compliance with such change requires a change to the Services or the Service Systems, such change shall be considered and (if approved) implemented in accordance with the Change Control Request Procedure.

33. SUB-CONTRACTORS AND KEY SUB-CONTRACTORS

33.1 The Service Provider shall not sub-contract its obligations under this Agreement unless the identity of such Sub-Contractor is approved in writing in advance by TfL.

33.2 The list of Key Sub-Contractors as at the date of this Agreement is set out in Schedule 26 (*Key Sub-Contractors*). TfL may add to the list of Key Sub-Contractors by sending notice to the Service Provider setting out the name of any proposed Sub-Contractor which is to become a Key Sub-Contractor.

33.3 In relation to each Key Sub-Contractor:

33.3.1 the Service Provider shall not enter into or amend any Key Sub-Contract unless the terms of such contract (or such amendment) are approved in advance by TfL in writing; and

33.3.2 the Service Provider shall ensure in relation to any Key Sub-Contract (excluding any contract of employment or any contract in respect of TfL's property) that the Key Sub-Contractor, the Service Provider and TfL have executed a collateral deed in the form of Schedule 22 (*Collateral Deed*).

33.4 The Service Provider shall create and maintain an accurate and up-to-date log of all Sub-Contracts and shall ensure such log is contained in the Document Library.

33.5 The Service Provider shall ensure that all contracts entered into by the Service Provider with Sub-Contractors provide that payment by the Service Provider to the Sub-Contractor shall be made no later than thirty (30) calendar days from receipt of an invoice.

33.6 Such measures will be monitored by the Service Provider and reported to TfL on a Monthly basis and discussed in Strategic Review Meetings.

33.7 In the event TfL terminates this Agreement in accordance with Clause 61.3, then the Service Provider shall provide or procure an option for TfL to receive services for provision of the **REDACTED** on such terms and pricing as is commercially available to the market place at such time.

34. CHANGE CONTROL

34.1 The Service Provider shall ensure that none of the following changes are made other than in accordance with Schedule 9 (*Change Control Request Procedure*):

34.1.1 General Change;

34.1.2 Emergency Change;

34.1.3 Mandatory Change;

34.1.4 Merchant Acquirer Change; and

34.1.5 Parameter Change.

34.2 In relation to any change to the Services or the Service Systems which the Service Provider does not consider to be a Change:

34.2.1 the Service Provider shall provide TfL with a report on a monthly basis summarising all such changes proposed for the next month;

34.2.2 such reports shall be considered by the Operational Review Group (and, in the Implementation Phase, the Project Review Group) in accordance with Schedule 10 (*Contract Management and Reporting*);

34.2.3 if TfL, acting reasonably, confirms to the Service Provider at a Contract Management Meeting (or in writing) that it considers such change could be a Change, or could cause or require an associated Change, the Service Provider shall not implement such change until the Parties have agreed whether there are any associated Changes (and any disagreement in relation thereto shall be resolved in accordance with the Dispute Resolution Procedure); and

34.2.4 subject to Clause 34.2.3, the Service Provider shall not implement such change until it has been considered at an Operational Review Meeting.

34.3 TfL may at any time issue to the Service Provider a Change Authorisation in respect of the Website CCR and upon issuing such Change Authorisation this Agreement shall be deemed to be amended as set out in the Website CCR (and, for the avoidance of doubt, the Service Provider shall not be entitled to any additional payments in respect of the Website CCR other than those explicitly set out in the Website CCR). If, subsequent to the execution of the Website CCR, TfL identifies further changes to the Services or Service Systems which relate to the Website, such changes shall be considered and implemented in accordance with the Change Control Request Procedure.

35. TFL MONITORING STAFF

35.1 Without prejudice to the provisions of the Statement of Requirements, TfL shall have the right to locate, at any time and for such period as TfL may require from time to time, the PMAs and up to five (5) (or such other number as the Parties may agree from time to time) other TfL employees or representatives (**"TfL Monitors"**), at the Premises and/or any Sub-Contractor's premises (but excluding any Cloud Premises) in order to monitor and review the Service Provider's performance of its obligations and provision of the Services under this Agreement.

35.2 The Service Provider shall provide, at no additional cost to TfL, such office accommodation, facilities, information and access to each PMA and TfL Monitor as they may reasonably require from time to time, including but not limited to:

35.2.1 a desk and chair, with working telephone and personal computer (in the case of TfL Monitors such may be provided by means of 'hotdesks');

35.2.2 utilities and lavatories; and

35.2.3 parking space.

35.3 The Service Provider shall:

35.3.1 invite such of the TfL Monitors and PMAs to internal Service Provider meetings as TfL may require from time to time and shall permit such TfL Monitors to attend such meetings;

35.3.2 permit such of the TfL Monitors and PMAs as TfL may require from time to time to attend Test Witnessing; and

35.3.3 ensure that its Key Sub-Contractors comply with the provisions of this Clause 35 as if they were a Party hereto.

35.4 The Service Provider acknowledges that:

35.4.1 the presence of TfL Monitors at the Premises from time to time shall in no way diminish or limit the Service Provider's responsibility for providing the Services in accordance with this Agreement; and

35.4.2 the actions of the TfL Monitors shall not in any circumstances be taken to be, or indicate, the Approval, Assurance or acceptance of TfL.

35.5 Any issues raised by the TfL Monitors in relation to the Services or Service Systems shall, if desired by TfL, be discussed at the next Project Review Meeting or Operational Review Meeting.

35.6 The Service Provider acknowledges and agrees that subject to Clause 37.6, nothing in this Clause 35 shall restrict TfL's right to monitor and review the Service Provider's performance of its obligations under Clause 33 (*Sub-Contractors and Key Sub-Contractors*) and the provision of the Cloud Services (to the extent possible without physically entering the Cloud Premises).

36. AUDIT AND INSPECTION

36.1 The Service Provider shall, and shall procure that its Sub-Contractors (excluding the Cloud Provider) shall:

36.1.1 maintain a complete, current and accurate set of records pertaining to all activities relating to the provision of the Services and all transactions entered into by the Service Provider for the purposes of this Agreement (or, in the case of a Sub-Contractor, all transactions entered into by the Sub-Contractor for the purposes of the relevant Sub-Contract); and

36.1.2 retain all such records for a period of not less than six (6) years (or such longer period as may be prescribed by Law) following termination or expiry of this Agreement and at the end of such period TfL may require that a subset of documents relevant to its then existing requirements be delivered by the Service Provider to TfL.

36.2 The records referred to in Clause 36.1 shall, subject to Clause 37.6, include but are not limited to the following, insofar as they relate to the Services or this Agreement:

36.2.1 records of all Service Provider Personnel involved in the provision of the Services including names, training records, timesheets and National Insurance numbers;

36.2.2 all sub-contracts (including proposals of successful and unsuccessful bidders, bids and rebids), commitments, leases, manufacturer's specifications and details, purchase orders and data relating to procurement of the Services or any part of the Services, including any such records provided to, or made available to, the Service Provider pursuant to the Cloud Agreement;

36.2.3 management accounts, information from management information systems and any other management records;

36.2.4 accounting records (in hard copy as well as computer readable data);

36.2.5 original estimates;

36.2.6 estimating worksheets;

36.2.7 correspondence;

36.2.8 variation, claims and compensation events files (including documentation covering negotiated settlements);

36.2.9 detailed inspection records;

36.2.10 information relating to each and all Service Failures, prepared in accordance with Clause 12; and

36.2.11 any other information specified in this Agreement.

36.3 The Service Provider shall procure that each Sub-Contract (except the Cloud Agreement) into which it enters shall contain:

36.3.1 equivalent rights of audit, inspection and access in favour of TfL (and any Third Party to whom rights of audit, inspection and access are granted pursuant to this Clause 36); and

36.3.2 equivalent obligations on the relevant Sub-Contractor,

to those set out in this Clause 36.

36.3A The Service Provider shall, subject to either TfL being entitled to receive such records as a result of its own relationship with Microsoft for cloud services, the records being publicly available, or the Service Provider being permitted to provide such records to TfL under the terms of the Cloud Agreement (provided that in order to refuse disclosure to TfL on these grounds, Capita must demonstrate to TfL's reasonable satisfaction that it is not permitted to provide the records to TfL under the terms of its agreement with Microsoft), provide TfL with the following records, insofar as they relate to the Services or this Agreement:

36.3A.1 such annual audit reports (or similar documents) of the Cloud Provider provided to, or made available to, the Service Provider by the Cloud Provider within ten (10) Business Days of receipt of such annual audit reports (or similar documents); and

36.3A.2 any internal audit findings of the Cloud Provider provided to, or made available to, the Service Provider by the Cloud Provider within [five (5)] Business Days of receipt of the internal audit findings.

36.4 TfL and its authorised representatives on its behalf may at any time during the Term and during the period of not less than six (6) years (or such other period as may be prescribed by Law) following termination or expiry of this Agreement, and with five (5) Working Days' prior notice or such shorter notice as is reasonable in the circumstances, undertake any inspection of the Service Systems and the Services and any audit or check of any matter relating to the Service Provider's performance under this Agreement including:

36.4.1 the recording and calculation of the Service Charges, Service Failure Deduction Points and Service Failure Deductions;

36.4.2 calculation of Gainshare in accordance with Schedule 23 (*Gainsharing*);

36.4.3 the implementation of the Security Policy and compliance with Schedule 14 (*Security*);

36.4.4 the method of report production and Data transformations including conditions used for extraction of Data from source Systems and reconciliation of source to target Data;

36.4.5 the technology architecture and operation of MIS;

36.4.6 compliance with the data protection provisions in Clause 49 (*Information Compliance*);

36.4.7 Testing conduct, methodology and procedures;

36.4.8 compliance with Schedule 24 (*Responsible Procurement*); and

36.4.9 the evaluation of claims, compensation events or variations.

36.5 The Service Provider shall grant identical inspection, audit and/or checking rights to those described in Clause 36.4 where the same shall have been requested by any national or local Government body or department whether currently in existence or coming into existence during the continuance of this Agreement or at any time during the period of six (6) years (or such longer period as may be prescribed by Law) following termination or expiry of this Agreement.

36.6 The Service Provider shall, at no additional cost to TfL, promptly co-operate in relation to any inspection, audit or check including (without limitation) to the extent relevant to the particular inspection, audit or check and, in respect of the Cloud Services, to the extent permitted under the Cloud Agreement (provided that in order to refuse the provision of such records to TfL on these grounds, the Service Provider must demonstrate to TfL's reasonable satisfaction that it is not permitted to provide the records to TfL under the terms of the Cloud Agreement):

36.6.1 granting or procuring the grant of access to any premises used in the Service Provider's performance of this Agreement, whether the Premises, a Sub-Contractor's premises or otherwise;

36.6.2 granting or procuring the grant of access to any equipment (including all Hardware, Software and Service Databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's obligations under this Agreement, wherever situated and whether the Service Provider's own equipment, a Sub-Contractor's equipment or otherwise;

36.6.3 granting access to any Data Dictionary and the fields and records within it to enable Data (including standing data and transaction data processed by the Service Systems and security settings) to be downloaded from any computer Systems operated by the Service Provider or a Sub-Contractor;

36.6.4 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to, Data during the audit; the Service Provider shall, in addition, maintain records of all and any fraudulent access attempts which may compromise the security of the Services or the Service Systems;

36.6.5 making the Documentation and any logs, documents and records required to be maintained under this Agreement (whether exclusively or non exclusively) available for inspection;

36.6.6 providing a reasonable number of copies of any documents or records and/or granting copying facilities for the purposes of making such copies;

36.6.7 maintaining Service Systems journal records for a minimum period of twelve (12) months irrespective of the occurrence of any fraudulent act, suspected fraudulent act or security breach;

36.6.8 complying with TfL's requests for access to Personnel engaged in the Service Provider's performance of the Agreement;

36.6.9 procuring that all Personnel fully co-operate with TfL in relation to any audit or inspection conducted pursuant to this Clause 36; and

36.6.10 providing all requested support at its own facilities to TfL or its representatives in the discharge of their functions and allowing them use of suitable office accommodation if necessary.

36.7 Without limitation to the generality of the foregoing provisions of this Clause 36, the audit methodology of the Service Provider used in providing Management Information and reports to TfL will be subject to audit by TfL from time to time, as required by TfL. The Service Provider shall:

36.7.1 ensure that the audit methodology identifies omissions in the relevant process being audited and that all features, functions and facilities ascribed as part of the Services (or any part of the Services or between any part of those features, functions and facilities) which are not provided or managed by the Service Provider in accordance with this Agreement are identified and addressed;

36.7.2 provide details of its audit methodology which shall be at least equivalent to Good Industry Practice and to TfL's satisfaction;

36.7.3 without prejudice to the foregoing provisions of this Clause 36, if TfL considers that the Service Provider's audit methodology is not at least equivalent to Good Industry Practice, TfL shall be entitled to require the Service Provider to:

(A) adopt a more rigorous methodology in line with Good Industry Practice. Such methodology shall be adopted by the Service Provider within twenty-five (25) Working Days of TfL serving notice on the Service Provider requiring it to do so; and/or

(B) implement any other recommendations made by TfL in relation to the Service Provider's audit methodology from time to time at no additional cost to TfL; and

36.7.4 implement the audit methodology.

36.8 Without prejudice to any other rights or remedies of TfL, if TfL, as a result of audit or inspection whether or not undertaken in accordance with this Clause 36, identifies any failures by the Service Provider in complying with the requirements of this Agreement, TfL may notify the Service Provider to this effect. Promptly following receipt of such notice, and in any event no later than twenty (20) Working Days from the date of such notice, the Service Provider shall rectify such failures to the satisfaction of TfL, at no cost to TfL.

36.9 In the event that an inspection, audit or check reveals that information previously supplied to TfL pursuant to this Clause 36, or otherwise, was inaccurate and:

36.9.1 such information was inaccurate in any material respect; and/or

36.9.2 any inaccuracy results in or creates any adverse impact on TfL, its business or the Schemes,

the cost incurred by TfL and the Service Provider in respect of any such inspection, audit or check shall be borne by the Service Provider.

36.10 Any dispute over the existence of an inaccuracy under Clause 36.9, or a dispute as to whether fraudulent activity on the part of the Service Provider, its agents, employees or Sub-Contractors has taken place and/or the extent of such fraudulent activity, shall be resolved in accordance with Dispute Resolution Procedure.

36.11 In respect of any accounting information supplied by the Service Provider to TfL such statement shall, at the request of TfL, be accompanied by a separate audit certificate from the appointed auditor of TfL or an independent auditor nominated by TfL and at TfL's request, subject to Clause 36.9, the reasonable cost of such audit certificate to be borne by TfL.

36.12 The Service Provider grants to TfL, its Affiliates and their agents the right, at any time, on two (2) Working Days' notice, to audit and/or test the security and robustness of the Services, Service Systems and/or the Service Provider's compliance with the TfL's requirements on security, data integrity and protection against breach of confidentiality. Such audits and tests may include penetration testing and ethical hacking and the Service Provider grants consent for such tests and audits to be performed notwithstanding any provisions contained within the Computer Misuse Act 1990 or the Police and Justice Act 2006. Where the scope of any audit or test pursuant to this Clause 36.12 would cause the Cloud Provider's Penetration Testing Rules of Engagement to apply, TfL shall be responsible for ensuring that the activities carried out by or on behalf of TfL in such audit or test does not include any activity which is prohibited under the Cloud Provider's Penetration Testing Rules of Engagement, taking into consideration Cloud Services utilised by the Service Provider to deliver the Services (as reasonably described in the Service Provider's Solution). In view of the fact that such audits and testing may be intended to simulate a criminal attack, the Service Provider agrees not to take any action against TfL, its Affiliates or their agents performing the audits or tests and that, subject to Clause 36.13:

36.12.1 TfL, its Affiliates and their agents shall not be responsible or liable for any loss, damage, expenses or claims incurred by the Service Provider as a result of such tests or audits, including any loss or damage caused to the Service Provider's Systems or the Service Provider's business or any third party claims brought against the Service Provider relating to or arising out of such tests or audits except to the extent that it would be unlawful for TfL not to be responsible or liable; and

36.12.2 The Service Provider agrees to indemnify TfL, its Affiliates and their agents against any loss, damage or expenses that the TfL, its Affiliates or their agents may incur by reason of claims, actions, demands or proceedings brought against them by third parties, including the Service Provider's suppliers, arising out of or in connection with such audits or tests to the extent that such claims, actions, demands or proceedings arise from the Service Provider's failure to comply with

its obligations as set out in this Agreement in respect of security, data integrity and protection against breach of confidentiality.

36.13 In conducting any audit or test pursuant to Clause 36.12 where there Cloud Provider's Penetration Testing Rules of Engagement apply, TfL shall not carry out any activity which is prohibited by the Cloud Provider's Penetration Testing Rules of Engagement. TfL agrees to indemnify the Service Provider and its Affiliates against any loss, damage or expenses that the Service Provider may incur by reason of claims, actions, demands or proceedings brought against them by the Cloud Provider to the extent that such claims, actions, demands or proceedings arise from TfL Carrying out any activity which is prohibited by the Cloud Provider's Penetration Testing Rules of Engagement (except for (i) any requirement to obtain pre-approval from the Cloud Provider for TfL to conduct such audits or tests, which the Service Provider shall use reasonable endeavours to promptly obtain upon TfL's request, including by involving TfL directly in any correspondence with Microsoft, if such pre-approval is necessary under the Cloud Provider's Penetration Testing Rules of Engagement, and (ii) any requirement to notify the Cloud Provider of any potential security flaw, which shall be the Service Provider's responsibility, subject to TfL notifying the Service Provider pursuant to Clause 36.14.1). If the Cloud Provider's pre-approval for such audit of test is necessary under the Cloud Provider's Penetration Testing Rules of Engagement, TfL shall not conduct such audit of test prior to the Service Provider confirming that it has obtained such pre-approval from the Cloud Provider.

36.14 If, during the course of conducting any audit or test of the Cloud Services pursuant to Clause 36.12 where the Cloud Provider's Penetration Testing Rules of Engagement applies, TfL discovers a potential security flaw related to the Cloud Services:

36.14.1 TfL shall notify the Service Provider within 24 hours of discovery ("**TfL Potential Security Flaw Notice**");

36.14.2 the Service Provider shall comply with the requirements of the Cloud Provider's Penetration Testing Rules of Engagement with respect to the reporting of security issues;

36.14.3 the Service Provider shall promptly notify TfL upon becoming notified by the Cloud Provider that the relevant vulnerability to which the TfL Potential Security Flaw Notice relates has been corrected; and

36.15 TfL shall not disclose any information contained in the TfL Potential Security Flaw Notice publicly or to any Third Party until such time the Service Provider notifies TfL pursuant to Clause 36.14.3.

36.16 The Service Provider acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL 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. Without prejudice to the provisions of Clause 25 (*Value for Money Review*), the Service Provider shall assist TfL to discharge its duty wherever possible, and in doing so, it shall inter alia carry out any reviews of the Services requested by TfL from time to time. Without prejudice to any other provision of this Agreement, the Service Provider agrees to negotiate in good faith (acting reasonably) any changes to the Agreement in order for TfL to achieve best value.

37. OPEN BOOK

37.1 The Service Provider shall provide TfL with open book pricing and shall, whenever requested by the TfL, provide to TfL details and supporting evidence of all the Service Provider's costs in meeting its obligations under this Agreement, including all management, software, hardware and service input costs.

37.2 The Service Provider shall complete the template set out at Schedule 30 (*Open Book Template*) every Service Provider Financial Year and shall provide such completed template to TfL within twenty (20) Working Days at the end of the relevant Service Provider Financial Year.

37.3 Without prejudice to the generality of Clause 37.1, the Service Provider shall maintain, in accordance with good accountancy practice and compliant with the Accounting Standards, and provide TfL with access to, accounting books and records that set out:

37.3.1 the actual and forecast operating expenditure of the Service Provider in providing the Services;

37.3.2 the actual and forecast capital expenditure of the Service Provider in providing the Services broken down by volume, unit cost and margin;

37.3.3 the actual and forecast cost of all resources provided, or to be provided, by the Service Provider in meeting its obligations under this Agreement (which shall include grade, number of days and day rates);

37.3.4 all transactions between Service Provider Group members relating to this Agreement (which the Service Provider shall ensure are at competitive rates on an arm's length terms);

37.3.5 all actual and forecast third party costs incurred by the Service Provider in providing the Services (including all Sub-Contractor costs) and any mark-up charged on any such third party costs;

37.3.6 the profit, before interest and tax, that the Service Provider has achieved, and has forecast to achieve, under this Agreement;

37.3.7 any other information and documentation that relates to the reasonableness of the Charges and/or which is necessary to satisfy TfL's requirement to demonstrate value for money as further described in Clause 36.13; and

37.3.8 any such other cost items as TfL may reasonably require in order to audit the costs of the Service Provider for the purpose of verifying the Charges, any estimates of the Charges and/or any charging information being provided by the Service Provider in conjunction with Schedule 7 (*Charging and Operational Pricing*) and Schedule 9 (*Change Control Request Procedure*).

37.4 The Service Provider shall, following a written request by TfL and without prejudice to any other audit and inspection rights that the TfL Group has under this Agreement, promptly provide TfL with copies of any or all accounting books and records referred to in Clause 37.3.

37.5 The Service Provider shall not be entitled to reimbursement by the TfL Group for any costs or expenses incurred as a result of the Service Provider complying with the requirements of this Clause 37.

37.6 TfL acknowledges and agrees that, notwithstanding anything to the contrary under this Clause 37, the Service Provider shall not be obliged to disclose beneficial terms and pricing information relating to the Cloud Agreements including:

37.6.1 any beneficial pricing that the Cloud Provider has offered the Service Provider under the terms of the Cloud Agreements (including unit pricing, or information that would allow TfL to determine the Service Provider's unit price under the Cloud Agreement) save that the Service Provider agrees that the Report referred to in paragraph 7.9 of Schedule 7 (Charging & Operational pricing), when provided in the format described in Annex G of Schedule 7 (Charging & Operational Pricing) does not contain any beneficial pricing; or

37.6.2 any terms applicable to the Cloud Agreement which differ from publicly available terms for the same or similar services provided by the Cloud Provider.

38. OWNERSHIP AND ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS

38.1 Nothing in this Agreement shall affect the ownership of Intellectual Property Rights owned by a Party prior to the Effective Date, or that a Party obtains ownership of independently of the performance of the Services under this Agreement.

38.2 In consideration of the sum of one pound (£1) (receipt of which is hereby acknowledged by the Service Provider), the Service Provider agrees that, subject to Clause 39.3, TfL shall own upon their creation (and otherwise assigns to TfL ownership of) present and future Intellectual Property Rights created by or on behalf of the Service Provider in the conduct of the provision of the Services (such Intellectual Property Rights being referred to as **"Foreground IPR"**). Insofar as any Foreground IPR does not vest automatically by operation of law or under this Agreement, the Service Provider holds legal title in these rights on trust for TfL.

38.3 The Service Provider shall, at the expense of TfL as to the Service Provider's reasonable, externally invoiced, out-of-pocket costs, execute all documents and instruments and take such other steps as TfL may reasonably require to vest all right, title and interest in and to Foreground IPR absolutely in TfL.

38.4 Any assignment of Intellectual Property Rights pursuant to this Clause 38 shall be with full title guarantee, free from encumbrances and shall include the right to take action for any past, present and future damages and other remedies in respect of any infringement.

38.5 The Service Provider shall notify TfL of any Foreground IPR created and provide to TfL (or any person nominated by TfL in writing) a copy of the Source Code and object code for all Software and copies of all Documentation, the Intellectual Property Rights in which are assigned to TfL pursuant to this Clause 38 (including without limitation any update or upgrade of that Software), and shall do so at the same time as providing any associated Deliverable to TfL during the Implementation Phase or in connection with a Change or, in all other circumstances, on a monthly basis.

39. LICENSING OF INTELLECTUAL PROPERTY RIGHTS

Licence from Service Provider

39.1 The Service Provider hereby grants to TfL (and any Third Parties nominated by TfL, for TfL's benefit) a non-exclusive, irrevocable, transferable, fully paid-up licence for the period up to expiry of this Agreement or (as applicable) Termination Date or Partial Termination Date and to the extent necessary to enable TfL to exercise its rights under Clauses 64.5.7 and 64.5.8 and Schedule 16 (*Exit Plan*):

39.1.1 to the Intellectual Property Rights (other than TfL Background IPR and Foreground IPR which is owned by TfL) used by or on behalf of the Service Provider in connection with the Services to the extent necessary for, and for the purposes of TfL:

(A) receiving the Services and other services in connection with the Schemes;

(B) receiving services in connection with the operation of the Schemes from Other Service Providers;

(C) providing assistance and advice to public authorities in relation to schemes other than the Schemes; and/or

(D) exercising any rights or performing any obligations of TfL under this Agreement (including without limitation the exercise of Step-In Rights or any rights under Clause 36 (*Audit and Inspection*) or Clause 64 (*Exit Management*));

39.1.2 to disclose, copy and reproduce the Service Materials as reasonably required for the purposes envisaged under Clause 39.1.1, provided that material provided to another public authority pursuant to Clause 39.1.1(C) (i) shall not include Software, (ii) shall not be provided to Third Party service providers by such public authority and (iii) shall not be used by TfL to operate another scheme on behalf of such public authority;

39.1.3 to modify, adapt and enhance the Service Materials as reasonably required for the purposes envisaged under Clause 39.1.1, provided that:

(A) Software owned by the Service Provider and licensed to TfL pursuant to Clause 39.1.1 may not be modified, adapted or enhanced by TfL except pursuant to a Step-In Action;

(B) Software owned by a Third Party and licensed to TfL pursuant to Clause 39.1.1may not be modified, adapted or enhanced by TfL except pursuant to a Step-In Action when permitted by the Service Provider's relevant software licence agreement with such Third Party; and

39.1.4 to grant sub-licences (each with a right to sub-license and further sub-license through multiple tiers) similar to those granted to TfL under Clauses 39.1.1 and 39.1.2 to any Other Service Provider or other Third Party (working with or on behalf of TfL) for the purposes envisaged under Clauses 39.1.1 to 39.1.3 (inclusive).

39.2 To the extent that the TfL Foreground Materials are subject to any Intellectual Property Rights which:

39.2.1 are owned or Controlled by the Service Provider; and

39.2.2 have not been created by or on behalf of the Service Provider in the conduct of the provision of the Services (such IPR being Foreground IPR, which are addressed in Clause 38.2),

the Service Provider hereby grants and shall grant to TfL a perpetual, irrevocable, worldwide, fully paid-up, non-exclusive licence under such Intellectual Property Rights for the purposes of using the TfL Foreground Materials and exploiting the associated Foreground IPR. Such licence shall include a right for TfL to grant sub-licences (each with a further right to sub-license) in its discretion.

39.3 If in the modification or configuration of a COTS Product in the conduct of the provision of the Services the Service Provider or the relevant Third Party vendor creates Intellectual Property Rights (excluding, for the avoidance of doubt, any Intellectual Property Rights created by the Service Provider in (i) any separable application or coding or (ii) the Interfaces, which in each case shall be Foreground IPR) then such Intellectual Property Rights shall not be Foreground IPR and instead:

39.3.1 the Service Provider or the relevant Third Party (as the case may be) shall own such Intellectual Property Rights;

39.3.2 the Service Provider shall provide TfL with a copy of all Documentation associated with such Intellectual Property Rights and, in relation to any such configurations, shall ensure that such Documentation fully describes and explains the configurations;

39.3.3 the Service Provider hereby grants to TfL (and any Third Parties nominated by TfL for TfL's benefit) a perpetual, non-exclusive, irrevocable, transferable, fully paid-up licence to such Intellectual Property Rights for the purposes of receiving (or providing to itself) services in connection with the Schemes or the services listed in Schedule 33 (*Additional Services*) using such COTS Products (irrespective of whether such activities are performed by the Service Provider, TfL or a Third Party).

Licence from TfL

39.4 To the extent the Service Provider may require a licence to TfL Background IPR or Foreground IPR in order to provide the Services, TfL hereby grants to the Service Provider a royalty-free, non-exclusive, non-transferable licence under such TfL Background IPR and/or Foreground IPR (as appropriate) solely to enable the Service Provider to perform the Services pursuant to this Agreement. Such licence includes the right for the Service Provider to grant sub-licences on identical terms to each Sub-Contractor, solely and exclusively for the purpose of the Service Provider meeting its obligations under this Agreement.

Third Party IPR

39.5 The Service Provider shall, in respect of any Third Party's Intellectual Property Rights included within the licence granted by the Service Provider under Clause 39.1 and Clause 39.3.3, ensure that the Service Provider has obtained all licences from such Third Parties necessary to enable the Service Provider to grant such licence.

Post-Termination Licences

39.6 Upon request by TfL at any time during the twelve (12) months prior to expiry or termination of this Agreement or for a period of up to twelve (12) months after the Termination Date or Partial Termination Date (as appropriate), the Service Provider shall make, or (in relation to Intellectual Property Rights owned by Third Parties) use its reasonable endeavours to procure that the relevant Third Parties make, an offer which complies with Clause 39.7 and is capable of acceptance by TfL for a licence granted to TfL and any New Service Provider to some or all (as specified by TfL) of the Intellectual Property Rights (other than TfL Background IPR and Foreground IPR which is owned by TfL) used by or on behalf of the Service Provider in connection with the Services for a period of time specified by TfL, up to a maximum of ten (10) years, after termination or expiry of this Agreement for the purposes of TfL providing for itself or receiving from a New Service Provider services similar to the Services in connection with the Schemes or the services listed in Schedule 33 (*Additional Services*).

39.7 The Service Provider shall ensure that the offer received by TfL pursuant to Clause 39.6:

39.7.1 is on no worse terms than the terms which are generally commercially available from the Service Provider and/or relevant Third Parties at the time of such offer;

39.7.2 in respect of any Third Party's Intellectual Property Rights, includes licences to TfL or a New Service Provider directly from the relevant Third Parties (unless TfL agrees to license such rights via the Service Provider); and

39.7.3 in respect of any COTS Product which has been modified or configured in the conduct of the provision of the Services, includes a commitment to include (if requested by TfL) such modifications and configurations in the version of the COTS Product provided to TfL pursuant to such offer.

40. GENERAL PROVISIONS RELATING TO INTELLECTUAL PROPERTY RIGHTS

40.1 The Service Provider shall, in accordance with Clause 38 (*Ownership and Assignment of Intellectual Property Rights*) (in the case of TfL Foreground Materials) and/or promptly following a written request by TfL, ensure that all originals and copies of TfL Foreground Materials (including without limitation all physical embodiments and all Source Code and object code) and, to the extent necessary to receive the Services, copies of other Service Materials the Intellectual Property Rights in or to which are licensed to TfL under Clause 39 (*Licensing of Intellectual Property Rights*) are delivered-up to TfL (or TfL's nominee).

40.2 The Service Provider agrees to maintain at all times an up-to-date register of all TfL Materials and Supplier Materials as part of the Asset Register.

40.3 The Service Provider acknowledges that any licensing charges relating to the use of the Service Materials, during the Term of this Agreement have been taken into account when determining the Service Charges payable by TfL to the Service Provider under this Agreement (including without limitation any Source Code to which TfL is entitled access pursuant to Clauses 38 (*Ownership and Assignment of Intellectual Property Rights*) and 42 (*Source Code*)) and so TfL shall not be liable for any additional charges in relation thereto.

40.4 To the extent permitted by applicable Law, the Service Provider hereby waives and confirms it has obtained all necessary waivers in relation to all Moral Rights comprised in any rights assigned to TfL pursuant to Clause 38 (*Ownership and Assignment of Intellectual Property Rights*).

40.5 No Intellectual Property Rights in the trade marks or brands of TfL shall be used by the Service Provider without TfL's prior written consent.

40.6 The Service Provider or TfL may use Know-How gained in the performance of this Agreement in the furtherance of either of their normal businesses to the extent that such use does not involve in the case of the Service Provider or TfL and their respective Affiliates, use of any Intellectual Property Rights of the other Party or the other Party's licensor(s) other than as permitted under the terms of this Agreement.

Open Source Software

40.7 The Service Provider warrants that, save as set out in the Software IPR Summary Table or in respect of the Cloud Assets, none of the Software in the Service Systems uses, contains, or has embedded in it, any open source code or free code (each as defined by the Open Source Initiative or by the Free Software Foundation), or any code which would require the free of charge public distribution of the Software in the Service Systems or TfL's Software which links to the Service Systems.

40.8 The Service Provider shall pass on to TfL the benefit of any warranties and indemnities included in the Service Provider's software licence agreements with Third Party Software vendors in relation to the presence, absence, licence terms or functioning of any code of the type described in Clause 40.7 in Software which is used in the Service Systems.

40.9 The Service Provider shall produce, keep up-to-date and provide to TfL on a monthly basis (and at such other times as TfL may request in writing) a table in the format set out at Annex A of Schedule 28 (*Service Provider's Solution*) which sets out all Software in the Service Systems and the IPR ownership and licensing arrangements in relation to all such Software (the "**Software IPR Summary Table**"). In the event of any inconsistency between the Software IPR Summary Table and the provisions of Clauses 38 to 40 (inclusive), the latter shall prevail (irrespective of whether or not TfL has agreed, Approved or Assured such table).

41. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

41.1 The Service Provider warrants and undertakes that:

41.1.1 the provision and receipt of the Services;

41.1.2 the operation of the Service Systems (including without limitation use of Software); and

41.1.3 the use by TfL, the TfL Group, Other Service Providers, Third Parties, any New Service Provider or any other nominee of TfL or permitted sublicensee of the Service Materials, Deliverables, and Intellectual Property Rights assigned or licensed to TfL (or sublicensed to its sublicensee) in accordance with Clauses 38 (*Ownership and Assignment of Intellectual Property Rights*) and 39 (*Licensing of Intellectual Property Rights*),

shall not infringe or otherwise misappropriate the Intellectual Property Rights of any Third Party.

41.2 The Service Provider shall indemnify each member of the TfL Group and keep each member of the TfL Group indemnified in full against all Losses howsoever arising (including without limitation in contract or tort) from or in connection with any claim or threatened claim which may be brought against any member of the TfL Group by a third party by reason of any infringement or other misappropriation or alleged infringement or other misappropriation of any Intellectual Property Rights in connection with the circumstances referred to in Clause 41.1.1, 41.1.2 or 41.1.3 (a **"Claim"** or together, **"Claims"**), save to the extent that such infringement is caused by TfL or another Service Provider acting outside the scope of its licence pursuant to Clause 39.1.

41.3 On receipt of notice of any Claim from TfL, the Service Provider shall provide TfL with relevant Information in respect of such Claim and the Service Provider's initial assessment of the potential impact of the Claim on the Services and the operation of this Agreement (**"Initial Claim Assessment"**). The Service Provider shall regularly (and in any event no less than once per week following the date of the Initial Claim Assessment) report in writing to TfL in respect of developments in respect of each Claim. Such report shall include

without limitation any Information in respect of the Claim not previously provided to TfL by the Service Provider and the Service Provider's update to the Initial Claim Assessment.

41.4 The Service Provider shall at its own expense conduct any litigation arising from any infringement or other misappropriation or alleged infringement or other misappropriation of a Third Party's Intellectual Property Rights and all negotiations in connection therewith in such a way as to minimise damage to the reputation of TfL. TfL hereby agrees to grant to the Service Provider the exclusive control of any such litigation and such negotiations save that the Service Provider shall consult with TfL (and take due account of matters raised by TfL) at all times in respect of the Service Provider's conduct of any such litigation and save that in the event that the Service Provider refuses or has delayed in any way to solve or participate fully in any Claim or failed to consult with TfL in respect of the Service Provider's conduct of any such litigation (and take due account of matters raised by TfL) or failed to minimise damage to TfL's reputation resulting from a Claim (as required above), TfL may take over the conduct of the Claim by giving written notice to the Service Provider (at the cost and expense of the Service Provider including without limitation in respect of the amount of any settlement or judgment and reasonable legal fees and disbursements).

41.5 At the request of the Party that has control of the Claim, the other Party shall afford to it all reasonable assistance for the purpose of contesting any Claim and (in the case of such assistance by TfL) the Service Provider shall repay TfL all costs and expenses incurred by TfL in so doing including, without limitation, full legal costs and disbursements.

41.6 Unless permitted by the Service Provider and subject to TfL's rights to take over and conduct any Claim under Clause 41.4, TfL shall not make any admissions which may be prejudicial to the defence or settlement of any Claim.

41.7 Without limiting the indemnity in Clause 41.2, if a Claim is made or in the opinion of TfL or the Service Provider is likely to be made, the Service Provider shall at the Service Provider's sole option (provided that the Service Provider shall consult with TfL (and take due account of matters raised by TfL) at all times in respect of the Service Provider's exercise of such option, including without limitation so as to ensure minimal disruption to the provision of the Services and minimal damage to the reputation of TfL), and the Service Provider's own expense:

41.7.1 modify any part or all of the Service Materials or Deliverables without reducing the performance and functionality of the same, or substitute alternative items or services of equivalent performance and functionality so as to avoid the infringement or other misappropriation or alleged infringement or other misappropriation, provided that the terms herein shall apply *mutatis mutandis* to such modified items or services; or

41.7.2 procure a licence for TfL to use the item(s) or Services on the same terms as Clause 39.1 (*Licence from Service Provider*).

41.8 If the Service Provider has not, within twenty (20) Working Days of a written request by TfL to do so, modified or supplied substitute item(s) or services under Clause 41.7.1 or procured a licence in accordance with Clause 41.7.2, then (without limiting the indemnity in Clause 41.2), TfL may terminate this Agreement by written notice to the Service Provider with immediate effect.

41.9 Without limiting the indemnity in Clause 41.2, if a modification or substitution in accordance with Clause 41.7.1 above is not possible so as to avoid the infringement or alleged infringement or the Service Provider has been unable to procure a licence in accordance with Clause 41.7.2 (and TfL has not terminated this Agreement pursuant to Clause 41.8) the Service Provider shall be liable for all unavoidable costs of substitute items or services pursuant to the terms of this Agreement.

41.10 TfL will defend and indemnify the Service Provider against any claim that TfL Background IPR used by the Service Provider as permitted by the terms of this Agreement infringes or misappropriates a Third Party's Intellectual Property Rights, except for any item or thing the subject of the indemnity in Clause 41.2, and provided that the Service Provider:

41.10.1 notifies TfL in writing within five (5) Working Days of the Service Provider first becoming aware of the claim;

41.10.2 permits TfL to conduct the defence of any such claim using legal counsel of TfL's own choosing;

41.10.3 provides TfL with all assistance and information as reasonably requested by TfL in connection with the claim;

41.10.4 does not make any admission of liability, not settle or conclude any agreement in relation to such liability or make any compromise with any person, body or authority in relation to such liability without the prior written consent of TfL; and

41.10.5 consents to any settlement of such claim which TfL deems acceptable.

This Clause 41.10 does not apply to Deliverables created by the Service Provider, or Services provided by the Service Provider, using the TfL Background IPR, as it is at the Service Provider's discretion to choose the manner in which it creates such Deliverables or provides such Services.

42. SOURCE CODE

42.1 The Service Provider shall provide to TfL, prior to any development, provision or use of Software and in accordance with the requirements of Milestones by the relevant Milestone Date, a list of that Software with technical details of the Software and whether it will be part of the TfL Foreground Materials. If any Software is not part of the TfL Foreground Materials and TfL requests such Software to be Escrow Software, the Parties shall discuss and agree whether such Software should be Escrow Software (provided that if such Software is Third Party Software then it shall be Escrow Software unless Clause 42.6 applies). The Service Provider shall at all times thereafter keep that list accurate, complete and up to date (including without limitation for any updates or upgrades to the Escrow Software or as otherwise envisaged under Clauses 42.2 and 42.3) and make a copy of that list available to TfL promptly upon request by TfL.

42.2 The Service Provider shall, unless notified otherwise by TfL in writing:

42.2.1 at the commencement of the Systems Integration Testing, as described in Schedule 4 (*Testing Regime*);

42.2.2 no later than one (1) month prior to the Planned Operational Commencement Date;

42.2.3 during the Operational Phase, within ten (10) Working Days of any major modifications having been made to Escrow Software included in the Service Systems; and

42.2.4 during the Operational Phase, within ten (10) Working Days of any modifications having been made to the Escrow Software,

place the Source Code and object code of the relevant part of the Escrow Software together with the associated Documentation in escrow with the Software Escrow Agent, subject to Clause 42.6, on:

(A) the terms of the Software Escrow Agent's standard tripartite single licensee agreement (including the terms referred to in Clause 42.8 and a right for TfL to elect to receive source code validation services); or

(B) such other terms as the Service Provider and TfL shall from time to time agree.

42.3 The Service Provider shall thereafter keep current (in relation to the executable code of Escrow Software used to provide the Services) the Source Code and object code of major modifications to all Escrow Software and the associated Documentation by depositing the latest copy of the Source Code and object code and Documentation with the Software Escrow Agent within the timeframe specified in Clause 42.2.

42.4 The Service Provider shall promptly update the Asset Register each time it places Software in escrow in accordance with Clauses 42.2 and/or 42.3 indicating that the relevant Software is Escrow Software.

42.5 All escrow costs shall be borne by the Service Provider.

42.6 This Clause 42 shall not apply to Third Party Software to the extent and during such period as such Third Party Software is:

42.6.1 not available from the Third Party proprietor(s) thereof in Source Code format to the Service Provider provided that Third Party Software is at all times commercially available to TfL on substantially the same terms and conditions as under this Agreement; or

42.6.2 deposited with a Third Party escrow agent on the basis of a source code deposit agreement and only available in Source Code format to the Service Provider on the occurrence of an event or on the exercise of a right specified in that source code deposit agreement, in which case the Service Provider shall, and (where appropriate) shall procure that its Sub-Contractors, procure that TfL is entitled to the benefit of the source code deposit agreement and to receive a copy of the Source Code and object code for the deposited Third Party Software directly from the Third Party escrow agent on substantially the same basis as the Service Provider or any Sub-Contractor (as the case may be). Details of all arrangements made by the Service Provider pursuant to this Clause shall be provided to TfL as part of the Asset Register and shall be kept current to within one (1) month.

42.7 The Source Code and object code and associated Documentation placed in escrow pursuant to Clause 42.2 and 42.3 shall provide adequate Information and instruction to enable TfL or a New Service Provider to make full and proper use of the Software to the extent provided in the licences granted in Clause 39 (*Licensing Intellectual Property Rights*).

42.8 The Service Provider shall ensure that the Software Escrow Agent's standard tripartite Agreement it uses shall include (in addition to the standard release events provided for by such agreement) the following as release events for the Source Code and Documentation:

42.8.1 if the owner of the Intellectual Property Rights in the Escrow Software is subject to, or if TfL reasonably believes that such person may become subject to, an Insolvency Event;

42.8.2 if the owner of the Intellectual Property Rights in the Escrow Software assigns its Intellectual Property Rights in the Escrow Software and the Service Provider fails to procure from the assignee within forty (40) Working Days of such assignment substantially similar protection for TfL to that provided by this Agreement without significantly increasing the cost to TfL; or

42.8.3 if the Service Provider has breached Clause 19 (*Systems, Support and Maintenance*) or Clause 64.5.8 (including an unreasonable delay in providing Full Support) in relation to Software to which the Source Code and Documentation relates and has failed to remedy the breach within ten (10) Working Days of its receipt of a notice from TfL requiring it to do so,

and in such circumstances (and in any other circumstances when any other release event occurs under the Software Escrow Agent's standard tripartite agreement) the Software Escrow Agent will upon written request from TfL forthwith release to TfL a copy of the relevant Source Code, object code and Documentation for the Escrow Software.

42.9 The Service Provider hereby grants a licence, on release of the Source Code, object code and Documentation from escrow, in respect of the Source Code, object code and Documentation:

42.9.1 of the same type as is specified in Clause 39 (*Licensing of Intellectual Property Rights*); and

42.9.2 (without limiting Clause 42.9.1) to TfL to use the Source Code, object code and Documentation (including a licence to sublicense use to TfL's contractor or a New Service Provider) to adapt and modify the Source Code in order to maintain, adapt and modify the Software so that TfL or the New Service Provider can receive full benefit of the licence of that Software under Clause 39 (*Licensing of Intellectual Property Rights*),

provided that in the case of release of Source Code and Documentation under Clause 42.8.3, such licence shall last for so long as TfL requires for the purposes of exercising rights under those provisions (without prejudice to any future release of such Source Code and licence to TfL thereto pursuant to this Clause 42).

43. NOVATION OR MANAGEMENT OF SUPPLY CONTRACTS

43.1 TfL may, by notice to the Service Provider, require the Service Provider to:

43.1.1 propose the terms on which it would be prepared to accept the novation to it of one or more of the Supply Contracts (each relevant Supply Contract referred to in such notice being a **"Notified Supply Contract"**), such novation to have effect from the effective date of the novation (the **"Novation Date"**);

43.1.2 propose the terms on which it would be prepared to manage each Notified Supply Contract from the Novation Date until the date of agreement of appropriate novation arrangements (subject to Clause 43.2.4) in the event that such novation arrangements are not agreed on or before the Novation Date, including by providing the Services described in Schedule 20 (*Management Services*) and/or such other services as may be agreed pursuant to the Change Control Request Procedure in relation to such Notified Supply Contract(s) (the **"Interim Management Services"**); and/or

43.1.3 propose the terms on which it would be prepared to manage one or more of the Supply Contracts (each relevant Supply Contract referred to in such notice being a **"Managed Contract"**) from such date as TfL may specify (the **"Management Effective Date"**), including by providing the Services described in Schedule 20 (*Management Services*) and/or such other services as may be agreed pursuant to the Change Control Request Procedure in relation to such Managed Contract(s) (the **"Management Services"**),

and the Service Provider shall treat such notice as if such notice were a Change Control Request in respect of a Mandatory Change. For the avoidance of doubt, TfL may require that the Service Provider provides an Initial Response and/or Impact Assessment in the manner described in pursuant to paragraph 11 of Schedule 9 (*Change Control Request Procedure*) in respect of one, some or each of the scenarios described above (and in respect of one or more different Novation Dates and/or Management Effective Dates) for any particular Supply Contract(s). TfL may, in its absolute discretion, elect to require the Service Provider to accept novation or manage each relevant Supply Contract by raising a Mandatory Change on the basis of the relevant terms produced by the Service Provider in accordance with this Clause.

43.2 If the Service Provider is required to accept novation in respect of any Notified Supply Contract pursuant to Clause 43.1 above, and unless otherwise agreed pursuant to the Change Control Request Procedure:

43.2.1 the Parties shall promptly enter into a deed of novation in substantially the form set out in Schedule 27 (*Deed of Novation*) (each a **"Deed of Novation"**) in respect of each Notified Supply Contract;

43.2.2 if the Other Service Provider refuses to execute the Deed of Novation the Service Provider shall participate in any necessary negotiations with the Other Service Provider and TfL in good faith to reach agreement;

43.2.3 during the period, if any, between the Novation Date and the date of execution of the Novation Deed (the **"Interim Period"**) the Service Provider shall provide the Interim Management Services;

43.2.4 if the Interim Period continues for longer than ninety (90) days, or such other period as the Parties may, in writing, agree, either Party may serve notice on the other requiring the proposed novation to be revoked. Promptly following service of such notice, TfL shall notify the Service Provider as to whether:

(A) the Service Provider is required to provide Management Services in relation to the Notified Supply Contract, whereupon it shall be deemed a Managed Contract, the date of such notice shall be deemed the Management Effective Date and the provisions of Clause 43.3 shall apply; or

(B) the Service Provider should cease to provide Interim Management Services in respect of the Notified Supply Contract;

43.2.5 with effect from the date of execution of the Deed of Novation the relevant Other Service Provider shall become a Key Sub-Contractor hereunder and shall cease to be an Other Service Provider; and

43.2.6 the Service Provider shall not be entitled to any additional amounts due to the novation of, or otherwise in relation to, each Notified Supply Contract over and above those agreed through the Change Control Request Procedure in accordance with this Clause 43.

43.3 If the Service Provider is required to manage a Managed Contract pursuant to Clause 43.1 or Clause 43.2.4(A) above, then, unless otherwise agreed pursuant to the Change Control Request Procedure:

43.3.1 the Service Provider shall from the Management Effective Date:

(A) provide the Management Services;

(B) promptly advise TfL in the event that there is or may be any conflict of interest between the provision of the Management Services and its other obligations under this Agreement;

(C) promptly send to TfL a copy of all notices and other communications between the Service Provider and the Managed Contractor which may or will affect TfL's rights and obligations under the Managed Contract, whether the same are sent or received by it;

(D) promptly advise TfL of any issues or actions required in relation to the Managed Contract which do not fall within its responsibilities under this Clause 43 or Schedule 20 (*Management Services*); and

(E) comply with all reasonable instructions of TfL in relation to its management of the Managed Contracts;

43.3.2 in no event shall the Service Provider have authority to do, or seek or purport to do, any of the following:

(A) amend or vary any provisions of the Managed Contract, whether orally or in writing or otherwise;

(B) terminate the Managed Contract; and/or

(C) waive any of TfL's rights under, or any of the Managed Contractor's obligations under, the Managed Contract; and

43.3.3 the Service Provider shall:

(A) have no authority, and shall not hold itself out, or permit any person to hold itself out, as being authorised, to bind TfL in any way, and shall not do any act which might reasonably create the impression that the Service Provider is so authorised;

(B) not enter into any contract, exercise any rights or remedies, assume any obligation or risk, or incur any liability, on behalf (nor affect in any way any right, remedy, obligation, risk or liability) of TfL, nor pledge the credit of TfL;

(C) have no authority to and shall not take part in any dispute or institute or defend any proceedings, or settle or attempt to settle or make any admission concerning any dispute, proceedings or other claim relating to the Managed Contract, or any contract in connection with the Managed Contract or relating to the affairs of TfL in relation to the Managed Contract or any of those other contracts; and

(D) immediately inform TfL if any of the foregoing occurs or is suspected to have occurred or is likely to occur.

43.4 The Service Provider agrees that, notwithstanding anything to the contrary under this Clause 43, the provisions of Clause 76 (*Relationship*) shall (without limiting those provisions) apply in respect of the Management Services.

44. BUSINESS CONTINUITY

44.1 The Service Provider will throughout the Term comply with the provisions of Schedule 25 (*Business Continuity*) including creating, maintaining and updating the Business Continuity Plan which will (without limitation):

44.1.1 be capable of mitigating, in accordance with Good Industry Practice, any adverse impact on the Services in any circumstances where the ability of the Service Provider to provide the Services would otherwise be impaired;

44.1.2 make provision for action to be taken by the Service Provider in the event of non-availability of the Service Provider Premises; and

44.1.3 include a communications plan for relevant Service Provider Personnel and TfL, in respect of which the Service Provider will consult with TfL and incorporate TfL's requirements.

44.2 Without prejudice to Schedule 25 (*Business Continuity*), the Service Provider shall:

44.2.1 develop enhancements to and upgrades of the Business Continuity Plan to ensure that the Business Continuity Plan is at all times commensurate with the total volume of business managed and administered by the Service Provider. Such updates shall be provided on such dates as the Parties may agree from time to time in writing and as TfL may request from time to time; and

44.2.2 produce all enhancements and upgrades required under Clause 44.2.1 in advance of any agreed or anticipated volume increases in, or Changes to, the Services.

45. SECURITY

45.1 The Service Provider shall:

45.1.1 provide the Services in accordance with, and shall ensure that its Personnel comply with, the provisions of this Clause 45 and Schedule 14 (*Security*); and

45.1.2 furthermore, and without prejudice to Clause 45.1.1, comply with the provisions of Schedule 14 (*Security*) to ensure that the Services and Service Systems perform the features, functions and facilities and meet the performance and other criteria set out in the Requirements.

45.2 The Service Provider:

45.2.1 shall at all times provide such access, facilities, information, data, documentation and assistance reasonably required by TfL and any Third Party nominated by TfL in connection with the preparation and implementation of the Security Policy and any other security requirements envisaged under this Agreement;

45.2.2 agrees that TfL may, notwithstanding anything to the contrary in this Agreement, share the Security Policy in form or substance with any Third Party for the purposes of the Services, the Schemes and/or this Agreement; and

45.2.3 shall as soon as possible, and in any event before the end of the relevant calendar day, update the Incident Log in respect of each Security Incident in connection with the performance or otherwise of the Service Provider's obligations under this Clause 45 and ensure that the Incident Log is always available to TfL and is accurate, up to date and complete.

45.3 The Service Provider agrees that a breach or failure of security in connection with the Services and/or the Service Systems shall be at the sole risk of, and sole cost to, the Service Provider.

45.4 Either Party may request changes to any document envisaged under this Clause 45 by the Change Control Request Procedure.

45.5 If any Data is inaccurate, corrupted, lost or sufficiently degraded as to be unusable as a result of the Service Provider's failure to comply with the provisions of this Clause 45 or any other act or omission of the Service Provider, the Service Provider shall at its own cost carry out (or procure the carrying out of) such remedial action as is necessary to restore such data or information.

PCI-DSS

45.6 In relation to the processing of bank card details under this Agreement, the Service Provider shall comply with the Payment Card Industry (PCI) Data Security Standard Requirements and Security Assessment Procedures Version 2.0 October 2010 and any updated versions as published from time to time (**"PCI-DSS"**) in providing the Services. The Service Provider shall demonstrate compliance on an annual basis to TfL by providing confirmation in writing from an independent Payment Card Industry (PCI) Qualified Security Assessor (**"QSA"**) of its compliance with PCI-DSS.

45.7 The Service Provider acknowledges that the TfL Group is required to comply with the PCI-DSS when operating its Cardholder Data Environment.

45.8 To the extent that the Service Provider provides or recommends Software and/or Hardware and/or a System to the TfL Group that will be included in, or connected to, the Cardholder Data Environment, the Service Provider shall ensure that all such Software and Hardware complies with the requirements of PCI-DSS. The Service Provider shall, if requested by TfL, demonstrate how any such Software and/or Hardware and/or System complies with the requirements of PCI-DSS to the reasonable satisfaction of TfL.

45.9 To the extent that the Service Provider is providing Services in respect of any part or parts of the Cardholder Data Environment (the "**Cardholder Data Environment Services**"), then the Service Provider shall ensure it is compliant with (including in relation to its internal processes and procedures), and all its applicable information technology systems are compliant with, PCI-DSS when providing the Cardholder Data Environment Services. In addition, the Service Provider shall:

45.9.1 at least once every twelve (12) months appoint an independent QSA to validate that the Service Provider is compliant with (including in relation to its internal processes and procedures), and all its applicable information technology systems are compliant with, PCI-DSS when providing the Cardholder Data Environment Services;

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

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

45.10 The Service Provider's compliance with Clauses 45.6 to 45.9 (inclusive) shall be at no cost to TfL.

46. TESTING OF THE BUSINESS CONTINUITY PLAN AND SECURITY PLAN DURING THE OPERATIONAL PHASE

46.1 The Service Provider shall, in relation to the Business Continuity Plan, the Business Continuity Services, the Business Continuity Infrastructure and the Security Plan, at no additional cost to TfL:

46.1.1 conduct system level Tests no less frequently than every **REDACTED**; these shall comprise a test of each element of the Business Continuity Infrastructure and the Service Systems in respect of the capability and procedures undertaken by the Service Provider's technical and operational staff to ensure that:

(A) the Business Continuity Infrastructure meets the requirements of Schedule 25 (*Business Continuity*); and

(B) the Service Provider is complying with the Security Policy;

46.1.2 conduct total service Tests no less frequently than **REDACTED**; these shall comprise a test of:

(A) the Business Continuity Plan as a whole to ensure it meets the requirements of Schedule 25 (*Business Continuity*);

(B) the Service Systems and Services as a whole to ensure the Service Provider is complying with the Security Policy; and

(C) the Systems provided by Other Service Providers in relation to the Schemes, to be tested in conjunction with such Other Service Providers; and

46.1.3 produce test plans and test specifications for each test referred to in Clause 46.1 above and shall make copies of the same available to TfL for Assurance upon request.

46.2 The Tests referred to in Clause 46.1 shall demonstrate:

46.2.1 the capability of the Service Provider to execute the Business Continuity Plan and provide the Business Continuity Services; and

46.2.2 whether the Service Provider is complying with the Security Policy.

46.3 Where the Tests require downtime of the whole or any part of the Service Systems, the date and timing of the Tests shall be subject to prior agreement with TfL. Downtime approved by TfL in writing in advance which results from such Tests will be excluded from any measurement of Service Levels for the purposes of Schedule 5 (*Service Level Agreement*) in respect of the relevant Performance Indicators affected by such Tests.

46.4 The tests referred to in Clause 46.1 may be conducted more frequently than is specified in that clause if the Service Provider, acting in accordance with Good Industry Practice, deems it necessary subject to TfL's prior written consent.

46.5 If any aspect of the Tests referred to in Clause 46.1 fails to meet the criteria in the Business Continuity Plan and/or the Security Policy the Service Provider shall (at no cost to TfL) take such action as is necessary, and repeat such tests until all the relevant criteria are met.

46.6 The first test required under Clause 46.1 will be undertaken not later than four (4) months following the Operational Commencement Date. TfL may witness such tests at its discretion.

46.7 The Service Provider will provide TfL with ten (10) Working Days' notice of its intention to carry out the Tests required by Clause 46.1 and will provide TfL with a copy of the results of any such tests for Assurance within a reasonable period after the carrying out of any

such tests if TfL so requires. If TfL so requires, TfL may attend testing of the Business Continuity Plan, the Security Plan or any part of either of them.

46.8 Any participation by TfL in relation to the testing of the Business Continuity Plan and/or the Security Plan will be without prejudice to and will not be deemed in any way to restrict the steps required to be taken by the Service Provider pursuant to this clause or its obligations under Clause 57 (*Force Majeure*). Nor shall such participation be deemed to be acceptance by TfL that the Business Continuity Plan and/or the Security Plan is adequate or appropriate.

47. INDEMNITIES AND LIMITATIONS OF LIABILITY

47.1 Subject to the following provisions of this Clause 47, the Service Provider shall on demand indemnify and keep indemnified TfL, for and on behalf of itself and all other members of the TfL Group and their respective officers from and against (and shall pay on demand) any Losses which may arise out of, by reason of or in connection with the Service Provider's breach of this Agreement except in so far as, and to the extent that the damage, injury or loss is caused by the negligence or wilful misconduct of TfL or its agents, employees or contractors or by the breach by TfL of its obligations under this Agreement.

47.2 Except in relation to court awards, settlements and legal costs recoverable under Clause 41 (*Intellectual Property Rights Indemnity*) and court awards, settlements, legal costs and the amount of fines recoverable under Clause 49 (*Information Compliance*), each Party shall take all reasonable steps to mitigate any Losses incurred or which might be incurred as a result of a default or breach of this Agreement by the other Party including, without limitation, where it has the benefit of an indemnity under this Agreement.

47.3 Neither Party limits its liability for:

47.3.1 death or personal injury caused by its negligence;

47.3.2 fraud or fraudulent misrepresentation;

47.3.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

47.3.4 any other liability that cannot be limited or excluded by law.

47.4 Subject to Clauses 47.3 and 47.7:

47.4.1 the Service Provider’s liability in respect of:

(A) the indemnities in:

(1) Clause 41 (*Intellectual Property Rights Indemnity*); and

(2) Schedule 11 (*Employees and Key Personnel*);

(B) breach by the Service Provider of Clause 49 (*Information Compliance*), insofar as it relates to fines, court awards, settlements and legal costs;

(C) breach by the Service Provider of Clause 74.1 (*Confidentiality*);

(D) breach by the Service Provider of Clause 45 (*Security*); and

(E) loss of Data,

47.4.2 **REDACTED**; andsubject to Clause 47.4.1 and Clause 47.9, in respect of all Losses, except for liability for Service Failure Deductions, whether arising from tort (including negligence), breach of contract or otherwise, the Service Provider’s liability under or in connection with this Agreement shall in no event exceed, in relation to any and all causes of action arising during:

(A) the period up to and including 23:59:59 on the day immediately preceding the CC/LEZ Operational Commencement Date, an aggregate amount of **REDACTED**

(B) midnight on the CC/LEZ Operational Commencement Date to 23:59:59 on the last day of the Term, an aggregate amount of **REDACTED**; and

(C) the period from termination or expiry of this Agreement, in relation to any obligations which continue beyond such expiry or termination, the relevant aggregate limit or remainder thereof applicable to whichever of the periods set out in Clauses 47.4.2(A) and 47.4.2(B) (as appropriate) applied immediately preceding such termination or expiry, which shall continue to apply.

47.5 Subject to the provisions of Clause 41 (*Intellectual Property Rights Indemnity*), which shall apply in relation to the indemnities referred to in that clause, each Party's rights under this Agreement to be indemnified (the **"Indemnified Party"**) shall be contingent on that Party not making any admission of liability or acting in a way which might reasonably be interpreted as an admission of liability or as a settlement of any action, claim or proceeding (in whole or in part) without the prior express written consent of the Party providing the indemnity (the **"Indemnifying Party"**) and on promptly notifying the Indemnifying Party of any such action, claim or proceeding. Further, the Indemnifying Party shall have the right to assume full conduct of all discussions, negotiations, actions, proceedings and claims in relation to which it has or may have any obligation to indemnify the Indemnified Party under this Agreement, provided that where the Indemnifying Party is the Service Provider it shall use all reasonable endeavours not to act in a way detrimental to the reputation or business of TfL. The Indemnified Party shall provide such assistance to the Indemnifying Party as the Indemnifying Party may reasonably request, and the Indemnifying Party shall bear the reasonable costs of the Indemnified Party in providing such assistance.

47.6 Subject to Clauses 47.3 and 47.7, TfL's aggregate liability under or in connection with this Agreement, whether arising from tort (including negligence), breach of contract or otherwise, shall be limited **REDACTED**.

47.7 **REDACTED**

47.7.1

47.8 Subject to clause 47.4.1 (B):

(a) each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages, fines, or expenses (including reasonable legal fees) incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under Data Protection Legislation.

(b) TfL agrees to indemnify and keep indemnified and defend at its own expense the Service Provider against all costs, claims, damages, fines or expenses (including reasonable legal fees) incurred by the Service Provider or for which the Service Provider may become liable due to the Service Provider's compliance with any direction, instruction or requirement of TfL in relation to the Processing activities or TfL Personal Data where the Service Provider has acted in accordance with clause 49.4.3 (including without limitation the Service Provider's compliance with any technical and organisational security measures mandated by TfL in this Agreement).

47.8.1 Nothing in this clause shall restrict or limit either party's general obligation at law or either parties obligations to mitigate any losses it may suffer or incur as a result of an event that may give rise to a claim under this indemnity or otherwise.

47.8.2 The Service Provider shall be entitled to relief from liability for any failure to comply with its obligations under this Agreement (including any failure to perform the Services and Processing activities) to the extent such failure results from:

(a) a claim or complaint made by a Data Subject or a Supervisory Authority with regards to the Service Provider's performance of the Processing activities to the extent that such actions result from instructions received from TfL; and/or

(b) (save to the extent arising from a breach by the Service Provider of its obligations under clause 49.2 (*Data Protection*) or under the Data Protection Legislation) any order, direction or instruction by a Supervisory Authority (whether relating to TfL or the Service Provider in respect of the Services (including the Processing activities).

47.9 **No double-recovery**

For the avoidance of doubt, neither Party shall be entitled to recover in respect of the same loss under both this Agreement and the BOps Services Agreement.

47.10 **ULEZ Central Change**

47.10.1 **REDACTED**.

47.10.2 Subject to Clause 47.4.1, where TfL suffers Losses as a result of delays to one or more of the four planned ULEZ RFS Testing windows detailed in the ULEZ Central Change, providing always that such delay has arisen solely as a result of an act or omission by the Service Provider, the Service Providers total aggregate liability whether arising from tort (including negligence), breach of contract or otherwise, under or in connection with this Agreement shall in no event exceed **REDACTED**. For the purposes of this Clause 47.10.2 only, TfL's Losses shall be limited to only those incremental costs incurred by the D&EI Service Provider and providing always that TfL shall only be entitled to claim for Losses in respect of this Clause 47.10.2 where it is able to demonstrate it has complied with its obligations under Clause 47.2 of this Agreement.

47.11 **ULEX DVS & LEZ 20 Change**

47.11.1 **REDACTED**

47.11.2 Subject to Clause 47.4.1, where TfL suffers Losses as a result of delays to one or more of the three planned ULEX RFS Testing windows detailed in the ULEX, DVS & LEZ 20 Change (including where such delays require that TfL schedule additional ULEX RFS Testing windows) the Service Provider's total aggregate liability in respect of such Losses whether arising from tort (including negligence), breach of contract or otherwise, under or in connection with this Agreement, **REDACTED**. For the purposes of this Clause 47.11.2 only, TfL's Losses shall be limited to only those incremental costs incurred by the D&EI Service Provider as a direct result of such delays, where such delays have arisen solely as a result of an act or omission by the Service Provider and TfL shall only be entitled to claim for Losses in respect of this Clause 47.11.2 where it is able to demonstrate it has complied with its obligations under Clause 47.2 of this Agreement.

47.11.3

48. **INSURANCE**

48.1 Without prejudice to its liability to indemnify TfL under Clause 47 (*Indemnities and Limitations of Liability*) or any other provision of this Agreement, the Service Provider shall, throughout the Term of this Agreement (and any other period stated in this Clause 48), arrange and maintain with a reputable insurer or insurers authorised to underwrite such risks in the United Kingdom, policies of insurance of the following types and levels of indemnity (**"Insurances"**):

48.1.1 public liability insurance in respect of the Service Provider's liability for loss or damage to property (including property of TfL), breach of any Intellectual Property Rights and against liability in respect of death, injury or occupational disease up to a limit of at least **REDACTED** for each event or series of connected events, with financial loss extension;

48.1.2 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 up to a limit of at least **REDACTED**for each event or series of connected events;

48.1.3 product liability insurance of at least **REDACTED**in aggregate per annum for each event or series of connected events;

48.1.4 material damage insurance on an all risks basis, including terrorism cover, in respect of the Assets for their full replacement value from time to time, together with business interruption cover in the amount of at least **REDACTED**

48.1.5 professional indemnity insurance (including cyber cover) up to a limit of at least **REDACTED**for each claim and in the aggregate each year (cyber cover limited to **REDACTED**aggregate annual cover) for the period of the Term and six years thereafter; and

48.1.6 commercial crime insurance in the sum of at least **REDACTED**covering the loss of money and tangible property belonging to TfL resulting directly from a fraudulent or dishonest act by an employee of the Service Provider, while performing professional services for TfL.

48.2 In relation to each of the Insurances, the Service Provider shall prior to the execution of this Agreement and thereafter within five (5) Working Days of each due renewal date of the policies or at such other times as TfL may require, provide to TfL copies (or other evidence satisfactory to TfL) of all such Insurances together with receipts or other evidence of payment of premiums in respect of such Insurances.

48.3 The Service Provider shall ensure that the Insurances:

48.3.1 have TfL's interest noted on each insurance policy, or that a generic interest clause has been included;

48.3.2 cover the Service Provider's legal liability (including liability assumed under this Agreement) which may arise out of or in the course of or by reason of the Service Provider's or its Sub-Contractors' performance, non-performance or part-performance under or in connection with this Agreement; and

48.3.3 in respect of Insurances in relation to which both TfL and the Service Provider are named parties, provide that a vitiating act committed by one insured Party shall not prejudice the right to claim of any other insured Party who has an insured interest and who has not committed a vitiating act.

48.4 The public liability insurance policy referred to in Clauses 48.1.1, 48.1.2 and 48.1.3 shall extend to indemnify TfL as principal and shall be endorsed to provide that no act or omission on the part of the Service Provider or its Sub-Contractors shall prejudice TfL's rights under such policy as principal.

48.5 The material damage insurance policy referred to in Clause 48.1.4 shall be endorsed to note the interest of TfL and a waiver of the insurer's rights of subrogation against TfL.

48.6 Where the Insurances contain a care, custody or control exclusion, the relevant policy shall be endorsed so as to delete the exclusion in respect of any premises of TfL (including contents) that are occupied by the Service Provider for the purpose of performing the Services.

48.7 The Service Provider shall promptly and diligently deal with all claims under the Insurances and shall comply with the terms and conditions of the Insurances and all reasonable requirements of the insurers, including (without limitation), in connection with the prosecution, defence and settlement of claims, the recovery of losses and the prevention of accidents. The Service Provider shall bear the cost of all exclusions and limitations under such insurances and shall pay for any excess or deductible. The Service Provider shall not take nor fail to take any action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

48.8 In relation to all the Insurances (except employer's liability insurance), the Service Provider agrees that TfL 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 this Agreement.

48.9 The Service Provider shall give TfL not less than thirty (30) Working Days' prior written notice of any proposed cancellation or a material change in the terms of any of the Insurances.

48.10 The Service Provider shall notify TfL as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any of the Insurances lapsing or being terminated or the cover under them being reduced or modified. For the sake of clarification, this shall apply (without limitation) when there is an annual aggregate limit under any of the insurances which may be eroded by claims or incidents potentially leading to claims, whether arising in connection with this Agreement, or any other activities undertaken by the Service Provider.

48.11 The Service Provider shall inform TfL in writing immediately of:

48.11.1 any matter likely to affect the decision of the insurers to grant or to continue any of the Insurances; and

48.11.2 any event which might materially affect any such Insurances.

48.12 In the event of a claim being made under any of the Insurances, the proceeds shall be applied in making good the loss or damage in respect of which the claim is made.

48.13 If the Service Provider is in breach of its obligation to arrange and maintain the Insurances, as required under Clause 48.1, TfL may pay any premiums required to keep such Insurances in force or may procure such Insurances and in either case recover from the Service Provider all costs, expenses or other amounts as TfL may incur.

48.14 If TfL sends a written notice to the Service Provider requiring demonstration of the Service Provider's compliance with its obligations under Clause 48.1 or 48.2 and the Service Provider has not within ten (10) Working Days of such notice demonstrated such compliance, TfL may terminate this Agreement immediately on written notice.

49. INFORMATION GOVERNANCE

49.1 The Service Provider warrants and undertakes as follows:

49.1.1 the Service Provider shall in relation to this Agreement comply with the Data Protection Legislation (hereafter the **"DPL"**), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (hereafter the **"PECED"**) and all relevant, subordinate or successor legislation relating to each of them;

49.1.2 the Service Provider acknowledges that TfL will rely upon the Service Provider to enable TfL to comply with its obligations under the Freedom of Information Act 2000 (hereafter the **"FOIA"**), the Environmental Information Regulations 2004 (hereafter the **"EIRs"**) and the Reuse of Public Sector Information Regulations 2005 (hereafter the **"RPSI"**) in relation to the Services and this Agreement and that the processes and procedures set out in this Agreement with which the Service Provider is required to comply are important for the purposes of ensuring such compliance;

49.1.3 if there is dispute over what is required for compliance with the DPL and the other named Acts and Regulations, the Service Provider will comply with written instructions from TfL's legal advisers, except where it is illegal for the Service Provider to do so; and

49.1.4 the Service Provider agrees to provide promptly all reasonable additional information and co-operate fully with any investigations by TfL in relation to complaints under the DPL, FOIA, EIRs, RPSI, PECED and Computer Misuse Act 1990, including investigations relating to complaints by the Information Commissioner's Office, the Information Tribunal and the Courts.

Data Protection

48.2 With respect to the Parties' rights and obligations under the Agreement, the Parties acknowledge that TfL is a Data Controller solely responsible for determining the purposes

and manner in which TfL Personal Data is to be Processed, and that the Service Provider is a Data Processor.

49.3 Details of the TfL Personal Data to be Processed by the Service Provider and the purposes of such Processing are set in Schedule 15 (Data Descriptions).

49.4 The Service Provider shall:

49.4.1 process the TfL Personal Data only in accordance with instructions from TfL to perform its obligations under the Agreement;

49.4.2 use its reasonable endeavours to assist TfL in complying with any obligations under Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause TfL to breach any of its obligations under Data Protection Legislation to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;

49.4.3 notify TfLwithout undue delay if it determines or is notified that an instruction to Process Personal Data issued to it by TfL is incompatible with any obligations under Data Protection Legislation to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;.TfL acknowledges that any information the Service Provider provides with respect to this clause is not legal advice or guidance in anyway whatsoever, and that the Service Provider makes no warranty or representation regarding the information. The Service Provider has no liability to TfL for the content, nor any reliance by TfL on the information communicated under this clause;

49.4.4 maintain, and make available to TfL on its request, documentation which describes the Processing operations for which it is responsible under this Agreementt including:

(A) the purposes for which TfL Personal Data is Processed;

(B) the types of Personal Data and categories of Data Subject involved;

(C) the source(s) of the Personal Data;

(D) any recipients of the Personal Data;

(E) the location(s) of any overseas Processing of TfL Personal Data;

(F) retention periods for different types of TfL Personal Data; and

(G) where possible a general description of the security measures in place to protect TfL Personal Data.

49.4.5 implement and comply with a procedure, agreed with TfL, to handle Subject Access Requests in accordance with the requirements of Schedule 2, Appendix 28 (Information Governance) and the Performance Indicators specified in Schedule 5;

49.4.6 where requested to do so by TfL, or where Processing TfLPersonal Data presents a specific risk to privacy, support TfL in its role as Data Controller in carrying out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Legislation). . For the avoidance of doubt, where a Data Protection Impact Assessment is necessary as a result of a Change Control, then this will be dealt with in accordance with Schedule 9 (Change Control Request Procedure);

49.4.7 without prejudice to any cyber security and/or payment card industry data security standard obligations in this Agreement, provide TfLwith such information as TfLmay from time to time require to satisfy itself of compliance by the Service

Provider (and/or any authorised sub-contractor) with Clauses 49.4.6 and 49.4.9, including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this shall include a full report recording the results of any privacy or security audit carried out at the request of the Service Provider itself or TfL;

49.4.8 take action immediately to investigate the Data Security Breach and to identify, prevent and make reasonable efforts mitigate the effects of any such Data Security Breach and, with TfL's prior written agreement, to carry out any recovery or other action necessary to remedy or mitigate the Data Security Breach. The Service Provider shall not release or publish any filing, communication, notice, press release, or report concerning the Data Security Breach in respect of any TfL Personal Data without TfL's prior approval;

49.4.9 notify TfLwithout undue delay and in any event within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of this Clause 49, including the unauthorised or unlawful Processing of TfL Personal Data, or its accidental loss, destruction or damage;

49.4.10 having notified TfL of a breach in accordance with Clause 49.4.9, keep TfLproperly and regularly informed in writing until the breach has been resolved to the satisfaction of TfL;

49.4.11 fully cooperate as TfL requires with any investigation or audit in relation to TfL Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to the Agreement, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by TfL (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and shall do so both during the Agreement and after its termination or expiry (for so long as the Party concerned retains and/or Processes TfL Personal Data).; Nothing in this clause shall permit TfL or its auditors to make unaccompanied site visits or to remotely access the Service Systems without the Service Providers prior knowledge and consent, such consent not to be unreasonable withheld or delayed;

49.4.12 notify TfL within five (5) Working Days if it, or any sub-contractor, receives:

from a Data Subject (or third party on their behalf):

(A) Subject Access Request (or purported Subject Access Request);

(B) a request to rectify, block or erase any TfL Personal Data; or

(C) any other request, complaint or communication relating to the Authority's obligations under Data Protection Legislation.

(D) any communication from the Information Commissioner or any other regulatory authority in connection with TfL Personal Data; or

(E) a request from any third party for disclosure of TfL Personal Data where compliance with such request is required or purported to be required by law;

49.4.13 provide TfL with full cooperation and assistance (within the timescales reasonably required by TfL) in relation to any complaint, communication or request made as referred to in 49.4.12, including by promptly providing:

(A) TfL with full details and copies of the complaint, communication or request;

(B) where applicable, such assistance as is reasonably requested by TfL to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation; and

49.4.14 when notified in writing by TfL, supply a copy of, or information about, any TfL Personal Data. The Service Provider shall supply such information or data to TfL within such time and in such form as specified in the request (such time to be reasonable);

49.4.15 when notified in writing by TfL, comply with any agreement between TfL 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 TfL Personal Data; and

49.4.16 if required to do so by Data Protection Legislation, appoint a designated Data Protection Officer.

49.5 The Service Provider shall not share TfL Personal Data with any sub-contractor without prior written consent from the Authority and only where there is a written contract in place between the Service Provider and the sub-contractor which requires the sub-contractor to:

49.5.1 only Process TfL Personal Data in accordance with the TfL's instructions to the Service Provider as reasonably necessary to perform the Agreement in accordance with its terms;

49.5.2 not Process TfL Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with TfL;

49.5.3 not Process TfL Personal Data in such a way as to:

(A) place the Authority in breach of Data Protection Legislation;

(B) expose TfL to the risk of actual or potential liability to the Information Commissioner or Data Subjects;

(C) expose TfL to reputational damage including adverse publicity;

49.5.4 not allow Service Provider's Personnel to access TfL Personal Data unless such access is necessary in connection with the provision of the Services;

49.5.5 take all reasonable steps to ensure the reliability and integrity of all Service Provider's Personnel who can access TfL Personal Data;

49.5.6 ensure that all Service Provider's Personnel who can access TfL Personal Data:

(A) are informed of its confidential nature;

(B) are made subject to an explicit duty of confidence;

(C) understand and comply with any relevant obligations created by either this Agreement or Data Protection Legislation; and

(D) receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis.

49.5.7 not disclose or transfer TfL Personal Data to any third party without the Service Provider having obtained the prior written consent of TFL (save where such disclosure or transfer is specifically authorised under this Agreement);

49.5.8 without prejudice to Clause 49.4.7, wherever the Service Provider uses any mobile or portable device for the transmission or storage of TfL Personal Data, ensure that each such device encrypts TfL Personal Data; and

49.5.9 comply during the course of the Agreement with any written retention and/or deletion policy or schedule provided by TfL to the Service Provider from time to time and as set out in Schedule 2 Appendix 11 (Data Retention).

49.6 The Service Provider shall not, and shall procure that any sub-contractor shall not, Process or otherwise transfer any TfL Personal Data in or to any Restricted Countries.

49.7 If, after the Service Commencement Date, the Service Provider or any sub-contractor wishes to Process and/or transfer any TfL Personal Data in or to any Restricted Countries, the following provisions shall apply:

49.7.1 the Service Provider shall submit a written request to TFLsetting out details of the following:

(A) the TfL Personal Data which will be transferred to and/or Processed in any Restricted Countries;

(B) the Restricted Countries which the TfL Personal Data will be transferred to and/or Processed in;

(C) any sub-contractors or other third parties who will be Processing and/or receiving TfL Personal Data in Restricted Countries;

(D) how the Service Provider shall ensure an adequate level of protection and adequate safeguards in respect of the TfL Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the TfL's compliance with Data Protection Legislation;

49.7.2 in preparing and evaluating such a request, the Parties shall refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner in connection with the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;

49.7.3 the Service Provider shall comply with any instructions and shall carry out such actions as the Authority may notify in writing when providing its consent to such Processing or transfers, including:

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

(B) procuring that any sub-contractor or other third party who will be Processing and/or receiving or accessing the TfL Personal Data in any Restricted Countries enters into a data processing agreement with the Service Provider on terms which are equivalent to those agreed between TfL and the Service Provider in connection with the Processing of TfL Personal Data in (and/or transfer of TfL Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in 49.7.4.

49.8 The Service Provider and any sub-contractor (if any), acknowledge:

49.8.1 the importance to Data Subjects and TfL of safeguarding TfL Personal Data and Processing it only in accordance with the TfL's instructions and the Agreement;

49.8.2 the loss and damage TfL is likely to suffer in the event of a breach of the Agreement or negligence in relation to TfL Personal Data;

49.8.3 any breach of any obligation in relation to TfL Personal Data and/or negligence in relation to performance or non performance of such obligation shall be deemed a material breach of Contract;

49.8.4 notwithstanding Clause 61.3 if the Service Provider has committed a material breach under Clause 49.8.3 on two or more separate occasions, TfL may at its option:

(A) exercise its step in rights pursuant to Clause 60;

(B) withdraw authorisation for Processing by a specific sub-contractor by immediate written notice; or

(C) terminate the Agreement in whole or part with immediate written notice to the Service Provider.

49.9 Compliance by the Service Provider with this Clause 49 shall be without additional charge to TfL.

49.10 Following termination or expiry of this Agreement, howsoever arising, the Service Provider:

49.10.1 may Process the TfL Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with Clause 49.10.2

49.10.2 subject to Clause 49.10.1, shall;

(A) on written instructions from TfL either securely destroy or securely and promptly return to TFLor a recipient nominated by TfL (in such usable format as and to the extent TFLmay reasonably require) the TfL Personal Data; or

(B) in the absence of instructions from TfL after 12 months from the expiry or termination of the Agreement securely destroy the TfL Personal Data.

49.11 TfL Personal Data may not be Processed following termination or expiry of the Agreement save as permitted by Clause 49.10.

49.12 For the avoidance of doubt, and without prejudice to Clause 62, the obligations in this Clause 49 shall apply following termination or expiry of the Agreement to the extent the Party concerned retains or Processes TfL Personal Data.

49.13 The indemnity in Clause 47.1 shall apply to any breach of Clause 49 and shall survive termination or expiry of the Agreement.

49.14 **REDACTED**

Privacy and Electronic Communications (EC Directive) Regulations 2003

49.15 The Service Provider shall, and shall procure that its Sub-Contractors, employees and agents shall, comply with the PECED in all contact with Customers.

Freedom of Information Legislation and Environmental Information Regulations

49.16 The Service Provider acknowledges that TfL:

49.16.1 is subject to the FOI Legislation and agrees to assist and co-operate with TfL to enable TfL to comply with its obligations under the FOI Legislation; and

49.16.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider which may include the disclosure of Service Provider Confidential Information pursuant to Clause 74.7.4.

49.17 Without prejudice to the generality of Clause 49.16, the Service Provider shall and shall procure that its Sub-Contractors (if any) shall:

49.17.1 transfer to the Agreement Manager (or such other person as may be notified by TfL to the Service Provider) each Information Access Request relevant to the Agreement, the Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within 2 Business Days of receiving such Information Access Request; and

49.17.2 in relation to Information held by the Service Provider on behalf of TfL, provide TfL with details about and/or copies of all such Information that TfL requests and such details and/or copies shall be provided within 5 Business Days of a request from TfL (or such other period as TfL may reasonably specify), and in such forms as TfL may reasonably specify.

49.18 The Service Provider shall implement and comply with a procedure, agreed with TfL, to handle Information Access Requests in accordance with the requirements of Schedule 2, Appendix 28 (*Information Governance*) and the Performance Indicators specified in Schedule 5.

49.19 TfL shall 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 Access Request in accordance with the FOI Legislation. The Service Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by TfL. Without prejudice to Clause 49.16.2 TfL shall, where reasonably practicable and subject to TfL's obligations to comply with any timetable set out in relevant Law, use reasonable endeavours to consult with the Service Provider before TfL discloses Service Provider Confidential Information in response to an Information Access Request.

Governmental and other requests

49.20 The Service Provider shall inform TfL promptly, and in any event within five (5) Working Days, of any inquiry, communication, request or complaint received from (i) any Governmental, regulatory or supervisory authority, including but not limited to Privacy Authorities, relating to the Services, any Personal Data or any obligations under applicable Law, and will furnish all reasonable assistance to TfL to enable TfL to respond to such inquiries, communications, requests or complaints in accordance with applicable statutory or regulatory deadlines.

49.21 If the Service Provider or any Sub-Processor is required by Law, court order, warrant, subpoena, or other legal judicial process to disclose any Personal Data being processed by it pursuant to this Agreement to any person other than TfL, the Service Provider shall notify TfL and will furnish all reasonable assistance to TfL to enable TfL to respond or object to, or challenge, any such demands, requests, inquiries or complaints in accordance with applicable statutory or regulatory deadlines.

50. HEALTH AND SAFETY

50.1 The Service Provider shall at all times comply with:

50.1.1 all applicable Health and Safety Legislation; and

50.1.2 all decisions, requirements, regulations, orders, instructions, directions or rules relating to health and safety applicable to the provision of the Services.

50.2 The Service Provider shall be responsible for the observance by itself, its staff and Sub-Contractors of all current and relevant health and safety precautions necessary for the

protection of itself, its staff, Sub-Contractors and other persons invited onto or visiting the Premises including all precautions required to be taken by or under any Health and Safety Legislation.

50.3 The Service Provider undertakes to carry out formal risk assessments from time to time of all aspects of the Services in accordance with the requirements of all applicable Health and Safety Legislation and to carry out all testing, examination and other work necessary to minimise and, so far as reasonably practicable, eliminate all risk to health or safety resulting from the performance of the Services or the use of any equipment or materials or other things in connection with the Services.

50.4 The Service Provider will ensure that there will be present at the Service Provider Premises at all times during business hours at least one individual (or such greater number required by law) suitably qualified in first aid and that all necessary first aid supplies are provided by the Service Provider and are adequate for first aid purposes and meet relevant health and safety standards.

50.5 The Service Provider shall strictly comply with, and shall procure that the Service Provider's Personnel strictly comply with, such induction training procedures, safety training procedures and site procedures as are required by Health and Safety Legislation and as TfL may require from time to time.

50.6 In the event that a health or safety risk has arisen or is likely to arise in any part of the sites at or from which the Service Provider provides Services or in the provision of the Services, the Service Provider will notify TfL promptly in writing and will provide TfL with adequate information relating to such risk including any steps and safeguards which the Service Provider proposes to take and observe in order to ensure that the Services are performed safely. The Service Provider shall promptly take such steps and adopt such safeguards.

51. REPRESENTATIONS AND WARRANTIES

51.1 Without prejudice to any other warranties or representations expressed elsewhere in this Agreement or implied by Law, the Service Provider hereby warrants, represents and undertakes to TfL that:

51.1.1 it has full capacity and authority and all authorisations, consents, approvals and permits necessary (including without limitation all necessary shareholder and board approvals) for it to enter into and discharge its obligations under this Agreement and that this Agreement has been executed by a duly authorised representative of the Service Provider and, without limitation to the generality of the foregoing, the Service Provider has the full capacity and authority and all licences and consents necessary to enable it to grant the licences in Clause 39 (*Licensing of Intellectual Property Rights*) and Clause 42 (*Source Code*);

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

51.1.3 the Service Provider is aware of the purpose for which the Services are required and acknowledges that TfL is relying upon the Service Provider's expertise and knowledge in the provision of the Services;

51.1.4 the Service Provider has title, free of all liens and encumbrances, to any Assets that are transferred to TfL pursuant to this Agreement;

51.1.5 the Assets and (without limitation to the generality of the foregoing) all elements of the Service Systems and the Services shall:

(A) be free from material defects, shall be Fit for Purpose for which they are intended and of satisfactory quality; and

(B) conform strictly to the Requirements, all statements and other requirements in this Agreement and shall comply in all respects with any Law which may be in force at the time of delivery;

51.1.6 the Deliverables shall:

(A) be free from material defects, shall be Fit for Purpose for which they are intended and of satisfactory quality;

(B) conform strictly to the Requirements, all statements and other requirements in this Agreement; and

(C) not hinder or prevent TfL's compliance with applicable Laws;

51.1.7 the Service Systems and the Services:

(A) in the case of the Service Systems, are capable of running in combination and interface appropriately with all relevant TfL Systems, Other Service Provider Systems, Systems used by Third Parties;

(B) in the case of Service Systems Interfaces, permit interfacing between: (a) the Services Databases and any other part of the Service Systems; (b) each of the Service Elements; (c) the Service Systems (including without limitation the Services Databases) and Other Service Provider Systems; (d) the Service Systems (including without limitation the Services Databases) and Third Party Systems;

(C) will be Date Compliant and Euro Compliant; and

(D) do not include any Software licensed under an Open Source Licence unless stated as such in Schedule 28 (*Service Provider's Solution*) or agreed in writing by TfL via the Change Control Request Procedure;

51.1.8 the Service Provider has used and shall at all times have in place systems, configurations and processes to prevent Viruses on any part of the Service Systems and use the latest commercially available state of the art Virus protection Software, in accordance with Good Industry Practice, on all Service Systems and parts of the Service Systems;

51.1.9 the Documentation provided by the Service Provider will be, and the Service Provider's Solution is, complete and accurate and suitable and sufficient to enable TfL to enjoy the full benefit of the Services;

51.1.10 any and all information supplied in writing after the date of the OJEU Notice 2012/S 232-381985 by or on behalf of the Service Provider to TfL or to any of its advisers, including but not limited to all responses to the clarification process of the procurement, in connection with the award of contract to the Service Provider and in response to the Invitation to Participate for the provision of Services made by the Service Provider was, at the time it was provided, and, except where superseded by subsequent information supplied to TfL, at the date hereof true and accurate and it shall advise TfL of any fact, matter or circumstance of which it may or has become aware which would render any material statement or representation to be false or misleading;

51.1.11 it has not, prior to or on the date of execution of this Agreement:

(A) committed any act that would constitute non-compliance with Clause 52 (*Ethics, Bribery and Corruption*); or

(B) committed any of the acts referred to in Clause 53.2 (*Fraud*);

51.1.12 the provisions of the Agreement do not put the Service Provider in breach of any other agreements to which it is a Party;

51.1.13 the execution of this Agreement does not contravene the terms of any licence, regulation or other restrictions applicable to the Service Provider; and

51.1.14 the Billing Model is in all material respects accurate and complete.

51.2 If the Service Provider is not the manufacturer of any element of the Service Systems, the Service Provider shall, where practicable and relevant, obtain the same warranties as specified in Clauses 51.1.4, 51.1.5, 51.1.7(C) and 51.1.7(D) from the manufacturer and the

Service Provider shall make the benefit of such warranties as it obtains available to TfL as if they had been given to TfL directly. The Service Provider shall at its own cost assist and cooperate with TfL in making claims under such warranties.

51.3 The warranties specified in Clauses 51.1.4, 51.1.5, 51.1.7 and 51.2 shall survive any inspection, acceptance and payment in respect thereof by TfL and shall inure to the benefit of TfL, its agents, successors in interest and assigns.

51.4 If at any time the Service Provider becomes aware, or TfL or an Other Service Provider notifies the Service Provider, of a failure of all or any part of the Services to comply with the warranties (a **"Warranty Failure"**), without prejudice to any other rights or remedies available to TfL, the Service Provider shall submit a Remedy Plan in relation to such Warranty Failure and comply with Clause 58 in respect of that Remedy Plan.

51.5 For the purposes of construing the warranties and representations in this Clause 51, references to the Services shall include any part of the Services.

51.6 The warranties set out in this Clause 51 shall be deemed repeated as at:

51.6.1 Operational Commencement Date; and

51.6.2 successful implementation of a Change.

51.7 Each warranty and representation shall be construed as a separate warranty or representation and, subject to Clauses 47, 56 (*Relief Events*) and 57 (*Force Majeure*), shall not be limited or restricted by any other term of this Agreement.

51.8 The Service Provider shall be deemed to have full knowledge of the extent and nature of the Requirements and the Services as at the date of this Agreement and to have allowed for all items of work shown upon, described by, or referred to in, this Agreement or which are otherwise necessary to provide such Services and to have gained adequate detail and insight into all such items of work prior to the Effective Date.

51.9 TFL warrants, represents and undertakes to the Service Provider that it has lawful grounds for processing the Personal Data.

52. ETHICS, BRIBERY AND CORRUPTION

52.1 With respect to any of the matters which are the subject of this Agreement or in connection with this Agreement and any matters resulting from it, the Service Provider undertakes that it and its group undertakings and any person acting on its or their behalf, including directors, officers, employees and agents (together, **"Representatives"**), either in private business dealings or in dealings with the public or government sector, directly or indirectly:

52.1.1 have not given, made, offered, or received (or agreed to give, make, offer or receive); and

52.1.2 will not give, make, offer or receive (nor agree to give, make, offer or receive), any payment, gift or other advantage which: (i) would violate any applicable Laws; (ii) was intended to, or did, influence any person to act or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept; (iii) was made to or for a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or (iv) which a reasonable person would otherwise consider to be unethical, illegal or improper, (a **"Corrupt Act"**).

52.2 With respect to any of the matters which are the subject of this Agreement or in connection with this Agreement and any matters resulting from it, the Service Provider undertakes that it and its Representatives will not:

52.2.1 request any action, inaction or services that would violate applicable Laws; or

52.2.2 receive, agree or attempt to receive the benefits of or profits from a crime or any Corrupt Act or agree to assist any person to retain the benefits of or profits from a crime or any Corrupt Act.

52.3 The Service Provider represents that, save as disclosed to TfL, neither it nor any of its Representatives: has been investigated (or is being investigated or is subject to a pending or threatened investigation) or is involved in an investigation (as a witness or suspect) in relation to any Corrupt Act by any law enforcement, regulatory or other governmental agency or any customer or supplier; or has admitted to; or been found by a court in any jurisdiction to have engaged in, any Corrupt Act, or been debarred from bidding for any contract or business; or are Public Officials or persons who might otherwise reasonably be considered likely to assert a corrupt or illegal influence on behalf of TfL. The Service Provider agrees that if, at any time, it becomes aware that any of the representations set out at in this Clause 52.3 is no longer correct, it will notify TfL of this immediately in writing.

52.4 TfL or its nominee shall be entitled to have access to, inspect and audit all invoices and accompanying documents issued by, and the financial books and records of, the Service Provider in order to verify compliance with this Clause 52. The Service Provider undertakes that it will co-operate fully and promptly with any such audit or inspection conducted by or on behalf of TfL pursuant to this Clause 52.4.

52.5 The Service Provider undertakes that it and its Representatives will report to TfL, where permitted by law, any suspected violations of Corruption Law in connection with any matters to which this Agreement relates (which for the avoidance of doubt includes acts or omissions which may affect directly or indirectly TfL or any member of the TfL Group). The Service Provider consents to TfL making any disclosures of this information as may reasonably be required, provided that, to the extent it is legally permitted to do so, where TfL intends to so disclose gives the Service Provider reasonable notice of this disclosure and, where notice of disclosure is not prohibited and is given in accordance with this Clause 52.5 it takes into account the reasonable request of the Service Provider in relation to the content of such disclosure.

52.6 The Service Provider undertakes to fully and effectively indemnify, keep indemnified and hold harmless each member of the TfL Group from and against all Losses (including all Losses, suffered or incurred in investigating, settling or disputing any action (actual or potential) and/or seeking advice as to any such action (actual or potential)) which any of them may suffer or incur or which may be brought against any of them in any jurisdiction arising, directly or indirectly, out of, in respect of, or in connection with any alleged or actual violations of any Corruption Law.

52.7 Without prejudice to any other express remedies referred to elsewhere in this Agreement or any remedies available at law or in equity, in the event of a breach by the Service Provider of any of the undertakings contained in this Clause 52, TfL may terminate this Agreement:

52.7.1 if the Service Provider refuses to take any actions reasonably requested by TfL (i) to reduce the risk of any further breach of this Clause 52 or (ii) to remedy or address the consequences of the breach that has occurred;

52.7.2 if such breach involves a Corrupt Act by the Service Provider or its Representatives; or

52.7.3 if TfL reasonably concludes that it should terminate this Agreement to ensure that it is in compliance with Corruption Law.

53. FRAUD

53.1 If any fraudulent activity comes to the attention of the Service Provider in relation to the Schemes or the Services, the Service Provider shall notify TfL by the most expeditious means available. The Service Provider shall then co-operate in the investigation of such fraudulent activity and shall implement any necessary changes to the procedures or working practices employed in the provision of the Services as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised.

53.2 In the event of any fraudulent activity on the part of the Service Provider, its agents, employees or Sub-Contractors, TfL shall have the right to terminate this Agreement in accordance with Clause 61 (*Termination*) and to recover from the Service Provider any cost, loss, liability or damage incurred or suffered by TfL as a result of, or which would not have arisen but for, such fraudulent activity provided that, in the case of fraudulent activity on the part of employees or Sub-Contractors such termination right shall only be exercisable in the event that either: (i) the Service Provider has not taken action which TfL, acting reasonably, considers appropriate, in relation to the relevant employee or relevant Sub-Contractor; or (ii) such cost, loss, liability or damage arose due to or was contributed to by, the negligence or material default of the Service Provider or a Sub-Contractor.

54. PREMISES

The Parties shall comply with the provisions of Schedule 18 (*Premises*).

55. ASSETS

55.1 The Service Provider shall maintain the Asset Register in accordance with the provisions of Schedule 12 (*Asset Management*) and shall comply with its other obligations set out in that Schedule.

55.2 The Service Provider shall:

55.2.1 ensure that all Assets are (without limiting Clause 19 (*Systems, Support and Maintenance*)) at all times housed, maintained and operated in accordance with Good Industry Practice and, without limiting the generality thereof, the relevant manufacturer's recommendations;

55.2.2 ensure that all Assets that the Service Provider and its Sub-Contractors acquire or use are subject to appropriate written legally binding contracts (including but not limited to any relevant guarantees, warranties, licences, equipment rental or lease agreements) (**"Asset Agreements"**), which:

(A) permit the Service Provider to use such Assets for the purposes set out in this Agreement; and

(B) provide all necessary maintenance and support in respect of the Assets to permit the Service Provider to comply with its obligations under this Agreement;

55.2.3 use all reasonable endeavours to procure that the Asset Agreements (excluding the Cloud Agreements) relating to Service Provider Assets are assignable or transferable to TfL at no additional cost to TfL;

55.2.4 take all steps reasonably necessary to ensure that the Asset Agreements are not breached or terminated; and

55.2.5 if, notwithstanding the Service Provider's compliance with Clause 55.2.2, any Asset Agreement is terminated, enter into or procure a suitable replacement for such Asset Agreement on similar terms in accordance with this Agreement to ensure that the Service Provider continues to receive no less a standard of maintenance and support as the Service Provider enjoyed under such Asset Agreement.

55.3 In no event shall the Service Provider be entitled to claim relief from its obligations under this Agreement due to defective or unsatisfactory performance of the Assets, except where such defective or unsatisfactory performance is directly due to the occurrence of a Force Majeure Event and the Service Provider has complied with the provisions of Clause 57 (*Force Majeure*) in respect of such Force Majeure Event.

55.4 On TfL's express written notice the Service Provider shall promptly dispose of TfL Assets specified in such notice and shall account to TfL for the proceeds.

55.5 The Service Provider shall comply with relevant Laws and the Security Plan when disposing of Assets and parts of Assets which it has replaced as part of the Services.

55.6 The Service Provider shall keep and maintain a record of configurations of equipment, routers, servers and similar Hardware and Systems used by it in the Service Systems (**"Configuration Records"**). The Service Provider shall promptly update and provide TfL with a copy of such Configuration Records:

55.6.1 on request; and

55.6.2 on termination or expiry of this Agreement or Partial Termination during the Hand Back Period.

55.7 The Configuration Records shall be maintained as part of the Asset Register.

56. RELIEF EVENTS

56.1 The Service Provider shall, in accordance with this Clause 56, be entitled to claim relief from failure to perform its obligations under this Agreement if, and only to the extent that, the Service Provider can demonstrate to TfL's reasonable satisfaction that:

56.1.1 the failure results from TfL or an Other Service Provider not complying with an express dependency attributed to TfL under this Agreement, the Implementation Plan or a Remedy Plan (as the case may be) (a **"Dependency Failure"**);

56.1.2 it has provided TfL with:

(A) advance written notice of the circumstances which led to such Dependency Failure, at the earliest possible time, so as to allow TfL to attempt to prevent that Dependency Failure; or

(B) (where the Dependency Failure was not reasonably foreseeable) with prompt written notice of the Dependency Failure to give TfL (where possible) a reasonable opportunity to remedy or to mitigate the impact of the Dependency Failure (such notice in all cases being served at the earliest time reasonably possible and in any event within three (3) Working Days of the Service Provider becoming aware of such Dependency Failure);

56.1.3 it has complied with its obligations under Clause 12, 15 and 20 in respect of the co-ordination with and management of dependencies on TfL and Other Service Providers; and

56.1.4 it has used or will use (as appropriate) all reasonable endeavours to perform its obligations under this Agreement notwithstanding the Dependency Failure and has mitigated (or will mitigate) as far as possible the impact of the Dependency Failure on the provision of the Services,

(such circumstances being a **"Relief Event"**).

56.2 Subject to Clause 56.4, the Service Provider may claim compensation in respect of a Relief Event if, and only to the extent that:

56.2.1 the Service Provider can demonstrate to TfL's reasonable satisfaction that the Dependency Failure caused the Service Provider to incur Incremental Costs in its delivery of the Services;

56.2.2 the Service Provider has provided TfL with written notice of such Incremental Costs as soon as is reasonably possible and in accordance with the following process:

(A) concurrently with the notice it issues pursuant to Clause 56.1.2 the Service Provider shall provide TfL with:

(1) such details of the Incremental Costs as are reasonably available to the Service Provider as at such date;

(2) to the extent that the Service Provider is not able to assess the full extent of the Incremental Costs at such date:

(a) a non-binding estimate of when it will be able to assess the full extent of the amount of Incremental Costs;

(b) a non-binding estimate of such Incremental Costs (if reasonably practicable);

(B) the Service Provider shall provide regular written updates to TfL in relation to such Implementation Costs on the same basis as Clause 56.2.2(A) and no less frequently than every two (2) weeks (and at any other time requested by TfL); and

(C) final details of such Incremental Costs on or before the date which is five (5) Working Days after the cessation of the relevant Dependency Failure.

56.2.3 the Service Provider has taken all reasonable steps to mitigate such Incremental Costs and has consulted with TfL in relation to such steps; and

56.2.4 TfL has approved in writing the actual Incremental Costs,

(such approved, actual Incremental Costs being the "**Relief Event Costs**" associated with that Relief Event).

56.3 If a Relief Event has occurred:

56.3.1 TfL shall give the Service Provider such relief from its obligations under this Agreement, as TfL may (acting reasonably) direct, following consideration of the relief proposed by the Service Provider;

56.3.2 each Party shall act reasonably in relation to the identification, consideration and approval of potential Relief Event Costs identified by the Service Provider pursuant to Clause 56.2;

56.3.3 the Service Provider shall provide TfL with all information reasonably requested by TfL in relation to any claim for Relief Event Costs (including any supporting financial data, management information and evidence of relevant resource utilisation);

56.3.4 TfL shall pay the Relief Event Costs:

(A) monthly, in arrears following an invoice for the same submitted by the Service Provider via the Billing Model in accordance with Schedule 7 (*Charging & Operational Pricing*); and

(B) to the extent such costs relate to incremental man days' effort by Supplier Personnel, at the relevant Day Rates for such personnel; and

56.3.5 any change to the Implementation Plan shall be considered and implemented in accordance with the Change Control Request Procedure in a manner consistent with the following principles:

(A) if the delay to a Milestone is caused by TfL or an Other Service Provider:

(1) the Milestone Date for such Milestone shall be changed to such later date as is reasonable and proportionate in the circumstances (with the period between the original date and the revised date being equal to or less than the delay to the relevant dependency being met);

(2) if an On-Time Delivery Payment is associated with that Milestone then such On-Time Delivery Payment shall continue to apply to such Milestone in accordance with paragraph 8 of Schedule 3 *(Milestones and Deliverables*); and

(3) if the Milestone has not been Accepted within the two (2) months following the original Milestone Date (i.e. the relevant date for that Milestone in the Implementation Plan prior to its amendment pursuant to this Clause 56.3.5) and such delay was not caused by the Service Provider, then TfL will (acting reasonably)

determine and pay a partial payment of the Milestone Payment which reflects the Service Provider's work in relation to such the Milestone as at such date (and the remainder of the Milestone Payment shall be payable by TfL in accordance with Clause 24 when the Milestone is Accepted).

(B) if the delay to a Milestone is caused by the Service Provider and the Milestone Date for such Milestone is changed to a later date, any On-Time Delivery Payment previously associated with that Milestone shall cease to be available (unless TfL exercises its discretion under paragraph 8.2 of Schedule 3 (*Milestones and Deliverables*) to make some or all of such payment available).

56.4 Any change to the Services or the Service Systems following a Relief Event shall be considered and implemented as a Change in accordance with the Change Control Request Procedure and accordingly the Service Provider shall not be entitled to receive Relief Event Costs in respect of such Change (as instead the Service Provider will, to the extent determined pursuant to the Change Control Request Procedure, receive Service Charges and/or One-off Charges in relation thereto).

56.5 If the Parties disagree as to the application of this Clause 56, the Parties shall resolve such disagreement in accordance with the Dispute Resolution Procedure.

56.6 For the purpose of this Clause 56, the Service Provider's **"Incremental Costs"** in relation to a Relief Event are the Service Provider's costs which:

56.6.1 are caused by the Relief Event; and

56.6.2 exclude:

(A) any costs or expenses which have already been taken into account in the calculation of the Service Charges;

(B) any costs or expenses which relate to activities which were already within the scope of the Service Provider's activities pursuant to this Agreement prior to such Dependency Failure (including activities which were taken into account in the Implementation Plan), irrespective of whether such costs had in fact been incurred by the Service Provider prior to such Dependency Failure;

(C) any costs which can reasonably be avoided by the Service Provider using its then-current resources covered by the existing Service Charges during Working Hours;

(D) any costs or expenses which are not reasonably and properly incurred by the Service Provider;

(E) any costs or expenses which relate to the Service Provider's compliance with its obligations under Clauses 12, 15 and 20 in respect of the co-ordination with and management of dependencies on TfL and Other Service Providers;

(F) any costs or expenses to the extent that they are increased due to the Service Provider's failure to comply with its obligations under this Agreement, including its obligations under Clauses 12, 15 and 20;

(G) any contingent costs or expenses (i.e. costs or expenses that may or may not be incurred by the Service Provider depending on a future event), until such cost or expense ceases to be contingent (i.e. is actually incurred);

(H) any loss of use, loss of contract, loss of goodwill and/or any indirect or consequential loss; and

(I) without prejudice to Clause 56.3.4(B), any loss of profit or loss of revenue (save that TfL acknowledges that fees or charges paid by the Service

Provider to a Third Party pursuant to an existing contract between such parties may include the Third Party's normal margin in accordance with such contract),

provided that the total Incremental Costs for a Relief Event shall be reduced by any amounts described in Clause 56.7.

56.7 The total Incremental Costs for a Relief Event shall be reduced by:

56.7.1 any savings made by the Service Provider as a result of the Relief Event;

56.7.2 any compensation received by the Service Provider from any other person pursuant to the occurrence of the Relief Event; and

56.7.3 any insurance proceeds received by the Service Provider attributable to the occurrence of the Relief Event.

57. FORCE MAJEURE

57.1 Subject to Clause 57.3, neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other as a result of any delay or failure in the performance of its obligations under this Agreement if and to the extent that such delay or failure is due to the occurrence of a Force Majeure Event.

57.2 If the Service Provider alone is affected by the Force Majeure Event, TfL shall be relieved from any obligation to make payments to be provided under this Agreement to the Service Provider for so long as the same continues, except in respect of Services which have been actually supplied.

57.3 The Service Provider shall not be entitled to rely on Clause 57.1 if and to the extent that the Service Provider has failed to comply with the Business Continuity Plan.

57.4 A Party whose performance of its obligations under this Agreement is delayed or prevented by a Force Majeure Event:

57.4.1 shall forthwith notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event. As soon as possible following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effect of the Force Majeure Event and facilitate the continued performance of the Agreement;

57.4.2 shall use all reasonable endeavours in accordance with Good Industry Practice to minimise the effect of the Force Majeure Event on its performance of its obligations under this Agreement including:

(A) compliance with the Business Continuity Plan (in the case of the Service Provider); and

(B) the making of any alternative arrangements for resuming the performance of its obligations which may be practicable without incurring material additional expense; and

57.4.3 shall forthwith after the cessation of the Force Majeure Event, notify the other Party thereof and resume full performance of its obligations under this Agreement.

57.5 If a Force Majeure Event occurs before the Operational Commencement Date and if the Service Provider has complied with its foregoing obligations under this Clause 57, then subject to Clause 57.6, the Planned Operational Commencement Date shall be postponed by such time as shall be reasonable for such a Force Majeure Event, taking into account the likely effect of delay.

57.6 If, on the expiry of ten (10) Working Days after the occurrence of a Force Majeure Event where the Service Provider is the affected Party, the Force Majeure Event is continuing and has a material adverse effect on the Service Provider's performance of all or substantially all of the Services then, for as long as such Force Majeure Event continues

and has that effect, TfL may terminate this Agreement in its entirety or may Partially Terminate in accordance with Clause 61 (*Termination*).

57.7 If:

57.7.1 on the expiry of six (6) months after the occurrence of a Force Majeure Event where TfL is the affected Party and the Force Majeure Event is such that it prevents TfL from making payments to the Service Provider under this Agreement; or

57.7.2 TfL has been relieved from making payments to the Service Provider pursuant to Clause 57.2 for a period in excess of eight (8) months,

the Service Provider may terminate this Agreement in its entirety.

58. REMEDY PLANS

58.1 If:

58.1.1 a Milestone has not been Accepted on or before the relevant Milestone Date;

58.1.2 having exercised its Assurance Rights in respect of a Deliverable, TfL is not satisfied with the Service Provider's response to such exercise (as required pursuant to paragraph 9.2 of Schedule 3 (*Milestones and Deliverables*);

58.1.3 the Services do not meet the Requirements;

58.1.4 the Service Provider does not provide the Services in a manner consistent with the Service Provider's Solution;

58.1.5 the Services do not meet the Service Levels;

58.1.6 the Service Provider otherwise fails to comply with its obligations under this Agreement,

(each, a **"Service Provider Failure"**),

the Service Provider shall, if requested by TfL and without prejudice to any other rights or remedies of TfL under this Agreement or at law, forthwith (and in any event within five (5) Working Days of such failure) deliver to TfL's Contract Manager, for Approval by TfL, a plan to remedy such Service Provider Failure which complies with Clause 58.2 (a **"Remedy Plan"**).

58.2 The Service Provider shall ensure that each Remedy Plan specifies:

58.2.1 the relevant Service Provider Failure and the steps the Service Provider will take to address such Service Provider Failure;

58.2.2 the reasons for the relevant Service Provider Failure;

58.2.3 a date by which the relevant Service Provider Failure is to be rectified;

58.2.4 which Services, Requirements, PIs or other obligations are or may be affected and, in the reasonable opinion of the Service Provider, the extent to which they are affected;

58.2.5 any measures which the Service provider proposes to adopt to mitigate the consequences of, including all Losses in relation to, the relevant Service Provider Failure;

58.2.6 for each outstanding Incident or Defect relating to such Service Provider Failure:

(A) a summary of the Incident or Defect (as the case may be);

(B) a Severity Level for the Incident or Defect (as the case may be);

(C) a workaround for the Incident or Defect (as the case may be), together with a plan for the withdrawal of such workaround;

(D) the planned date for correction of the Incident or Defect (as the case may be) (and any associated Testing);

58.2.7 any proposed Changes which the Service Provider considers necessary to remedy the relevant Service Failure(s);

58.2.8 any proposed changes to the Services or the Service Systems which the Service Provider considers necessary to remedy the relevant Service Failure(s) and which are not Changes;

58.2.9 if the Service Provider claims a Relief Event in respect of the relevant Service Failure, a full summary of the basis for such claim in accordance with Clause 56.

58.3 In relation to each Remedy Plan, the Service Provider shall:

58.3.1 amend the Remedy Plan as necessary until such Remedy Plan is Approved by TfL;

58.3.2 implement and comply with the Approved Remedy Plan;

58.3.3 comply with TfL's reasonable instructions in connection with the Approved Remedy Plan.

58.4 The Service Provider shall use its reasonable endeavours to accelerate preparation of the Remedy Plan at the TfL's request if TfL considers that the consequences of the relevant Service Provider Failure are sufficiently detrimental to warrant such acceleration.

58.5 The preparation and implementation of Remedy Plans shall be a standing agenda item in meetings of the Strategic Review Group.

59. ENHANCED CO-OPERATION

59.1 If a Service Provider Failure:

59.1.1 is not resolved; or

59.1.2 in TfL's reasonable opinion is unlikely to be resolved,

by the Service Provider's implementation of a Remedy Plan (such circumstances being an **"Enhanced Co-operation Event"**) then the Service Provider shall, as directed by TfL and at no additional cost to TfL:

59.1.3 provide all necessary assistance, information and cooperation requested by TfL in connection with the remedy of the Enhanced Cooperation Event;

59.1.4 devote additional resources and Personnel to the resolution of the Enhanced Cooperation Event;

59.1.5 permit TfL to attend the Service Provider's Premises upon notice and during Working Hours to observe and monitor the Service Provider's implementation of the Remedy Plan;

59.1.6 notify TfL of internal meetings of the Service Provider in which the Service Provider Failure is discussed and give TfL the opportunity to attend such internal meetings;

59.1.7 copy TfL in on all electronic communications made by the Service Provider in relation to the Service Provider Failure;

59.1.8 report to TfL on its implementation of the Remedy Plan;

59.1.9 make any changes to the Remedy Plan which the TfL considers are necessary to remedy the Enhanced Cooperation Event,

(TfL's rights under this Clause 59.1 being its **"Enhanced Co-operation Rights"** in relation to such Enhanced Co-operation Event).

59.2 For the avoidance of doubt, TfL may exercise its Enhanced Co-operation Rights pursuant to Clause 59.1.2 prior to the completion of the relevant Remedy Plan (if in its opinion the Service Failure is unlikely to be remedied by the Service Provider's activities under the Remedy Plan).

59.3 The Service Provider shall consult and cooperate with any third party nominated by TfL in relation to the exercise of its Enhanced Cooperation Rights.

59.4 The Service Provider shall indemnify TfL for all reasonable incremental costs, liability and expenses incurred by TfL in relation to the resolution of an Enhanced Co-operation Event, including any amounts paid or payable by TfL to the third parties it engages in relation thereto.

59.5 TfL shall cease exercising its Enhanced Cooperation Rights upon the resolution of the Enhanced Cooperation Event (or at such earlier time as TfL notifies to the Service Provider in writing). Notwithstanding such cessation, the Service Provider shall continue to implement any Remedy Plan which is still in effect on such date.

59.6 TfL's exercise of its Enhanced Co-operation Rights shall not prejudice the Service Provider's obligation to satisfactorily and expeditiously resolve any Service Provider Failure.

59.7 TfL's exercise of its Enhanced Co-operation Rights shall not prejudice the Service Provider's ability to recover Relief Event Costs in accordance with Clause 56 in relation to a Relief Event associated with an Enhanced Co-operation Event.

60. STEP-IN

60.1 Without prejudice to any other right or remedy of TfL under this Agreement, if TfL (acting reasonably) considers that:

60.1.1 TfL is entitled to terminate this Agreement pursuant to paragraph 6.2(A) of Schedule 3 (*Milestones and Deliverables*)

60.1.2 there is a Material Service Level Failure or Continuous Service Breach;

60.1.3 an Insolvency Event has occurred;

60.1.4 the Service Provider has committed a material breach or Persistent Breach of this Agreement;

60.1.5 an Enhanced Co-operation Event has occurred and the Service Provider has failed to remedy such circumstances within thirty (30) days, or such other period as agreed by the Parties, of such event;

60.1.6 the Service Provider has failed to comply with the terms of the Exit Plan;

60.1.7 TfL is entitled to exercise its Step-In Rights pursuant to Clause 45 (*Security*);

60.1.8 a Business Continuity Event has occurred and has continued, or in TfL's opinion is likely to continue, for a period of more than five (5) Working Days and the Service Provider has either not implemented the Business Continuity Plan or has implemented such plan (in whole or in part) but Business Continuity has not been achieved;

60.1.9 TfL needs to do so in order to discharge any part of its statutory duties;

60.1.10 there is a Force Majeure Event which affects the Services; and/or

60.1.11 there is a Change in Law which renders performance of a material part of the Service Provider's obligations under this Agreement illegal,

TfL may serve notice in writing on the Service Provider (a **"Step-In Notice"**) specifying:

60.1.12 which of the above circumstances applies;

60.1.13 the action TfL intends to take and the reason for such action;

60.1.14 the date on which TfL intends to commence such action which, for the avoidance of doubt, may be the date that the Step-In Notice is served; and

60.1.15 the time period which it believes will be reasonably necessary for such action.

60.2 At any time after TfL has issued a Step-In Notice, TfL may, for such period as TfL deems necessary, itself take such action, or appoint one or more Third Parties to take such action

(and any consequential additional action as it believes necessary) as TfL considers appropriate (each, a **"Step-In Action"**). Without limitation to the generality of the foregoing, a Step-in Action may (subject to Clause 60.20) include:

60.2.1 taking over any or all or any part of the Services as specified in the Step-In Notice. If and to the extent that TfL expressly in the Step-In Notice confirms that it is taking over such Services, the obligation of the Service Provider to provide such Services shall be suspended as specified in the Step-In Notice. The Service Provider shall continue to provide the Services which are not the subject of the Step-In Action in accordance with the provisions of the Agreement;

60.2.2 entering the Service Provider Premises (and the Service Provider shall procure that TfL and any Third Party engaged by TfL is able to enter upon the Premises at no cost to TfL or to such Third Party);

60.2.3 having access to, and the right to use, any of the Service Systems and all records, documents (including but not limited to Documentation) and Data relevant to the provision of the Services;

60.2.4 using and accessing any Service Provider Assets or Third Party Assets for which the Service Provider or its Sub-Contractors are able to grant rights to use (including, without limitation, Third Party Software), and to use, test, operate and do all such things as may be required by TfL in respect of those Assets. The Service Provider hereby grants to TfL and any Third Party engaged by TfL (and shall procure that its Sub-Contractors shall grant) such rights as are necessary for TfL or any Third Party to exercise its rights under this Clause 60; and/or

60.2.5 doing all other things that TfL deems necessary for the purposes of taking such Step-In Action (**"Arrangements"**) and, unless and until a Step-Out Notice is served on the Service Provider by TfL, the Service Provider shall not do, permit to be done, omit to do or permit not to be done, anything which will or may terminate or breach the terms of such Arrangements.

60.3 If TfL wishes to engage the services of any Third Party to assist it in the performance of the Step-in Action, TfL shall notify the Service Provider of such Third Party. If such Third Party is to be granted access to any Confidential Information of the Service Provider, TfL shall procure that the Third Party enters into a confidentiality agreement in favour of the Service Provider prior to being engaged in any Step-in Action.

60.4 A Step-In Notice may be served and Step-In Action taken by TfL at any time, whether before, during or after the service of a notice of termination or a Partial Termination Notice pursuant to this Agreement.

60.5 The Service Provider shall co-operate fully with TfL in relation to any Step-in Action and shall provide all requested assistance for the purposes of or relating to the Step-In Action including:

60.5.1 providing access to or copies of Data and such other financial, operational, management or other information as requested by TfL relevant to the provision of the Services; and

60.5.2 procuring the prompt assistance and availability of all relevant Service Provider Personnel.

60.6 In relation to each Step-In Action (save for a Step-in Action taken pursuant to Clauses 60.1.1, 60.1.9, 60.1.10 or 60.1.11) the Service Provider shall indemnify TfL for all expense, cost, liability, loss, damage, actions, demands, claims or proceedings (including all legal fees and expenses on a full indemnity basis) which TfL incurs or suffers in relation to such Step-In Action (including reasonably allocated overheads and other internal costs and all advisers and legal fees).

60.7 In relation to each Step-In Action taken pursuant to Clauses 60.1.1, 60.1.9, 60.1.10 or 60.1.11, TfL shall meet its own costs of taking the Step-In Action and shall reimburse the Service Provider for all reasonable costs incurred by the Service Provider in assisting TfL

in relation such Step-In Action (provided that the Service Provider has provided and continues to provide TfL with its full co-operation and assistance pursuant to Clause 60.5). Such reimbursement amounts shall be included in the Service Provider's monthly Invoice, with each item requiring reimbursement separately identified. TfL shall otherwise have no liability whatsoever to the Service Provider or any Sub-Contractor as a result of any such Step-In Action provided that it uses reasonable skill and care when conducting such Step-In Action (taking into account the circumstances of the Step-In Action).

60.8 For so long as the Step-in Action is taken and the Service Provider complies with Clause 60.5, the Service Provider shall continue to be paid the Service Charges, against which the following shall be set-off:

60.8.1 an amount corresponding to the mean level of the Service Failure Deductions which were payable in the three (3) months prior to the Step-In Action being taken;

60.8.2 all other deductions which TfL is entitled to make from such Charges under this Agreement; and

60.8.3 all costs and expenses due in accordance with Clause 60.6 (if applicable).

60.9 If and to the extent that the aggregate deductions referred to in Clauses60.8.1, exceed the aggregate amount of Service Charges (and any sums payable under Clause 60.7 which are due), the Service Provider shall promptly upon demand pay to TfL a sum equal to the difference.

60.10 Neither TfL nor any Third Party engaged by TfL in accordance with this Clause 60 shall have any liability to the Service Provider for any damage which is caused by the Service Provider's action or inaction prior to the date specified in TfL's Step-In Notice for commencement of Step-In Action.

60.11 Without prejudice to TfL's right to exercise its Step-In Rights and/or its continuing right to remain stepped-in once Step-In Action has been taken:

60.11.1 the Service Provider shall, if requested to do so in the Step-In Notice or as notified to the Service Provider by TfL from time to time during the period of Step-In Action, promptly develop and put forward to TfL proposals demonstrating that the Service Provider is and will continue to be capable of providing the Services in respect of which Step-In Action has been, or may be, taken together with what steps, if any, the Service Provider proposes taking;

60.11.2 upon receipt of the Service Provider's proposals, TfL may, if TfL in its sole discretion deems it appropriate, subject to such conditions as TfL deems appropriate and in any event without prejudice to TfL's rights under this Clause 60, permit the Service Provider to continue to perform or recommence, as appropriate, performance of all or part of the Services in respect of which the Step-In Action has been taken;

60.11.3 any permission given under Clause 60.11.2 shall be set out in a notice to the Service Provider (a **"Step-Out Notice"**) informing the Service Provider that from the date specified in such Step-Out Notice, the Service Provider shall continue to perform or recommence performance, as appropriate, of all or part of the Services in respect of which the Step-In Rights were exercised and TfL will withdraw its own personnel (and any personnel of Third Parties appointed by TfL as referred to in Clause 60.2) from such parts of the Services as the Service Provider is to recommence performance. The Service Provider shall resume full performance of and responsibility for the provision of such parts of the Services from the date specified in the Step-Out Notice;

60.12 Notwithstanding the foregoing, TfL may, at its sole discretion, decide at any time that it is inappropriate for TfL to continue with its Step-In Action or that the grounds for the exercise of its rights under Clause 60.2 no longer exist in respect of all or any part of the suspended Services and may serve a Step-Out Notice specifying:

60.12.1 the parts of the Services in respect of which the Service Provider is to resume full performance; and

60.12.2 the date on which the Service Provider's provision of and responsibility for such Services is to resume.

60.13 TfL may issue more than one Step-Out Notice in relation to Services affected by a single Step-In Notice and TfL may require the Service Provider to recommence the provision of suspended Services in their entirety, partially or gradually.

60.14 The Service Provider shall comply fully with the terms of any Step-Out Notice.

60.15 Without prejudice to any other rights TfL may have to terminate this Agreement, TfL shall be entitled in its sole discretion to terminate this Agreement:

60.15.1 in the event that TfL exercises its Step-In Rights for a continuous period of three (3) months or more; and/or

60.15.2 once the total of all periods during which TfL exercises its rights equals or exceeds twelve (12) months in aggregate.

60.16 References (however worded) in this Clause 60 to any steps or action being taken by TfL under this Clause 60 are references to such steps or action being taken either by TfL itself or by persons engaged by TfL for that purpose.

60.17 The issuing of a Step-In Notice and taking of Step-In Action by TfL:

60.17.1 shall not give the Service Provider the right to terminate this Agreement; and

60.17.2 shall be without prejudice to TfL's right to terminate this Agreement or to Partially Terminate in accordance with Clause 61 (*Termination*), whether the event permitting TfL to do so arose before, on or after the date of the Step-In Notice.

60.18 TfL shall not be liable for any cost, loss, damage or claim suffered or incurred by the Service Provider or any Sub-Contractor arising from any deterioration in any elements of the Assets and the Services operated by it whilst taking the Step-in Action provided that TfL shall operate such Assets and Services in a reasonable manner (taking into account the circumstances of the Step-In Action).

60.19 TfL shall use reasonable endeavours not to disturb or adversely affect the provision of the Services more than is required for the purposes of the Step-in Action.

60.20 TfL acknowledges and agrees that, in relation to the Cloud Assets and Cloud Premises, the Step-In Action may include a requirement on the Service Provider to act on the instructions of TfL provided that such instructions shall not cause the Service Provider to breach the Cloud Agreement (subject to Capita reasonably demonstrating that such instruction would breach the Cloud Agreement), but shall not require any direct access to or use by TfL (or by any Third Party on behalf of TfL) of any such Cloud Assets or Cloud Premises.

61. TERMINATION

Termination by the Service Provider

61.1 Without prejudice to the other rights or remedies it may have, the Service Provider may serve a notice in writing on TfL to terminate this Agreement with effect from thirty (30) Working Days of receipt by TfL of such notice if TfL fails to comply with any of its payment obligations hereunder relating to any undisputed sum in excess of £2,000,000 (two million pounds sterling) where payment has fallen due and payable and TfL fails to remedy such breach within ninety (90) calendar days after receipt of formal written notice from the Service Provider demanding payment.

61.2 The Service Provider may only terminate this Agreement in accordance with the provisions of Clause 61.1 or Clause 57.7 and must fully specify in any notice of termination the details of the event which has occurred entitling the Service Provider to terminate.

Termination by TfL of the Agreement

61.3 Without prejudice to any other rights or remedies it may have, TfL may terminate this Agreement by notice to the Service Provider with immediate effect (or effective from such date as TfL may specify in such notice) upon the occurrence of any of the following events or circumstances:

61.3.1 a Change of Control of the Service Provider and/or Guarantor (other than as a result of a consolidation, amalgamation, merger or solvent reconstruction of the Service Provider's Group) provided that TfL serves the notice of termination within sixty (60) calendar days of the date of receipt of notice from the Service Provider of the relevant Change of Control;

61.3.2 the Service Provider commits one or more material breaches or Persistent Breaches of (i) this Agreement, (ii) the BOps Services Agreement or (iii) any other agreement that it has entered into with TfL pursuant to this Agreement or the BOps Services Agreement;

61.3.3 a Guarantor commits one or more material breaches or Persistent Breaches of (i) a Guarantee or (ii) any other agreement that it has entered into with TfL pursuant to this Agreement or the Guarantee or (without limitation to the foregoing) any other event giving rise to a right for TfL to terminate a Guarantee has occurred;

61.3.4 if any of the representations or warranties set out in Clause 51 (*Representations and Warranties*) of this Agreement or set out in a Guarantee prove to have been inaccurate or incorrect when made or at the date hereof or of the relevant Guarantee (as appropriate), which materially adversely affect the provision of the Services or the operation of the Schemes;

61.3.5 the Service Provider commits any material breach of Clause 28 (*Revenue*) or of the provisions of Schedule 32 (*Revenue Collection and Payment*) which results in TfL incurring financial loss;

61.3.6 any falsification of Data or Personal Data, any non-compliance with Clause 49 (*Information Compliance*), or failure to comply with a provision of this Agreement that causes Data to be corrupted, in each case by the Service Provider, its Sub-Contractors or their respective agents or employees where such falsification, non-compliance or failure:

(A) is not dealt with to TfL's reasonable satisfaction;

(B) arose due to or was contributed to by, the negligence, wilful default or material default of the Service Provider or a Sub-Contractor; or

(C) adversely impacts the operation or integrity of the Schemes;

61.3.7 a breach of Clause 45 (*Security*) which:

(A) has an adverse effect on the operation or integrity of the Schemes; or

(B) is not remedied to TfL's reasonable satisfaction;

61.3.8 there is a Material Service Level Failure or Continuous Service Breach;

61.3.9 an Insolvency Event affecting the Service Provider or a Guarantor occurs;

61.3.10 there is a Change in Law, other than a change in TfL policy, which renders operation of the Schemes (or one of them) wholly or partly illegal or if the Schemes (or one of them) is cancelled or terminated by an authority (including but not limited to the Mayor) other than TfL;

61.3.11 a Business Continuity Event has occurred and has continued, or in TfL's opinion is likely to continue, for a period of more than twelve (12) hours and the Service Provider has either not implemented the Business Continuity Plan (if required under this Agreement) or has failed to implement such plan (in whole or in part) such that the standard of Services provided is not in all material respects

equivalent to (or better than) the standards to which the Services were provided immediately prior to the System Failure occurring);

61.3.12 there has been a material Diversity Infraction which is not dealt with to TfL's reasonable satisfaction (including but not limited to the Service Provider taking such steps as may be required by Law and appropriate disciplinary or other steps);

61.3.13 breach by the Service Provider of Clause 67 (*London Living Wage*) which is not remedied within thirty (30) days;

61.3.14 as expressly provided for in the following provisions:

(A) paragraph 6.2(B) of Schedule 3 (*Milestones and Deliverables*);

(B) Clause 41.10 (*Intellectual Property Rights Indemnity*);

(C) Clause 48.13 (*Insurance*);

(D) Clause 49.8.4(C) (*Information Governance*);

(E) Clause 52.7 (*Corrupt Gifts or Payment*);

(F) Clause 53.2 (*Fraud*);

(G) Clause 57.6 (*Force Majeure*);

(H) Clause 60.15 (*Step-In*);

(I) Clause 75.3 (*Assignment*);

(J) Clause 81.3 (*Conflict of Interest*); and/or

(K) Clause 82.2 (*Change of Control and Change of Ownership*);

61.3.15 as otherwise expressly provided for in this Agreement; and/or

61.3.16 without prejudice to the Parties' other rights and remedies under this Agreement, TfL may in its sole discretion (without any obligation to provide any reasons therefore) terminate this Agreement:

(A) at the Three Year Break Point by giving not less than twelve (12) months' written notice to the Service Provider in advance of the Three Year Break Point; or

(B) at the Four Year Break Point by giving not less than twelve (12) months' written notice to the Service Provider in advance of the Four Year Break Point.

(C) at the Eight Year Break Point by giving not less than twelve (12) months' written notice to the Service Provider in advance of the Eight Year Break Point; or

(D) at the Nine Year Break Point by giving not less than twelve (12) months' written notice to the Service Provider in advance of the Nine Year Break Point.

61.4 Except in relation to failures to meet the Service Levels in relation to which TfL exercises its rights under Clause 5 (*Standard of Services*) and/or Schedule 5 (*Service Level Agreement*), the Service Provider commits the same breach of this Agreement, or a Guarantor commits the same breach of a Guarantee, more than twice in any period of twelve (12) months, then TfL may, without prejudice to any of its rights or remedies under this Agreement, or at common law, serve a notice on the Service Provider or the relevant Guarantor (as appropriate):

61.4.1 specifying that it is a formal warning notice;

61.4.2 specifying the breach; and

61.4.3 stating that if such breach continues beyond twenty (20) Working Days, or such other period as the Parties may expressly in writing agree, after the date of

service of the notice or recurs three (3) or more times during the month after the date of service of the notice, TfL may terminate or Partially Terminate this Agreement, pursuant to Clause 61.3.2 or 61.7 (as applicable), or may exercise its Step-In Rights.

61.5 Notwithstanding that the provisions of this Agreement TfL shall be entitled to exercise its rights under Clause 60 (*Step-In*) at any time if the circumstances in Clause 61.3 apply.

61.6 The Service Provider shall, promptly upon becoming aware that one or more of the events or circumstances set out in Clause 61.3 has, have or is or are likely to arise, notify TfL of this occurrence or likely occurrence with full details.

Partial termination by TfL

61.7 A **"Partial Termination Event"** will occur when any of the circumstances described in Clauses 61.3.2 to 61.3.8 (inclusive), 61.3.10, 61.3.14(A), 61.3.14(B), 61.3.14(C), 61.3.14(D), 61.3.14(E), 61.3.14(F), 61.3.14(G), 61.3.14(H) or 61.3.14(I) arise in relation to the Services in relation to a particular Scheme or Schemes.

61.8 On the occurrence of a Partial Termination Event:

61.8.1 TfL may by notice to the Service Provider with immediate effect (or effective from such date as TfL may specify in such notice) terminate the Services to which such Partial Termination Event applies; and

61.8.2 where the relevant Services in relation to a relevant Scheme or Schemes are being provided by a Sub-Contractor or Sub-Contractors, TfL shall have the right to require by notice the Service Provider to replace the relevant Sub-Contractor or Sub-Contractors.

61.9 If the Service Provider fails to replace any relevant Sub-Contractor as required by a notice issued by TfL pursuant to Clause 61.8.2 within a reasonable time not to exceed three (3) months (or such longer time as TfL may in its sole discretion agree) of TfL issuing such notice, TfL shall be entitled at its option to terminate the right and obligation of the Service Provider to continue to provide the relevant Services relating to the relevant Scheme or Schemes provided by the Sub-Contractor in question by notice having effect either immediately or on such date as TfL shall specify in such notice.

61.10 Notwithstanding any other provision of this Agreement, TfL shall be entitled to exercise its rights under Clause 60 (Step-In) at any time if the circumstances in Clause 60.1 apply.

61.11 The Service Provider shall, promptly upon becoming aware that one or more of the events or circumstances set out in Clause 61.3 and/or Clause 61.7 has, have or is or are likely to arise, notify TfL of this occurrence or likely occurrence with full details.

62. CONSEQUENCES OF TERMINATION, PARTIAL TERMINATION OR EXPIRY

62.1 Upon termination or Partial Termination of this Agreement, TfL shall, subject to Clause 78 (*Recovery of Sums Due and Set-Off*) pay the Service Provider the relevant Service Charges, One-off Charges and Customer Satisfaction Incentive Payments due and payable to the Service Provider under this Agreement up to the Termination Date or Partial Termination Date.

62.2 Without prejudice to Clause 62.1, TfL shall not be liable to pay any sums to the Service Provider in respect of the termination or expiry of this Agreement, save as set out in Schedule 6 (*Termination Compensation*).

62.3 In the event of a Partial Termination, any variations that are required to this Agreement as a result of such Partial Termination shall be agreed by the Parties pursuant to the Change Control Request Procedure as soon as practicable following the service of the Partial Termination Notice. Any such variations shall be deemed to be a Mandatory Change for the purposes of Schedule 9 (*Change Control Request Procedure*).

62.4 On termination, Partial Termination or expiry of this Agreement for any reason:

62.4.1 TfL shall have the option to purchase any Service Provider Assets (excluding Cloud Assets) used in the provision of the Services (or, in the event of Partial Termination, those Service Provider Assets which are no longer required for the provision of the Services after the Partial Termination) at their then Net Book Value; and

62.4.2 to the extent that they have not already been removed in accordance with the Service Transfer Plan, the Service Provider shall promptly remove all Service Provider Assets (or, in the event of Partial Termination, those Service Provider Assets which are no longer required for the provision of the Services after the Partial Termination) which are situated on TfL's premises or such other premises as shall fall under TfL's control as part of the Service Transfer Plan or Exit Plan (as appropriate), except as otherwise required under this Agreement or expressly agreed in writing by the Parties. If the Service Provider fails to comply within twenty (20) Working Days, TfL may take any action which is necessary or desirable to remove any such Service Provider Assets and other items from TfL's premises. TfL shall not be liable for any losses or liabilities incurred by the Service Provider or any Third Party as a result, directly or indirectly, of any removal of property from TfL's premises or of any action taken by TfL pursuant to this Clause 62.3 and the Service Provider shall indemnify TfL against any cost, expense, loss, damage or liability that TfL may suffer or incur as a result of any such removal or action and against any claim, action, proceeding or demand for damages by any Third Party (including legal fees and expenses on an indemnity basis) in respect of any cost expense, loss, damage or liability which that Third Party may suffer or incur and which results from, or arises out of or in any way is connected with any such removal or action.

62.5 With effect from the Termination Date or the Expiry Date as appropriate, and subject to Clause 63 (*Survival of Clauses*), the rights and obligations of the Parties shall terminate and be of no future effect. This Clause 62.5 is without prejudice to either Parties' rights and remedies which may have accrued prior to the Termination Date or Expiry Date. Subject to Clause 62.6, termination, Partial Termination or expiry shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the circumstances which gave rise to the termination or Partial Termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the Termination Date, Partial Termination Date or Expiry Date subject always to Clause 47 (*Indemnities and Limitations of Liability*) and Clause 62.6.

62.6 The Service Provider shall have no claim against TfL in relation to the termination, Partial Termination of this Agreement or the events directly giving rise to termination or Partial Termination, where relevant, other than amounts due but unpaid by TfL or as expressly provided in this Clause 62.

62.7 Following termination, Partial Termination of this Agreement, each of the Parties shall use all reasonable endeavours to mitigate any losses, expenditure and costs arising as a consequence of such termination, Partial Termination for which they are to be compensated by the other Party. Where compliance with this Clause will mean that the Service Provider will incur material expenditure, the Service Provider shall not incur such material expenditure without the express written approval of TfL.

62.8 Where TfL has served a notice to terminate this Agreement in accordance with Clause 61.3, or a Partial Termination Notice, TfL shall, at any time before the expiry of the notice, be entitled to exercise, as soon as may be practicable within that period, such of the following powers as it considers expedient:

62.8.1 direct the Service Provider, where Services have not been provided and other than where termination is pursuant to Clause 61.3.16, to refrain from providing such Services;

62.8.2 direct the Service Provider to complete in accordance with this Agreement the performance of all or any of the Services, or any part or component thereof which are ongoing at the expiry of the notice and to deliver the same at such time or times as may be mutually agreed on, and all Services provided by the Service Provider in accordance with such directions and accepted shall be paid for as follows;

(A) if the relevant Services are activities which relate to the delivery of a Milestone, the charges will be the relevant Milestone Payment (or relevant portion thereof);

(B) if the relevant Services are activities which relate to a Change Authorisation issued pursuant to Schedule 9 (*Change Control Request Procedure*), the charges will be the relevant charges set out in the Change Authorisation; and

(C) in all other circumstances, the charges shall be calculated on the same basis as set out in Clause 64.6; and/or

62.8.3 direct that the Service Provider shall, as soon as may be practicable after the receipt of such notice:

(A) take such steps as will ensure that the Services (or relevant part of the Services, in the event of Partial Termination) being provided by the Service Provider are reduced as rapidly as possible; and/or

(B) as far as possible, and in a manner consistent with Clause 62.8.2(A), concentrate work on the completion of Services (or relevant part of the Services, in the event of Partial Termination) partly provided.

63. SURVIVAL OF CLAUSES

63.1 Termination or expiry of this Agreement shall not affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination, including the following:

63.1.1 Clauses 1 (*Definitions and Interpretation*), 26 (*Gainsharing*), 27 (*Commercial Exploitation and Marketing*), 29.2 (*Revenue*), 36 (*Audit and Inspection*), 38 (*Ownership and Assignment of Intellectual Property Rights*), 39 (*Licensing of Intellectual Property Rights*), 40 (*General Provisions Relating to Intellectual Property Rights*), 41 (*Intellectual Property Rights Indemnity*), 42 (*Source Code*), 47 (*Indemnities and Limitations of Liability*), 48 (*Insurance*), 49 (*Information Governance*), 62 (*Consequences of Termination, Partial Termination or Expiry*), 63 (*Survival of Clauses*), 64 (*Exit Management*), 70 (*Variation*), 72 (*Notices*), 73 (*Publicity*), 74 (*Confidentiality*), 77 (*Contract (Rights of Third Parties) Act*), 79 (*Further Assurance*), 84 (*Disputes, Governing Law and Jurisdiction*); and

63.1.2 the Schedules to the extent that they relate to the Clauses listed in Clause 63.1.1.

64. EXIT MANAGEMENT

64.1 In addition to, and without limitation to, the generality of the following provisions of this Clause 64, the Parties shall:

64.1.1 comply with their obligations set out in Schedule 16 (*Exit Plan*) in relation to the Exit Plan and the Service Transfer Plan(s); and

64.1.2 when agreed pursuant to Schedule 16 (*Exit Plan*) comply with the Exit Plan and the Service Transfer Plan(s).

64.2 The Service Provider acknowledges that, upon the termination, Partial Termination or expiry of this Agreement, TfL may require part or all of the Services to be performed by TfL itself or by a New Service Provider.

64.3 In addition, the Service Provider acknowledges that TfL may require information (excluding Service Provider Confidential Information) to be provided by the Service Provider

concerning the relevant Service Provider Premises, the Service Systems and/or the provision of the Services in order to provide such information to Third Parties whom TfL has invited to tender for the provision of the New Services whether or not an agreement with TfL to provide the New Services has been entered into. The Service Provider shall provide all such information at TfL's request provided that TfL has obtained a written confidentiality undertaking from any Third Party to whom it proposes providing the information in respect of any information which is deemed to be confidential.

64.4 Without prejudice to the terms of Schedule 16 (*Exit Plan*) or the terms of the Exit Plan:

64.4.1 where this Agreement has not been terminated prior to the date that is eighteen (18) months prior to the date on which this Agreement is expected to expire, TfL may by notice require a period, up to a maximum of eighteen (18) months;

64.4.2 in the event of termination or Partial Termination by TfL, TfL may provide in the notice of termination or Partial Termination Notice for a period, up to a maximum of twelve (12) Months; or

64.4.3 in the event of termination by the Service Provider, TfL may by notice require a period, up to a maximum of twelve (12) months,

as TfL deems necessary to ensure a smooth hand-over of part or all of the Services (the **"Hand Back Period"**). Such Hand Back Period shall commence upon such date as TfL may specify in such notice and shall cease on the Termination Date or Partial Termination Date, as appropriate.

64.5 In order that the transfer of the right and obligation to provide part or all of the Services may be properly managed the Service Provider shall throughout the Hand Back Period (and in respect of Clauses 64.5.7 and 64.5.8 such period after that date as required by TfL in accordance with this Clause 64.5):

64.5.1 provide such assistance to and co-operate with TfL and/or any Other Service Provider and/or any New Service Provider as TfL may require in relation to planning or starting to implement preparatory steps for the orderly and smooth transfer of services from the Service Provider to TfL or a New Service Provider following such expiry or termination;

64.5.2 minimise disruption, inconvenience or any risk to the Services (or services substantially similar to the Services) and/or the Service Systems (or any part or replacements thereof), the TfL Group, Other Service Providers, Customers, and any other person, including in relation to health and safety;

64.5.3 provide TfL or a New Service Provider with information on all Data held by or on behalf of the Service Provider in connection with the Services and provide TfL or a New Service Provider with details of their use and the relationship between them;

64.5.4 provide TfL or a New Service Provider with a complete and uncorrupted version of the Data in any format reasonably required by TfL;

64.5.5 as requested by TfL, allow TfL and/or New Service Provider personnel to shadow Service Provider Personnel during the Hand Back Period (such shadowing to be in respect of the Personnel, activities and duration specified by TfL);

64.5.6 proactively identify issues that may arise during the transfer of services to TfL or a New Service Provider and propose solutions to those issues;

64.5.7 co-operate with and assist both TfL and, at the direction of TfL, a New Service Provider in any transition procedure for the New Services for a period of up to twelve (12) months following the Termination Date, Partial Termination Date or the Expiry Date (as appropriate);

64.5.8 if required by TfL, provide support and maintenance services in relation to the

Systems, Hardware, Software, Interfaces (excluding Cloud Services) to be used in relation to the New Services for a period of up to twelve (12) months after the Termination Date, Partial Termination Date or Expiry Date (as appropriate); and

64.5.9 take all actions reasonably required by TfL to fulfil the Exit Objectives;

64.6 Subject to anything to the contrary in the Exit Plan, the Service Provider may invoice TfL (monthly, in arrears) for the assistance, and support and maintenance services, provided by the Service Provider to TfL and/or a New Service Provider pursuant to this Clause 64 at the appropriate Day Rates or, where there is no Day Rate for the relevant Service Provider Personnel, at the Service Provider's normal commercial rates, and for Pass-Through Costs identified as being in relation to exit activities in the Billing Model.

65. CRIME AND DISORDER ACT 1998

65.1 The Service Provider acknowledges that TfL is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998:

65.1.1 to have due regard to the impact of crime, disorder and community safety in the exercise of TfL's duties;

65.1.2 where appropriate, to identify actions to reduce levels of crime and disorder; and

65.1.3 without prejudice to any other obligation imposed on TfL, to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

and in the performance of this Agreement, the Service Provider will assist and co-operate with TfL, and will use reasonable endeavours to procure that its Sub-Contractors observe these duties and assists and co-operates with TfL where possible to enable TfL to satisfy its duty.

66. WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS 2006

66.1 When procuring any WEE Equipment for use in accordance with the Services whether by direct purchase by the Service Provider, purchase on behalf of TfL, 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:

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

66.1.2 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.

66.2 The Service Provider shall indemnify and keep indemnified TfL and each member of the TfL Group as a result of any Losses which TfL or any member of the TfL Group incurs as a result of any failure on the part of the Service Provider or the relevant producer to comply with the terms of this Clause 66.

67. LONDON LIVING WAGE

67.1 Without prejudice to any other provision of this Agreement, the Service Provider shall:

67.1.1 ensure that none of the London Living Wage Employees is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

67.1.2 ensure that none of the London Living Wage Employees is paid less than the amount to which they are entitled in accordance with their respective contracts of employment;

67.1.3 provide to TfL such information concerning the London Living Wage as TfL may

reasonably require from time to time;

67.1.4 disseminate on behalf of TfL to the London Living Wage Employees such perception questionnaires as TfL may reasonably require from time to time and promptly collate and return to TfL responses to such questionnaires; and

67.1.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

68. WAIVER

68.1 The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever. Without prejudice to the generality of the foregoing the Service Provider acknowledges that exercise by TfL of its Step-In rights pursuant to Clause 60 shall not impair or constitute a waiver of any right, power, privilege or remedy of TfL under this Agreement.

68.2 No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

69. ENTIRE AGREEMENT

69.1 Each of the Parties to this Agreement confirms that this Agreement, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect.

69.2 Each Party confirms that:

69.2.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement; and

69.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement are pursuant to this Agreement, and for the avoidance of doubt and without limitation, neither party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement).

70. VARIATION

Subject to Clause 34 (*Change Control*), no variation of this Agreement shall be effective unless it is in writing (which for this purpose, does not include email) signed by or on behalf of each of the Parties to this Agreement. The expression "variation" includes any variation, supplement, deletion or replacement, however effected.

71. SEVERABILITY

If any provision or part of this Agreement is void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum deletion necessary to make it valid, legal and enforceable.

72. NOTICES

72.1 A notice (including any approval, consent or other communication) in connection with this Agreement:

72.1.1 must be in writing in the English language;

72.1.2 must be left at the address of the addressee or sent by pre-paid recorded delivery (airmail if posted from a place outside the United Kingdom) to the address of the addressee in each case which is specified in this Clause in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address in the United Kingdom, and/or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause.

The relevant details of each party at the date of this Agreement are:

Transport for London

Address: 4th Floor, 5 Endeavour Square, London, E20 1JN

Attention: **REDACTED**

with a copy to:

Address: 5 Endeavour Square, London, E20 1JN

Attention: General Counsel

Capita Business Services Ltd

Address: Tower Court, Foleshill Enterprise Park, Courtaulds Way, Coventry, CV6 5NX

Attention: **REDACTED**, Managing Director

72.1.3 for the avoidance of doubt, must not be sent by electronic mail.

72.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 72.3 below.

72.3 Subject to Clause 72.4 below, a notice is deemed to be received:

72.3.1 in the case of a notice left at the address of the addressee, upon delivery at that address; and

72.3.2 in the case of a posted letter, on the third day after posting or, if posted from a place outside the United Kingdom, the seventh day after posting.

72.4 A notice received or deemed to be received in accordance with Clause 72.3 on a day that is not a Working Day, or after 5pm on any Working Day, shall be deemed to be received on the next following Working Day.

72.5 Notwithstanding Clause 72.1.3, where the Service Provider intends to give notice to TfL under this Agreement, the Service Provider shall promptly following the decision to give such notice, send an email to TfL at the email address: CCTEChange@TfL.gov.uk (or such other email address as notified to the Service Provider from time to time) setting out details of the notice to be given.

73. PUBLICITY

73.1 Subject to Clause 73.3 and whether or not any restriction contained in Clause 74.1 (*Confidentiality*) is disapplied pursuant to Clause 74.2, the Service Provider shall not, and shall procure that its Personnel and Sub-Contractors do not, make any announcement (including, without limitation, any communication to the public, to any clients or suppliers of either Party or to all or any of the employees of either Party or to representatives of the press, television, radio or other media) concerning the existence, provisions or subject matter of this Agreement or containing any information about TfL (including, without limitation Confidential Information) without the prior written approval of TfL.

73.2 TfL shall have the absolute discretion in deciding whether to give its consent as referred to in this Clause 73.

73.3 Clause 73.1 shall not apply if and to the extent that such announcement is required by Law or by any securities exchange or regulatory or Governmental body having jurisdiction over either Party (including but, not limited to, the Financial Services Authority, the London Stock Exchange, The Panel on Takeovers and Mergers and the Serious Fraud Office) and whether or not the requirement has the force of law and provided that (unless prohibited by Law) any such announcement will be made only after consultation with the other Party.

73.4 The obligations and restrictions contained in this Clause 73 will survive termination of the Agreement and continue without limit of time.

74. CONFIDENTIALITY

TfL Confidential Information

74.1 The Service Provider acknowledges that during the Term it may receive, obtain, prepare or create TfL Confidential Information. The Service Provider undertakes, subject to Clause 74.2, that:

74.1.1 it shall receive and/or maintain the TfL Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;

74.1.2 it shall not use the TfL Confidential Information for any purposes whatsoever (and in particular shall not use the TfL Confidential Information to the detriment of TfL) other than for the purpose of the performance of the Services or compliance with its obligations under this Agreement;

74.1.3 it shall not disclose the TfL Confidential Information to any Third Party without the prior written consent of TfL except that it is entitled to the extent strictly necessary to disclose the TfL Confidential Information:

(A) to such of the Service Provider's Personnel and advisers who need to know the TfL Confidential Information for the performance of the Services provided that the Service Provider shall be responsible for any breach of its obligations occasioned by any act or omission of such Personnel and shall, before disclosing TfL Confidential Information to members of Key Personnel either: (i) require such Key Personnel to enter into a written confidentiality undertaking in the form set out in Schedule 19 (*Deed of Confidentiality*); or (ii) have obtained prior written notice from TfL confirming that the obligations of confidentiality imposed on such members of Key Personnel by the Service Provider are sufficient and that no such written undertaking is required; or

(B) to the Service Provider's auditors and any other person or body having a legal right or duty to know the TfL Confidential Information in connection with the Service Provider's business provided that prior to such disclosure the Service Provider consults with TfL as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before TfL Confidential Information is disclosed;

74.1.4 it shall inform each of the persons referred to in Clauses 74.1.3(A) and 74.1.3(B) to whom TfL Confidential Information is disclosed of the restrictions as to use and disclosure of the TfL Confidential Information;

74.1.5 it shall, at TfL's request, deliver to TfL or destroy all or any documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the TfL Confidential Information and if instructed by TfL in writing, remove all electronically held TfL Confidential Information, including (without limitation) the purging of all disk-based TfL Confidential Information and the reformatting of all disks; and

74.1.6 it shall not, except where provided in Clause 74.1.3, or without the prior written consent of TfL, disclose to any Third Party the nature or content of any

discussions or negotiations between the Parties relating to the TfL Confidential Information.

74.2 The obligations set out in Clause 74.1 do not apply to any TfL Confidential Information that:

74.2.1 the Service Provider can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Service Provider by TfL;

74.2.2 is lawfully disclosed to the Service Provider otherwise than in breach of an obligation of confidentiality to any member of the TfL Group;

74.2.3 is or has come into the public domain through no fault of the Service Provider or its Personnel, agents or Sub-Contractors; or

74.2.4 is required by law or by the regulations of any stock exchange or regulatory or supervisory authority (including the Panel on Takeovers and Mergers) to which the Service Provider is subject or by order of a court of competent jurisdiction to be disclosed.

74.3 If the Service Provider becomes required, in circumstances contemplated by Clause 74.2.4, to disclose any information it shall (if permitted by Law) give to TfL such notice as is practical in the circumstances of such disclosure and shall co-operate with TfL, having due regard to TfL's views, and take such steps as TfL may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

74.4 The Service Provider acknowledges that damages may not be an adequate remedy for any breach of Clause 74.1 and that (without prejudice to all other remedies which TfL may be entitled to as a matter of law) TfL shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause.

74.5 The TfL Confidential Information shall be and shall remain the property of TfL.

Service Provider Confidential Information

74.6 TfL acknowledges that during the Term it may receive Service Provider Confidential Information. TfL undertakes, subject to Clause 74.7, that:

74.6.1 it shall receive and/or maintain the Service Provider Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;

74.6.2 it shall not use the Service Provider Confidential Information for any purposes whatsoever (and in particular shall not use the Service Provider Confidential Information to the detriment of the Service Provider) other than for the purpose of the receipt of the Services, compliance with its obligations under this Agreement or exercise of its rights under this Agreement;

74.6.3 it shall not disclose the Service Provider Confidential Information to any Third Party without the prior written consent of the Service Provider except that it is entitled to the extent strictly necessary to disclose the Service Provider Confidential Information:

(A) to such of its employees, officers, agents and advisers who need to know the Service Provider Confidential Information provided that TfL shall be responsible for any breach of its obligations occasioned by any act or omission of such persons; or

(B) to TfL’s auditors, any other person or body having a legal right or duty to know the Service Provider Confidential Information in connection with TfL’s business and any other person to whom Service Provider Confidential Information may be disclosed under this Agreement, provided that prior to such disclosure TfL consults with the Service Provider as to the proposed form of such disclosure and what, if any,

confidentiality undertakings each such Third Party should enter into before Service Provider Confidential Information is disclosed;

74.6.4 it shall inform each of the persons referred to in Clauses 74.6.3(A) and 74.6.3(B) to whom Service Provider Confidential Information is disclosed of the restrictions as to use and disclosure of the Service Provider Confidential Information;

74.6.5 it shall, at the Service Provider's request, deliver to the Service Provider or destroy all or any documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the Service Provider Confidential Information and if instructed by the Service Provider in writing, remove all electronically held Service Provider Confidential Information, including (without limitation) the purging of all disk-based Service Provider Confidential Information and the reformatting of all disks provided that TfL shall be entitled to retain such number of copies as are necessary for its internal and/or audit purposes; and

74.6.6 it shall not, except where provided in Clause 74.6.3, or without the prior written consent of the Service Provider, disclose to any Third Party the nature or content of any discussions or negotiations between the Parties relating to the Service Provider Confidential Information.

74.7 The obligations set out in Clause 74.6 do not apply to any Service Provider Confidential Information which:

74.7.1 TfL can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to TfL by the Service Provider;

74.7.2 is lawfully disclosed to TfL otherwise than in breach of an obligation of confidentiality to the Service Provider;

74.7.3 is or has come into the public domain through no fault of TfL or its employees, officers, agents or advisers;

74.7.4 TfL determines should be disclosed in accordance with FOI Legislation;

74.7.5 is required to be disclosed to the National Audit Office or the District Auditor; or

74.7.6 is required by law or by the regulations of any stock exchange or regulatory or supervisory authority (including the Panel on Takeovers and Mergers) to which TfL is subject or by order of a court of competent jurisdiction to be disclosed.

74.8 If TfL becomes required, in circumstances contemplated by Clause 74.7.6, to disclose any information it shall give to the Service Provider such notice as is practical in the circumstances of such disclosure and shall co-operate with the Service Provider, having due regard to the Service Provider's views, and take such steps as the Service Provider may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

74.9 TfL acknowledges that damages may not be an adequate remedy for any breach of Clause 74.6 and that (without prejudice to all other remedies which the Service Provider may be entitled to as a matter of law) the Service Provider shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause.

74.10 The Service Provider Confidential Information shall be and shall remain the property of the Service Provider.

74.11 Notwithstanding any other provision of this Agreement no confidentiality obligation shall restrict TfL's ability to disclose Service Provider Confidential Information to the extent necessary or useful for it to perform its obligations or exercise its rights under this Agreement.

74.12 The obligations of confidentiality set out in this Clause 74 shall remain in effect indefinitely, or until the relevant information is no longer confidential in accordance with the provisions of this Clause 74.

Transparency

74.13 The Service Provider acknowledges that TfL is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 74.6, the Service Provider hereby gives its consent for TfL to publish the Contract Information to the general public.

74.14 TfL may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion TfL may take account of the exemptions/exceptions that would be available in relation to information requested under the FOIA. TfL may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 74.13. TfL shall make the final decision regarding publication and/or redaction of the Contract Information.

75. ASSIGNMENT

75.1 The rights and obligations of the Service Provider under this Agreement are personal to the Service Provider and shall not be assigned (whether absolutely or by way of security and whether in whole or in part), sub-contracted, delegated, transferred, mortgaged, charged, declared in trust for a third party, or otherwise disposed of in any manner whatsoever (each of the above a **"dealing"**) and any such purported dealing in contravention of this Clause 75.1 shall be ineffective.

75.2 TfL may assign (whether absolutely or by way of security and whether in whole or in part), sub-contract, delegate, transfer, mortgage, charge or otherwise dispose in any manner whatsoever of its rights and obligations under this Agreement as it may see fit. Within ten (10) Working Days of a written request from TfL, the Service Provider shall, at the Service Provider's own expense, execute such agreement as TfL may reasonably require to give effect to any such transfer of all or part of its rights and/or obligations under this Agreement to one or more persons nominated by TfL.

75.3 In the event of breach of Clause 75.1 by the Service Provider, TfL shall be entitled to terminate this Agreement on five (5) Working Days' notice unless the Service Provider has within five (5) Working Days of such notice:

75.3.1 demonstrated to TfL's reasonable satisfaction that such breach was inadvertent; and

75.3.2 rectified such breach within five (5) Working Days.

76. RELATIONSHIP

76.1 Nothing in this Agreement or in any document referred to in it or any arrangement contemplated by it shall constitute either Party a partner of the other nor shall the execution, completion and implementation of this Agreement confer on either Party any power to bind or impose any obligations to any third parties on the other party or to pledge the credit of the other Party.

76.2 Except as expressly provided to the contrary in this Agreement, the Service Provider shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of TfL or bind TfL in any way.

77. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

77.1 This Agreement does not create any right or benefit enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999) except that:

77.1.1 any member of the TfL Group will have the right to enforce the terms of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999;

77.1.2 rights conferred on any New Service Provider under Clause 30 (*Employees and Key Personnel*) will be enforceable by the applicable New Service Provider in accordance with the Contracts (Rights of Third Parties) Act 1999; and

77.1.3 rights conferred on any New Service Provider under Clause 64 (including under Schedule 16 (*Exit Plan*), the Exit Plan or a Service Transfer Plan).

77.2 The rights of the Parties to terminate or agree any variation under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

78. RECOVERY OF SUMS DUE AND SET-OFF

78.1 All damages, costs, charges, expenses, debts, sums or other amounts owing: (i) to or incurred by TfL arising out of or attributable to this Agreement; or (ii) to any member of the TfL Group under any other contract between any member of the TfL Group and the Service Provider, may be deducted by TfL from monies due or which may become due to the Service Provider under this Agreement or under any other contract with any member of the TfL Group or TfL may recover such amount as a debt.

78.2 Every payment payable by the Service Provider under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount (other than any deduction or withholding of tax as required by law or any admitted overpayment or credit) which is due and payable under this Agreement.

79. FURTHER ASSURANCE

Each Party shall at its own expense execute all documents and do all acts and things reasonably required by the other to give effect to the terms of this Agreement. In addition, the Parties shall execute all such further deeds and documents as may reasonably be required, or to the extent necessary for the provision of the Services, to document, secure, register, acknowledge and perfect the vesting, assignments and licences in relation to any Intellectual Property Rights arising under this Agreement in accordance with the terms of this Agreement.

80. PARENT COMPANY GUARANTEE

The Service Provider shall, contemporaneously with the execution of this Agreement, deliver to TfL a parent company guarantee in the form set out in Schedule 17 (*Agreed Form of Guarantee*), executed as a deed for and on behalf of the Guarantor by duly authorised representatives (the **"Guarantee"**).

81. CONFLICT OF INTEREST

81.1 The Service Provider acknowledges and agrees that it does not have an interest in any matter where there is or is likely to be a conflict of interest with its providing the Services to TfL or with any member of the TfL Group and that (except as provided below) it shall not act for any person, organisation or company where there is or is likely to be a conflict of interest with it providing the Services or with any member of the TfL Group. This Clause shall not prevent the Service Provider from providing services to an existing client of the Service Provider to whom the Service Provider is, as at the Effective Date, providing services provided that the Service Provider shall:

81.1.1 not act for any such client in respect of any transactions between any member of the TfL Group and such client;

81.1.2 ensure that the Personnel acting in any capacity for any such client are different from the Personnel involved in providing the Services or in any other work which the Service Provider carries out in relation to any member of the TfL Group;

81.1.3 ensure that any personnel acting for any such client do not have access to information held by the Service Provider relating to any member of TfL Group; and

81.1.4 inform TfL of all such existing clients and the steps that it is taking to ensure compliance with Clauses 81.1.1 to 81.1.3 (inclusive).

81.2 The Service Provider shall undertake ongoing and regular conflict of interest checks throughout the duration of the Agreement and shall notify TfL in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any member of the TfL Group and shall work with TfL 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 TfL's reasonable satisfaction.

81.3 Breach of Clause 81.2 shall entitle TfL to terminate this Agreement under Clause 61 (*Termination*) for material breach.

82. CHANGE OF CONTROL AND CHANGE OF OWNERSHIP

82.1 The Service Provider shall promptly and in any event within five (5) Working Days notify TfL of the public announcement of:

82.1.1 any event that may give rise to a Change of Ownership or a Change of Control affecting it and/or a future Change of Ownership or Change of Control and provide such information as TfL requires in relation to such a Change of Ownership; and

82.1.2 the sale or proposed sale of all or substantially all of the business of the Service Provider or the Guarantor.

82.2 In the event of the sale of all or substantially all of the business of the Service Provider or the Guarantor , TfL shall have the right to terminate this Agreement within sixty (60) days of receipt of notice from the Service Provider in accordance with Clause 82.1 unless, in the case of a sale affecting the Guarantor, the Service Provider has within such period provided a guarantee from a replacement guarantor acceptable to TfL in terms identical to the Guarantee.

83. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

84. DISPUTES, GOVERNING LAW AND JURISDICTION

84.1 Subject to Clause 84.4, each dispute or difference that arises out of or relates to this Agreement shall be resolved in accordance with Schedule 21 (*Dispute Resolution*).

84.2 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

84.3 Without prejudice to Clause 84.1, the Parties irrevocably agree the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), save that TfL 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.

84.4 Notwithstanding the foregoing, nothing in this Agreement shall prevent either Party from seeking injunctive relief in any court of competent jurisdiction.

IN WITNESS whereof this Agreement has been entered into the day and year first above written.

SIGNED BY on behalf of Transport for London	))))	---------- Director

SIGNED BY on behalf of Capita Business Services Limited	))))	---------- Director

SCHEDULE 1

DEFINITIONS

SCHEDULE 2

STATEMENT OF REQUIREMENTS

SCHEDULE 3

MILESTONES AND DELIVERABLES

SCHEDULE 4

TESTING REGIME

SCHEDULE 5

SERVICE LEVEL AGREEMENT

SCHEDULE 6

TERMINATION COMPENSATION

SCHEDULE 7

CHARGING & OPERATIONAL PRICING

SCHEDULE 8

NOT USED

SCHEDULE 9

CHANGE CONTROL REQUEST PROCEDURE

SCHEDULE 10

CONTRACT MANAGEMENT AND REPORTING

SCHEDULE 11

EMPLOYEES AND KEY PERSONNEL

SCHEDULE 12

ASSET MANAGEMENT

SCHEDULE 13

SERVICE PROVIDER CONFIDENTIAL INFORMATION

SCHEDULE 14

SECURITY

SCHEDULE 15

DATA DESCRIPTIONS

SCHEDULE 16

EXIT PLAN

SCHEDULE 17

AGREED FORM OF GUARANTEE

SCHEDULE 18

PREMISES

SCHEDULE 19

DEED OF CONFIDENTIALITY

SCHEDULE 20

MANAGEMENT SERVICES

SCHEDULE 21

DISPUTE RESOLUTION PROCEDURE

SCHEDULE 22

COLLATERAL DEED

SCHEDULE 23

GAINSHARING

SCHEDULE 24

RESPONSIBLE PROCUREMENT

SCHEDULE 25

BUSINESS CONTINUITY

SCHEDULE 26

KEY SUB-CONTRACTORS

SCHEDULE 27

DEED OF NOVATION

SCHEDULE 28

SERVICE PROVIDER'S SOLUTION

SCHEDULE 29

NOT USED

SCHEDULE 30

OPEN BOOK TEMPLATE

SCHEDULE 31

NOT USED

SCHEDULE 32

REVENUE COLLECTION AND PAYMENT

SCHEDULE 33

ADDITIONAL SERVICES

SCHEDULE 34

TFL POLICIES

SCHEDULE 35

NOT USED

SCHEDULE 36

VALUE FOR MONEY REVIEW PROCESS