

5. Implementation of the Variation

- 5.1. Following receipt of a Required Variation Notice and unless otherwise instructed by the Authority, the Service Provider shall forthwith implement the Variation required therein within the appropriate and achievable timescale specified in the Required Variation Notice. The Service Provider shall notify the Authority in writing within twenty four (24) hours of receipt of a Required Variation Notice if the Service Provider believes that it is not possible for the Service Provider to implement such Variation or to effect the Variation within the specified timescale. The Service Provider shall ensure that such notification includes a detailed explanation as to why it is not possible for the Service Provider to implement such Variation in the specified timescale.
- 5.2. Subject to paragraph 5.3, the Service Provider shall not implement any Variation set out in any Proposed Variation Notice or Service Provider's Proposal Notice until a notice substantially in the form set out in this Schedule 9) (the "**Authority to Proceed**") has been issued by the Authority for that Variation. For the avoidance of doubt, the Service Provider shall implement each Variation set out in a Required Variation Notice in accordance with paragraph 5.1 without any need for issuance of an Authority to Proceed. The Authority shall not at any time be obliged to issue an Authority to Proceed in respect of any Proposed Variation Notice or Service Provider's Proposal Notice.
- 5.3. The Authority may issue an Authority to Proceed at any time following issue of a Proposed Variation Notice even if the details for implementing that Variation have not yet been determined. In that event the provisions of paragraph 5.1 shall apply with effect from the date of the Authority to Proceed as if the Proposed Variation Notice had been a Required Variation Notice.
- 5.4. Any terms (including costs) of implementing a Variation the subject of an Authority to Proceed issued under paragraph 5.2 or 5.3 or of a Required Variation Notice signed and returned by the Service Provider pursuant to, and setting out the information specified in, paragraph 3.2 that are not agreed by the Parties within 14 days of the issue of the Authority to Proceed or of the return by the Service Provider of the Required Variation Notice (as applicable) may be referred by either Party for determination in accordance with the Dispute Resolution Procedure. On final resolution of the outstanding terms of the Variation pursuant to the Dispute Resolution Procedure or the written agreement of the Parties, The Authority shall either:
 - 5.4.1. issue a notice substantially in the form set out in this Schedule 9 (the "**Required Variation Settlement Notice**") setting out the terms of the Variation; or
 - 5.4.2. withdraw the Required Variation Notice or Authority to Proceed (as applicable) by issuing a notice substantially in the form set out in this Schedule 9 (the "**Withdrawal Notice**") in which case:
 - 5.4.2.1. the Service Provider shall immediately cease to implement the Variation; and
 - 5.4.2.2. the Service Provider shall be entitled to make a claim to recover from the Authority any costs that the Service Provider has reasonably and

properly incurred exclusively in connection with implementing the Variation prior to the Service Provider being sent the Withdrawal Notice.

- 5.4.3. The Authority may withdraw any Required Variation Settlement Notice or Authority to Proceed at any time by issuing a Withdrawal Notice in which case the provisions of paragraph 5.4.2 shall apply.

6. Cost Minimisation and Standards

- 6.1. The Service Provider shall make reasonable efforts to minimise the adverse and maximise the favourable impact on the Authority of any change in timetable or costs resulting from the implementation of a Variation. In particular the Service Provider shall, where appropriate, when submitting proposals in respect of any Proposed Variation Notice, Required Variation Notice or Service Provider's Proposal Notice or before referring any matter for determination pursuant to the Dispute Resolution Procedure and when implementing any Variation:
- 6.1.1. submit a statement to the Authority of its proposed method of implementing the Variation demonstrating the steps that it has taken to minimise the costs of doing so;
- 6.1.2. comply with its VfM obligations in paragraph 7; and
- 6.1.3. shall not in its proposal for the implementation of the Variation claim to be excused from any liability other than on the same grounds and to the same extent amended accordingly (*mutatis mutandis*) as it would have been excused from liability for performing its obligations under this Contract (before the proposed Variation took effect), provided that if the Service Provider considers that the risk inherent in the implementation of the Variation means that the Service Provider should be excused from any liability on other grounds or to a different extent, then the Service Provider shall be entitled to provide contemporaneously to the Authority alternative proposals for the implementation of the Variation. These alternative proposals shall not excuse the Service Provider from any liability other than on the same grounds and to the same extent *mutatis mutandis* as it would have been excused from liability for performing its obligations under this Contract (before the proposed Variation took effect). The alternative proposal(s) shall give details of the extent to which the Service Provider seeks to be excused from liability on other grounds or to a different extent in implementing the Variation and the corresponding change (if any) to the amount of the adjustment to the Charges which would otherwise be required in respect of implementing the Variation.
- 6.2. Unless the Authority requires otherwise, the Service Provider's proposal shall be a fixed price lump sum based on the allocation of risk specified in the Variation. However, the Service Provider may in addition include pricing for alternative options to be considered by the Authority.
- 6.3. The Authority may, from time to time, provide the Service Provider with information in relation to possible future Variations for the express purpose of providing the Service Provider with the means of taking such possible Variations into account in planning its operations and capital expenditure programmes and so as to reduce the costs of implementing such Variations in the future.

7. Value for Money

- 7.1. To enable the Authority to effectively determine whether VfM is being achieved in respect of any Variation, it will be necessary for the Service Provider to be transparent in the pricing of any proposed modification to the Charges arising from that Variation in accordance with this Schedule and its general accounting in so far as these are relevant to demonstrating VfM associated with that Variation.
- 7.2. Proposed modification to the Charges in accordance with a Variation shall be priced on a transparent and "open book" basis in accordance with paragraph 7.3 below.

7.3. Open Book Accounting

7.3.1. The Service Provider shall calculate any modifications proposed to the Charges in accordance with this Schedule on a "bottom up" basis.

7.3.2. All modifications to Charges shall represent the actual demonstrable costs to be incurred by the Service Provider or savings to be achieved by the Service Provider in each case with reasonable allowances for:

7.3.2.1. a reasonable level of target profit (having regard to what the Service Provider has achieved and has been and is forecast to achieve under the Contract);

7.3.2.2. overheads (with an explanation of the principles on which they have been appropriated to the Contract and to the Variation); and

7.3.2.3. any additional risks being incurred or existing risks being reduced (as the case may be) having regard to the terms of paragraph 6.1.3.

7.3.2.4. If requested by the Authority, the Service Provider shall evidence the breakdown in relevant costs including by reference to operating expenditure, capital expenditure, human resource costs, third party costs (including any sub-contractor mark-up and any intra-group charges).

7.4. The Authority's rights under Clause 24.3 (Records, Audit and Inspection) shall include the right of audit to ensure that the Service Provider has complied with its obligations under paragraph 6 above and this paragraph 7.

8. Contract Management of Variations

8.1. For a Variation under paragraph 2.1 and on receipt of a Service Provider's Proposal Notice under paragraph 4, the Authority shall allocate a unique number to the potential Variation and the Authority shall also maintain a sequentially numbered register of all potential and actual Variations. All subsequent correspondence between the Parties in connection with any potential or actual Variation shall bear the number allocated to such Variation.

8.2. For the avoidance of doubt, each of the Parties shall pay its own costs and expenses, in each case of any nature whatsoever, incurred in connection with the investigation, preparation or negotiation of each Proposed Variation Notice, Required Variation Notice, Service Provider Response, Service Provider's Proposal Notice, Authority to Proceed, Required Variation Settlement Notice and Withdrawal Notice and otherwise in connection with any acts, omissions or correspondence in connection with agreement on, or determination in

accordance with the Dispute Resolution Procedure of, the terms of any Variation and such costs and expenses shall not be taken into account (or included by the Service Provider) in costing any Variation.

Required Variation Notice

Variation No. [XXXX]	Date [DD-MMM-]
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YY] VARIATION TITLE:

Service Provider: [Insert in header]	Service Provider name]	(Contract name and reference no. to be included	in header)
[Insert PM Name]	[Insert Service Delivery	[Insert CM Name]	[Insert System Owner's

Summary

➤ **Scope of Variation to the Services**
Insert a concise summary of the scope of the Variation to the Services, including any specific deliverables to be provided by the Service Provider
 Full details of the change to the Services required are in Section A

➤ **Performance Management**
Insert a concise summary of the changes to the performance regime including any new, or revised, Service Level or performance regimes including any thresholds or trigger levels
 Full details of the performance regime is Section B

➤ **Key Constraints**
Insert a concise summary of the constraints on the implementation and/or delivery of the Variation to the Services
 Full details of the Key Constraints are in Section C

➤ **Key dates/Milestone Dates**
Provide a timetable for the implementation of the Variation including key dates or Milestone dates (including the deliverables or Services that the Service Provider must provide by each relevant key
 Full details of the key dates and Milestone Dates are in Section D

➤ **Assurance**
Insert summary of the key Assurance requirements
 Full details of the Assurance requirements are in Section E

➤ **Intellectual Property Rights**
Insert summary of any new IPR created Or state that no new IPR will be created as part of this
 Full details of the Intellectual Property Rights requirements and verification levels are in Section F

➤ **Charges and payment terms**
Insert summary of the proposed payment terms
 Full details of the proposed payment terms are in Section G

For the Authority: [Transport for London] [insert	Signed:
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