



ENGROSSMENT VERSION

Agreement Reference Number: tfl_scp_001290

Date:

**Framework Agreement
Rapid Charge Point Concessions**

between

Transport for London

and

Fastned B.V.

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THIS AGREEMENT is made the day of 2017

BETWEEN:

- (1) **TRANSPORT FOR LONDON**, a statutory body established under the Greater London Authority Act 1999 whose office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL ("**Contracting Authority**"); and
- (2) **Fastned B.V.**, a company registered under the Dutch Chamber of Commerce (Company Registration Number 54606179) whose registered office is at James Wattstraat 77-79, 1097 DL Amsterdam, The Netherlands ("**Concessionaire**").

RECITALS:

- A. The Contracting Authority placed a contract notice 2016/S 061-104855 on 24 March 2016 in the Official Journal of the European Union seeking expressions of interest from providers interested in being appointed to a framework pursuant to which calls could be made to compete for opportunities to finance, install, operate and maintain fast and rapid charge points and related infrastructure for electric vehicles at sites in Greater London.
- B. On 15 July 2016 the Contracting Authority issued an invitation to participate ("**ITP**") for the provision of Services and exploitation of rights at the sites. The Concessionaire represented to the Contracting Authority in its response dated 5 September 2016 (and in its subsequent submissions including its response (dated 30 January 2017) to the invitation to submit final responses ("**ITS**") issued by the Contracting Authority on 23 December 2016) that it is capable of delivering the Services and exploiting the rights in accordance with the Contracting Authority's requirements as set out in the ITP and ITS.
- C. On the basis of the Concessionaire's tender, the Contracting Authority selected the Concessionaire to enter into this non-exclusive framework Agreement. The Concessionaire acknowledges that the Contracting Authority has entered into framework agreements on similar terms with other successful tenderers pursuant to the procurement process commenced by the ITP which together constitute a framework.
- D. The framework enables Awarding Authorities to hold Mini-Competitions for the provision of Services and exploitation of rights at its sites. Where the Concessionaire is successful, the Awarding Authority and Concessionaire will enter into a Call-Off Contract and related Site Agreement(s) subject to and in accordance with the terms and conditions set out in this Agreement.

THE PARTIES AGREE THAT:

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

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement (including the recitals) unless the context indicates otherwise the following expressions shall have the following meanings:

“Abnormal”	has the meaning given to it in Clause 3.6.8;
“Acceptable Service Levels”	has the meaning given to it in paragraph 1.10 of Schedule 3 (Service Levels);
“Acquired Equipment”	has the meaning given in Clause 29.4.3.1;
“Agreement”	this framework agreement, including the Schedules and all other documents referred to in this Agreement;
“Agreement Commencement Date”	the date for commencement of this Agreement specified in Schedule 1 (Key Agreement Information);
“Alternative Back Office System”	such system or systems as may be utilised by an Authority Charge Point Operator to capture data relating to the availability of a Charge Point, its use by customers, the processing of payments and any other associated data as is required by the Statement of Requirements to be capable of being communicated by and/or accessed from the Charge Point;
“Authority Charge Point Operator”	the relevant Awarding Authority or its nominee or any person acquiring ownership of a Charge Point in succession to an Awarding Authority;
“Awarding Authority”	the “Awarding Authority” named in the Call-Off Contract, which may be the Contracting Authority, any subsidiary (direct or indirect) of the Contracting Authority, the GLA functional bodies and any subsidiary and/or Public Bodies in the Greater London Area (as defined in the Local Authorities Goods and Services Act 1970);
“Awarding Authority Branding”	such logo or other branding relating to the Awarding Authority as such Awarding Authority may require to be

	displayed in accordance with (and for the purposes set out in) Clause 5.5, provided always that such logo or branding shall not be in any way offensive, defamatory or infringe any third party intellectual property rights;
“Awarding Authority Group”	the Awarding Authority in its own right, its holding company (where applicable) and of all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time and all subsidiaries from time to time of its holding company (where applicable) together;
“Awarding Authority Premises”	any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the Awarding Authority Group, but excluding the Sites;
“Base Charge Reserve Value”	the minimum annual charge that is determined by the Awarding Authority in its sole discretion and specified in a Request Form as being payable in respect of a particular Site pursuant to a proposed Call-Off Contract;
“Business Day”	any day excluding Saturdays, Sundays or public or bank holidays in England;
“Call-Off Cap Reset Amount”	has the meaning given in Clause 20.11.4.1;
“Call-Off Contract”	a call-off contract in the form set out in Schedule 6 (Call-Off Contract Template) that has been executed by the Concessionaire and the Awarding Authority, which incorporates this Agreement and includes any attachments and any documents expressly referred to in that Call-Off Contract;
“Call-Off Contract Number”	the reference number for a Call-Off Contract, as specified in the relevant Call-Off Contract;
“Call-Off Co-ordinator”	the person named as such in a Call-Off Contract or such other person as notified

	to the Concessionaire by the Awarding Authority;
“Call-Off Guarantor”	means any person who agrees to act as guarantor under a Parent Company Guarantee pursuant to Clause 3.13.1;
“Call-Off Term”	the duration of a Call-Off Contract, as set out in the relevant Call-Off Contract;
“Call-Off Year”	means (as applicable): (a) the period of 12 months from and including the first day of a Call-Off Term; and (b) thereafter, the period of 12 months from and including each subsequent anniversary of the first day of the Call-Off Term;
“Cessation Plan”	a plan agreed between the Parties or determined by the Awarding Authority pursuant to Clause 30: (a) to give effect to a Declaration of Ineffectiveness; or (b) to give effect to a Public Procurement Termination Event;
“Charge Point Data”	real time data in relation to the status and availability of each and all Charge Points, including as a minimum the categories of data set out at Appendix 2 to Part 1 to Schedule 2 (Statement of Requirements);
“Charge Points”	the charge points and related infrastructure for electric vehicles to be financed, installed, operated and maintained by the Concessionaire at the Sites in accordance with this Agreement and the relevant Call-Off Contract;
“Concessionaire Equipment”	the equipment and materials of whatsoever nature installed at the Sites and used by the Concessionaire in providing the Services under any Call-Off Contract;

- (a) including without limitation the Charge Points; and
- (b) excluding any equipment and materials which the Call-Off Contract states is not to be treated as Concessionaire Equipment for the purpose of the Call-Off Contract;

“Concessionaire’s Call-Off Manager”

the person who is identified as the Concessionaire’s Call-Off Manager in a Proposal, it being acknowledged that such person may be the same person as is identified as being the Concessionaire’s Manager for the purposes of this Agreement;

“Concessionaire’s Manager”

the person who is identified as the Concessionaire’s Manager in Schedule 1 (Key Agreement Information);

“Concessionaire’s Personnel”

all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Concessionaire as are engaged in the performance of any of the Services;

“Concessionaire Property”

the equipment and materials of whatsoever nature used by the Concessionaire in providing the Services under any Call-Off Contract, including Concessionaire Equipment but excluding the Proprietary System;

“Confidential Information”

all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Contracting Authority and/or Awarding Authority (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Contracting Authority and/or Awarding Authority;

“Consumer Prices Index”

means the United Kingdom consumer prices index as published from time to time by the Office for National Statistics

as “CPI” or, if such index shall cease to be published or there is, in the reasonable opinion of the Contracting Authority (in the case of this framework Agreement) or the Awarding Authority in respect of a Call-Off Contract), a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other prices index as the Contracting Authority or Awarding Authority (as applicable) may, after consultation with the Concessionaire, determine to be appropriate in the circumstances;

“Contact Centre”

means a customer service function operated by the Concessionaire to enable Customers to register queries and/or complaints with the Concessionaire in connection with the provision of the Services by the Concessionaire via the following means of communication:

- (a) telephone;
- (b) email; and
- (c) letter;

“Contract Information”

the Agreement, any Call-Off Contract and related Site Agreement(s) in their entirety (including from time to time agreed changes to the same);

“Contracting Authority Branding”

such logo or other branding as relates to:

- (a) the Contracting Authority; and/or
- (b) the contractual framework established by virtue of the procurement process commenced by the ITP and relating to the subject matter of this Agreement,

as an Awarding Authority may require to be displayed in accordance with (and for the purposes set out in) Clause 5.5, provided always that such logo or

	branding shall not be in any way offensive, defamatory or infringe any third party intellectual property rights;
“CPI”	means the percentage increase in the level of the Consumer Prices Index (“Index”) between: (a) the level of the latest monthly Index to be published prior to the commencement of a Call-Off Term; and (b) the level of the Index published for the equivalent month in the Call-Off Year immediately preceding the Call-Off Year in respect of which the relevant calculation is being made;
“Customer	has the meaning given to it in Schedule 2 (Statement of Requirements);
“Declaration of Ineffectiveness”	a declaration made by a Court of competent jurisdiction under regulation 98 and which has any of the consequences described in regulation 101 of the Public Contracts Regulations 2015 SI 2015/102 or under regulation 59 and which has any of the consequences described in regulation 62 of the Concession Contracts Regulations 2016 SI 2016/273;
“Delayed Purchase Notice”	has the meaning given in Clause 29.4.2.9;
“Deleterious Materials”	any goods, materials or substances which are themselves or which incorporate substances which are generally known at the time of recommendation, specification or use to be deleterious to health and safety or the durability of the completed Charge Points and any other Concessionaire Equipment in the particular circumstances in which they are used or are otherwise not in accordance with British Standards, codes of practice or good building practice or techniques;

“Dispute”	has the meaning given in Clause 27.1;
“Disputing Party”	in respect of a Dispute: (a) relating to the Agreement means the Contracting Authority and the Concessionaire; and (b) relating to a Call-Off Contract means the Awarding Authority and the Concessionaire;
“Early Cessation Date”	has the meaning given in Clause 28.7;
“Exit Plan”	the Concessionaire’s Exit Plan contained in Schedule 9 of this Agreement (as may, in the context of a particular Call-Off Contract, be supplemented for the purpose of that Call-Off Contract);
“Financial Principles”	the financial principles on which the Turnover Charge element of the Payments due under each Call-Off Contract shall be calculated, reported on and paid as set out in Schedule 4 (Calculation and Payment of the Turnover Charge);
“Financial Year”	the twelve month period commencing on 1 April each year and ending on 31 March the following year;
“Force Majeure Event”	any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“Affected Party”) to perform its obligations in accordance with the terms of this Agreement (which includes for this purpose, a relevant Call-Off Contract) but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to

prevent such Force Majeure Event or its impact;

“Future Site Charges”

the aggregate of all Site Charges which would have been payable in respect of a relevant Site during the period:

- (a) on and from (as applicable):
 - (i) the date of termination of the relevant Call-Off Contract and its related Site Agreement(s); or
 - (ii) where Clause 28.7 applies, the Early Cessation Date; and
- (b) until and including the date on which the relevant Call-Off Contract and its related Site Agreement(s) would have terminated had the relevant Call-Off Contract and its related Site Agreement(s) continued in force and effect for the full duration of the applicable Call-Off Term;

“Go-Live Date”

the date specified in each Call-Off Contract by which the Charge Points are to have been installed and commissioned at all of the Sites;

“Go-Live Delay Event”

means any circumstance which:

- (a) is beyond the Concessionaire’s reasonable control;
- (b) is caused by or arises as a result of:
 - (i) any act or omission (including delay) of a statutory undertaker; or
 - (ii) any act or omission (including delay) of a local or other competent public authority;

which gives rise to a delay in the granting of any Statutory Consent;

or the doing of any other act or thing required to be done by the applicable undertaker or public authority; and

- (c) causes the Concessionaire to be unable to meet the Go-Live Date;

“Holding Company”

any company which from time to time directly or indirectly controls the Concessionaire as set out by section 1159 of the Companies Act 2006;

“Insolvency Event”

any of the following:

- (a) the Concessionaire and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of either or both of the Concessionaire or the Holding Company;
- (c) being a company, either or both of the Concessionaire or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- (d) either or both the Concessionaire or the Holding Company ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Concessionaire becoming bankrupt or dying; or

- (f) any similar event to those in (a) to € above occurring in relation to either or both of the Concessionaire or the Holding Company under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights”

any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“ITP”

has the meaning given in Recital B;

“Losses”

all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;

“Management Information Data”

data which shows the pattern and extent of usage of the Charge Points operated under each Call-Off Contract, including as a minimum the categories of data set out at Appendix 1 to Part 1 to Schedule 2 (Statement of Requirements);

“Maintenance Direct Agreement

an agreement or other arrangement:

- (a) between a Maintenance Provider and the Awarding Authority;
- (b) under which the Maintenance Provider undertakes that it will (if and to the extent requested by the Awarding Authority) provide Maintenance Services to the

Authority Charge Point Operator for the Maintenance Period; and

- (c) on the terms provided in the Exit Plan or otherwise reasonably acceptable to the Awarding Authority;

“Maintenance Period”

means the period commencing on the termination or expiry of a Call-Off Contract and continuing until the end of the Temporary Operation Period (if any) or (if a Purchase Notice or a Delayed Purchase Notice is served) for whichever is the longer of:

- (a) 2 years on and from the date of termination or expiry of the Call-Off Contract; and
- (b) the remainder of the expected lifetime of the item (to be defined in the Maintenance Direct Agreement);

“Maintenance Provider”

a person procured by the Concessionaire to provide Maintenance Services (and where the Concessionaire itself provides the Maintenance Services in respect of any Concessionaire Equipment shall be the Concessionaire);

“Maintenance Services”

services to maintain the Concessionaire Equipment such that it performs in accordance with its specification and the Statement of Requirements and any additional requirements imposed by the Call-Off Contract, including the provision of any spare parts required for that purpose;

“Milestone”

an event which is the completion of one or more of the specified activities as may be set out in the Project Plan;

“Mini-Competition”

a competitive process which the Awarding Authority may from time to time utilise to select a concessionaire to provide services at its sites from time to time;

“Mobilisation Consents”	any Statutory Consents which the Concessionaire has expressly identified in a Proposal as being required to be given during the period between entry into of the Call-Off Contract and the applicable Go-Live Date;
“Open Charge Point Protocol”	the “Open Charge Point Protocol” published from time to time by the Open Charge Alliance or such other person or organisation responsible from time to time for the publication of the Open Charge Point Protocol;
“Parent Company Guarantee”	has the meaning given in Clause 3.13.1;
“Parties”	in respect of: (a) this Agreement, the Contracting Authority and the Concessionaire; and (b) a Call-Off Contract, the Awarding Authority and the Concessionaire, (in each case, including their successors and permitted assignees) and “Party” shall mean either of them as the case may be;
“PAYG Average Price”	the average price per kilowatt hour (kWh) charged to Customers for use of Charge Points on a PAYG Basis pursuant to a Call-Off Contract, measured over each Reporting Period and calculated as follows: $\text{PAYG Average Price} = \frac{\text{Total revenue (excluding VAT) generated on a PAYG Basis in a Reporting Period pursuant to a Call-Off Contract (including applicable connection charges but excluding overstay charges)}}{\text{Total kWh delivered on a PAYG Basis in a Reporting Period}}$

pursuant to a Call-Off Contract;

“PAYG Basis”

any payment system provided by the Concessionaire which allows Customers to turn up and pay to use Charge Points on a standalone transaction by transaction basis, without (for example and without limitation) any requirement to pre-register or join a subscription or membership model or have any other agreement or arrangement with the Concessionaire or a third party related or contracted to the Concessionaire;

“Payments”

the payments to be made by the Concessionaire to the Awarding Authority pursuant to any Call-Off Contract;

“PCG Cap Reset Amount”

has the meaning given to it in Clause 20.11.4.2;

“Procurement Regulations”

the Public Contracts Regulations 2015 SI 2015/102 or the Concession Contracts Regulations 2016 SI 2016/273;

“Project Plan”

the plan (if any) set out in a Call-Off Contract in relation to the performance and timing of the Services under a Call-Off Contract which may include Milestones;

“Procurement Manager”

the person named as such in Schedule 1 (Key Agreement Information) or such other person as notified to the Concessionaire by the Contracting Authority;

“Proposal”

the Concessionaire’s proposal in respect of the installation, maintenance and operation of Concessionaire Equipment at Site(s) in response to a Request Form. A Proposal must include a draft Call-Off Contract signed by the Concessionaire;

“Proprietary Software”

software used in the Proprietary System;

“Proprietary System”	the back-office software system used by the Concessionaire to capture the use of the Charge Points by customers, process customer payments and capture/process any other associated data, as identified as such in Part 2 of the Statement of Requirements;
“Public Procurement Termination Event”	has the meaning given in Clause 30.7;
“Public Procurement Termination Grounds”	any one or more of the grounds described either in regulation 73(1) of the Public Contracts Regulations 2015 SI 2015/102 or regulation 44(1) of the Concession Contracts Regulations 2016 SI 2016/273;
“Purchase Notice”	has the meaning given in Clause 29.4.1.5;
“Relevant Call-Off Cap”	has the meaning given in Clause 20.11.4.3;
“Relevant PCG Cap”	has the meaning given in Clause 20.11.4.4;
“Relevant Equipment”	has the meaning given in Clause 29.4.1.4;
“Removal and Clean Up Costs”	has the meaning given in Clause 29.3.4;
“Reporting Period”	each period of typically twenty eight (28) days within the Contracting Authority’s financial calendar as set out in Appendix 1 to Schedule 1 (Key Agreement Information) or otherwise supplied by the Contracting Authority from time to time, provided that (a) where a Call-Off Term commences on a day other than the first day of a Reporting Period (“First Reporting Period”), such First Reporting Period shall be shortened to the number of days running from and including the first day of the Call-Off Term until and including the last day of such First Reporting Period; and

- (b) where a Call-Off Term terminates or expires on a day other than the last day of a Reporting Period (“**Last Reporting Period**”), such Last Reporting Period shall be shortened to the number of days running from and including the first day of such Last Reporting Period until and including the day on which the Call-Off Term expires or is terminated;

“Request Form”

a document produced by the Awarding Authority pursuant to Clause 3, setting out its request for a Proposal, which document shall be in the form set out in Schedule 5 (Request Form (Mini-Competition)) or in such other form as may be notified to the Concessionaire by the Awarding Authority from time to time;

“SA Sub-contractor”

has the meaning given in Clause 3.14.1;

“Services”

- (a) the installation, operation and maintenance of Charge Points and any other Concessionaire Equipment and related services and activities to be undertaken by the Concessionaire at any Site pursuant to a Call-Off Contract; and
- (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Call-Off Contract as being provided by the Concessionaire;

“Service Levels”

the minimum service levels for the Services as set out in Schedule 3 (Service Levels);

“Site”

any site from which the Concessionaire will be required to provide the Services as set out in the Call-Off Contract, subject to and in accordance with the Site Agreement;

“Site Agreement”	the legally binding lease or licence (as required pursuant to the terms of an individual Call-Off Contract) governing the basis on which the Concessionaire (and, where applicable, an SA Sub-contractor) may use a Site for the Services;
“Site Charge”	the charge payable by the Concessionaire in relation to a Site as specified in a Call-Off Contract, such Site Charge not to be less than the Base Charge Reserve Value;
“Specification”	the specification and other requirements set out in Attachment 1 of the Call-Off Contract;
“Statement of Requirements”	the statement of requirements for the Services to be provided under each Call-Off Contract as set out in Schedule 2 (Statement of Requirements);
“Statutory Consents”	any statutory approvals, consents, licences or permissions required from any local or other competent public authority to enable the Concessionaire lawfully to carry out and complete the Services or to reinstate them following their damage or destruction;
“Temporary Operation Notice”	has the meaning given in Clause 29.4.1.4;
“Temporary Operation Period”	has the meaning given in Clause 29.4.1.4;
“Term”	the period during which this Agreement continues in force as set out in Clause 4;
“Third Party Direct Agreement”	has the meaning given to it in Clause 16.4.3.2;
“Third Party Owner”	has the meaning given in Clause 16.4.3;
“Transparency Commitment”	the Awarding Authority’s commitment to publish its contracts, tender documents in accordance with the Local Government Transparency Code 2015 and the Awarding Authority’s own published transparency commitments;

“Turnover Charge”	has the meaning given in paragraph 1 of Schedule 4 (Calculation and Payment of the Turnover Charge);
“Turnover Percentage”	has the meaning given in paragraph 1 of Schedule 4 (Calculation and Payment of the Turnover Charge);
“Unutilised Call-Off Cap Amount”	has the meaning given in Clause 20.11.4.5;
“Unutilised PCG Cap Amount”	has the meaning given in Clause 20.11.4.6;
“Utilised Call-Off Cap Amount”	has the meaning given in Clause 20.11.1;
“Utilised PCG Cap Amount”	has the meaning given in Clause 20.11.2; and
“VAT”	means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

1.2 In this Agreement:

- 1.2.1 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.2.2 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement;
- 1.2.3 a reference to any document other than as specified in Clause 1.2.2 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.2.4 headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.2.5 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;

- 1.2.6 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:
- 1.2.6.1 the conflicting part of the Schedule is explicitly expressed to take precedence; or
 - 1.2.6.2 the conflict is with a provision in Schedule 8 (Special Conditions of Agreement), in which case the provisions in Schedule 8 shall prevail; or
 - 1.2.6.3 the conflict is with a provision in Part 2 (Special Conditions for Call-Off) to Attachment 2 to Schedule 6 (Call-Off Contract Template), in which case the provisions in Part 2 to Attachment 2 to Schedule 6 shall prevail;
- 1.2.7 except as otherwise expressly provided in any Call-Off Contract, and subject to Clause 1.2.6, if there is any inconsistency between any of these Clauses, the Schedules, any Call-Off Contract or Site Agreement or any other document referred to in or incorporated into this Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
- 1.2.7.1 the Site Agreement;
 - 1.2.7.2 the Call-Off Contract;
 - 1.2.7.3 these Clauses;
 - 1.2.7.4 the Schedules;
 - 1.2.7.5 any other document referred to in or incorporated by reference into this Agreement or any Call-Off Contract;
- 1.2.8 the Schedules form part of the Agreement and will have the same force and effect as if expressly set out in the body of the Agreement;
- 1.2.9 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.2.10 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. FRAMEWORK AGREEMENT

- 2.1 The purpose of this Agreement is to:
- 2.1.1 provide a mechanism whereby the Parties may enter into Call-Off Contracts and related Site Agreements;
 - 2.1.2 provide the framework under which each Call-Off Contract and related Site Agreement(s) will be administered; and

2.1.3 set out the obligations of the Parties.

- 2.2 The Services to be provided by the Concessionaire at the Sites are as described in the Statement of Requirements set out in Schedule 2 (Statement of Requirements) and as more particularly described in each Call-Off Contract. The Awarding Authorities' requirements may vary and this Agreement shall not place an Awarding Authority under any obligation to enter into a Call-Off Contract at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent an Awarding Authority from engaging any other organisations or persons to provide services similar to or the same as the Services at sites other than the Sites comprised in any Call Off Contract(s) between the Awarding Authority and the Concessionaire.
- 2.3 Clause 3 sets out the procedure by which the Parties may enter into a Call-Off Contract. Each Call-Off Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions of this Agreement.
- 2.4 The Concessionaire shall provide the relevant Services in accordance with the Call-Off Contract and corresponding Site Agreement(s). The Concessionaire must not commence any Services without an agreed Call-Off Contract and corresponding Site Agreement(s).
- 2.5 The Concessionaire shall be liable to make Payments to the Awarding Authority as described in Clause 7.

3. CALL-OFF PROCEDURE

- 3.1 At any time during the duration of this Agreement, an Awarding Authority may identify sites suitable for Charge Points. The Awarding Authority may at its sole discretion wish to grant rights to the Concessionaire to provide Services at those sites under the terms of this Agreement, in which case the procurement process set out below will be followed, which the Awarding Authority reserves the right, at its discretion, to amend from time to time to reflect best practice and applicable law.
- 3.2 Subject to Clause 3.3, where the Awarding Authority opts to undertake a Mini-Competition it will issue to those concessionaires on the framework a Request Form as set out in Schedule 5 (Request Form (Mini-Competition)), specifying the site(s) available and services to be provided.
- 3.3 The Concessionaire acknowledges that the Awarding Authority may exclude it from a Mini-Competition such that the Concessionaire shall not be entitled to be awarded a Call-Off Contract in the event that any grounds exist for the time being on which the Awarding Authority would be entitled to terminate the Agreement.
- 3.4 In the event that the Concessionaire receives such a Request Form for a Mini-Competition:

- 3.4.1 the Concessionaire shall immediately confirm receipt of such Request Form;
- 3.4.2 the Concessionaire shall respond to a Request Form by completing a Proposal as an offer capable of acceptance or by notifying the Awarding Authority in writing that it does not intend to submit a Proposal (together with a high-level summary of the reasons for the Concessionaire's decision not to submit a Proposal). The Concessionaire shall respond to the Awarding Authority by the date specified in the Request Form or, if no such date is specified, within fifteen (15) Business Days of receiving the Request Form, or by such other date as may be agreed with the Call-Off Co-ordinator. A Proposal must remain valid for at least ninety (90) Business Days (or such longer period as may be specified in the Request Form) from the date it is submitted to the Awarding Authority;
- 3.4.3 subject to Clause 3.10, the Awarding Authority will evaluate tendered proposals (including the Proposal) to determine which is the most economically advantageous with reference to the assessment criteria set out in the Request Form as they relate to the site(s) and services in question;
- 3.4.4 each of the concessionaires to whom the Request Form for that Mini-Competition was sent, will be notified as to whether or not it has been successful (it being acknowledged that whilst the Awarding Authority shall be under no obligation to provide feedback to a concessionaire in relation to the outcome of the Mini-Competition, an Awarding Authority may at its sole discretion provide concessionaires with such written feedback as it may consider appropriate in the circumstances); and
- 3.4.5 in respect of any Proposal submitted by the Concessionaire which it proposes to accept, the Awarding Authority will forward to the Concessionaire two copies of the Call-Off Contract. The Concessionaire shall sign both copies and return same to the Awarding Authority within ten (10) Business Days of receipt. The Call-Off Co-ordinator will arrange for both copies of the Call-Off Contracts to be signed by the Awarding Authority and will send a completed signed copy of the Call-Off Contract to the Concessionaire.
- 3.5 The Concessionaire acknowledges that the timescale for responding to a Request Form and the Go-Live Date stipulated in a Request Form may be short reflecting the Awarding Authority's requirements.
- 3.6 The Concessionaire acknowledges and agrees that:
 - 3.6.1 the contents of the Request Form and its schedules are confidential and must be used only for the purpose of submitting a Proposal. The Concessionaire must not make any communication or enter into any

collusive arrangement with any third party save for the purpose of permitted sub-contracting or as provided in Clause 3.14.2;

- 3.6.2 any contact, relating to the Services to be provided under the proposed Call-Off Contract or the Proposal, with any Awarding Authority personnel other than as identified in the Request Form may invalidate the Concessionaire's Proposal submission;
- 3.6.3 save as may otherwise be provided in the Request Form:
 - 3.6.3.1 the proposed Go-Live Date(s) identified by the Awarding Authority should be deemed material to the Call-Off Contract; and
 - 3.6.3.2 if the Concessionaire is unable to meet the proposed Go-Live Date(s) specified in the Request Form, the Concessionaire should query within the clarification process whether it is entitled to propose alternative dates and provide feedback as to issues associated with meeting the proposed Go-Live Date(s);
 - 3.6.3.3 the Awarding Authority shall be entitled but not obliged to consider any feedback provided by concessionaires in accordance with Clause 3.6.3.2 and to issue to all concessionaires revised proposed Go-Live Date(s) for the purpose of the relevant Call-Off Contract;
- 3.6.4 save as may otherwise be provided in the Request Form, in the Proposal submission the commercial Proposal must be separated from the technical Proposal. The proposed payments must not be included in the technical Proposal. The documents must be clearly titled 'Commercial Proposal' and 'Technical Proposal'. Submissions must be in Microsoft Office applications or Adobe Portable Document Format (pdf) documents;
- 3.6.5 during the course of the Awarding Authority's evaluation of proposal submissions, the Concessionaire may be asked to answer questions about its Proposal. The Concessionaire must respond to such questions as quickly as possible but, in any event, within two (2) Business Days or, if a deadline is specified, responses must be submitted by that deadline. Failure to respond may result in the Awarding Authority rejecting the Proposal. Any amendments to the Proposal submission arising from these inter-actions with the Concessionaire may be taken into account in the final evaluation;
- 3.6.6 to enable evaluation and/or moderation of the proposal evaluation process, the Awarding Authority may request a meeting with each of the concessionaires. Failure of the Concessionaire to attend following a request may result in the Awarding Authority rejecting the Proposal;

- 3.6.7 subject to the terms of the Request Form, proposals that contain pricing and/or payment terms that are inconsistent with Clause 7 or the Financial Principles set out in Schedule 4 (Calculation and Payment of the Turnover Charge) will be deemed non-compliant. If a Concessionaire wishes the Awarding Authority to consider any payment terms, this must be requested within the clarification process prior to submission of the Concessionaire's Proposal;
- 3.6.8 the financial aspects of each Proposal will be reviewed to consider if it appears to be abnormally high (in the case of the Turnover Percentage and Site Charge aspects of the Proposal) or abnormally low (in respect of the PAYG Average Price aspect of the Proposal) ("**Abnormal**"). An initial assessment will be undertaken by the Awarding Authority (acting reasonably) using a comparative analysis of the financial aspects of the Proposal received from other concessionaires on the framework, with reference to the methods and other specific aspects of the Concessionaire's Proposal. If the assessment shows that the financial aspects of the Proposal may be Abnormal:
- 3.6.8.1 the Awarding Authority will request from the Concessionaire a written explanation of the Proposal, or those parts of the Proposal which the Awarding Authority considers contribute to the financial aspects of the Proposal being Abnormal;
 - 3.6.8.2 on receipt of the Concessionaire's written explanation, the Awarding Authority will verify with the Concessionaire the Proposal or the relevant parts of the Proposal; and
 - 3.6.8.3 if the Awarding Authority is still of the opinion (acting reasonably) that the Concessionaire has submitted a Proposal which is Abnormal and the Awarding Authority is not satisfied (acting reasonably) that the Concessionaire's explanation (and any accompanying evidence provided by the Concessionaire) accounts for the high level of the Turnover Percentage and/or Site Charge aspects of the Proposal or the low level of the PAYG Average Price aspect of the Proposal, then the Awarding Authority will confirm this to the Concessionaire and advise the Concessionaire that the Concessionaire's Proposal has been rejected; and
- 3.6.9 failure to disclose all material information (being facts that the Awarding Authority regards as likely to affect the evaluation process), or disclosure of false information at any stage of the process may result in ineligibility for award. The Concessionaire must provide all information requested and not assume that the Awarding Authority has prior knowledge of any of the Concessionaire's information.

- 3.7 Each Call-Off Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions of this Agreement, as may have been amended in such Call-Off Contract and such documentation shall together form a separate agreement between the Parties.
- 3.8 A Request Form and anything prepared or discussed by the Awarding Authority shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by the Concessionaire. The Awarding Authority shall not be obliged to consider or accept any Proposal submitted by the Concessionaire.
- 3.9 A draft Call-Off Contract shall only become a Call-Off Contract upon execution of the draft Call-Off Contract by the Awarding Authority.
- 3.10 The Awarding Authority is not obliged to approve or sign any Call-Off Contract.
- 3.11 The Concessionaire is responsible for all and any costs, charges and expenses arising from or associated with the procurement process in this Clause 3 and the Awarding Authority shall not be liable for any costs, charges or expenses borne by or on behalf of a Concessionaire whether or not the Concessionaire is awarded a Call-Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.
- 3.12 Nothing in this Clause 3 shall prevent an Awarding Authority, having considered its entitlement to do so taking into account applicable law including the relevant procurement laws and regulations, determining to secure additional Sites and Services by electing to vary an existing Call-Off Contract already entered into pursuant to this Agreement.
- 3.13 The Awarding Authority may in its discretion, taking into account the circumstances of any particular Call-Off Contract and the financial circumstances of the Concessionaire (including whether or not the Concessionaire is itself the Holding Company in its corporate group structure) require as a condition of the award of a Call-Off Contract that the Concessionaire delivers to the Awarding Authority at the time stated by the Awarding Authority such of the following as the Awarding Authority may specify:
- 3.13.1 a duly executed parent company guarantee from such Holding Company or other person, in each case as the Awarding Authority approves in writing, in the form set out in Appendix A to Schedule 8 (Special Conditions of Agreement) of this Agreement (a **“Parent Company Guarantee”**); and
- 3.13.2 if requested by the Awarding Authority, a legal opinion as to its enforceability in substantially the form set out in Appendix B to Schedule 8 (Special Conditions of Agreement) of this Agreement completed to the reasonable satisfaction of the Awarding Authority.

3.14 Consortium arrangements in respect of Site Agreements

3.14.1 This Clause 3.14 applies where the Concessionaire's tender for the framework to which this Agreement relates was on the basis of:

- 3.14.1.1 a consortium involving other parties who were named in the Concessionaire's response to the prequalification questionnaire issued by the Contracting Authority in respect of the Agreement; and
- 3.14.1.2 the Concessionaire entering into this Agreement and any Call-Off Contract, and one of the other consortium members entering into any associated Site Agreement(s).

Where this applies Schedule 10 (Named SA Sub-contractors) sets out details of any such consortium sub-contractors of the Concessionaire (each an "**SA Sub-contractor**").

3.14.2 If the Concessionaire is the winning bidder in respect of a Mini-Competition and is accordingly awarded a Call-Off Contract, the Awarding Authority shall allow, at the Concessionaire's written request, an SA Sub-contractor to enter into the associated Site Agreement(s) in place of the Concessionaire **provided always** that without limiting Clause 11 and without prejudice to any other rights and remedies which the Awarding Authority has under the Site Agreement(s) against the SA Sub-contractor:

- 3.14.2.1 the SA Sub-Contractor shall be a sub-contractor of the Concessionaire for the purposes of this Agreement;
- 3.14.2.2 the Concessionaire shall ensure that the SA Sub-contractor complies with the terms of the Site Agreement(s) and all of the obligations and duties of the SA Sub-contractor under the Site Agreement(s) and at all times the Concessionaire shall remain responsible and liable for any acts or omissions of the SA Sub-contractor under or in respect of or in connection with the applicable Site Agreement(s);
- 3.14.2.3 the Concessionaire acknowledges that the Awarding Authority and the Contracting Authority shall each have the same rights and remedies as against the Concessionaire in respect of any such SA Sub-contractor acts or omissions and/or in respect of any other circumstances affecting the SA Sub-contractor as if the Concessionaire had been a party to the Site Agreement and those acts or omissions or other circumstances had been those of or affecting the Concessionaire; and
- 3.14.2.4 it shall be a pre-condition of the Call-Off Contract that the SA Sub-contractor must agree to the inclusion of

provisions in the relevant Site Agreement(s) which confirm that the Awarding Authority has the same rights and remedies under the Site Agreement(s) against the SA Sub-contractor in respect of any acts or omissions of the Concessionaire under or in respect of or in connection with the Call-Off Contract or the Site Agreement(s) and/or in respect of any other circumstances affecting the Concessionaire as if those acts or omissions or other circumstances had been those of the SA Sub-contractor.

4. TERM OF AGREEMENT AND CALL-OFF CONTRACTS

- 4.1 This Agreement (but not a Call-Off Contract) commences on the Agreement Commencement Date and subject to Clause 4.2, continues in force for a period of three (3) years (“**Initial Term**”) unless terminated earlier, either in whole or in part, in accordance with this Agreement.
- 4.2 The Contracting Authority has an option, exercisable at its sole discretion, to extend the duration of the Agreement for a further period of one (1) year by providing notice in writing to the Concessionaire at least three (3) months prior to the expiry of the Initial Term.
- 4.3 Each Call-Off Term shall be set out in the relevant Call-Off Contract and shall be for such period as the Awarding Authority, in its discretion, considers shall be appropriate having regard to the time that a concessionaire could reasonably be expected to take to recoup the investments required to provide the Services under the relevant Call-Off Contract, together with a return on invested capital taking into account those investments (which depending on the circumstances may be up to 15 years). Unless stated otherwise in a Call-Off Contract, the Call-Off Term and the Services provided pursuant to a Call-Off Contract may extend beyond the termination or expiry of this Agreement, in which case the provisions of this Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.
- 4.4 A Call-Off Contract may expire or be terminated in accordance with its terms, Clause 28 or Clause 30 but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Agreement.

5. THE SERVICES

- 5.1 The Concessionaire:
 - 5.1.1 shall provide the Services specified in a Call-Off Contract in accordance with this Agreement and the terms of the relevant Call-Off Contract;
 - 5.1.2 acknowledges that it has sufficient information about the Awarding Authority, the Site(s) and the Specification and that it has made all

appropriate and necessary enquiries to enable it to perform the Services in accordance with the relevant Call-Off Contract;

- 5.1.3 shall neither be entitled to any payment nor excused from any obligation or liability under the Agreement or the terms of the relevant Call-Off Contract due to any misinterpretation or misunderstanding by the Concessionaire of any fact relating to the Site(s), Specification or otherwise to the Agreement or relevant Call-Off Contract; and
- 5.1.4 shall comply with all lawful and reasonable requirements of the Awarding Authority relating to its performance of the Services under any Call-Off Contract.
- 5.2 Notwithstanding anything to the contrary in this Agreement or any Call-Off Contract, the Awarding Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement or relevant Call-Off Contract.
- 5.3 The Concessionaire shall provide the Services under each Call-Off Contract:
 - 5.3.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;
 - 5.3.2 in conformance in all respects with the Statement of Requirements and Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Statement of Requirements and Specification;
 - 5.3.3 in conformance with the Service Levels;
 - 5.3.4 in conformance with the terms of the Call-Off Contract;
 - 5.3.5 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;
 - 5.3.6 so that they are properly managed and monitored and shall immediately inform the Awarding Authority if any aspect of the Call-Off Contract is not being or is unable to be performed; and
 - 5.3.7 (in respect of those elements of the Services that relate to the installation and maintenance of Charge Points and any other Concessionaire Equipment):
 - 5.3.7.1 in a good, proper and workmanlike manner, free from defects and using good quality and suitable materials;

- 5.3.7.2 without using or specifying the use of any Deleterious Materials;
 - 5.3.7.3 in accordance with any Statutory Consents;
 - 5.3.7.4 in accordance with all relevant codes of practice and British and European Standards at the date of the commencement of the relevant Services; and
 - 5.3.7.5 in accordance with the obligations contained in this Agreement (which includes for this purpose, the relevant Call-Off Contract).
- 5.4 The Concessionaire shall not be entitled to display advertisements at any Site or use a Site for any purpose other than as envisaged by this Agreement, save for where agreed in a Call-Off Contract and subject to the terms of the relevant Site Agreement, provided always that (so long as the Concessionaire has obtained any and all necessary consents) nothing in this Clause 5.4 shall prevent the Concessionaire from displaying its proprietary logos and/or branding at a Site and/or on any Charge Point or other Concessionaire Equipment.
- 5.5 Where and to the extent included as part of the Awarding Authority's requirements in a Request Form for a Call-Off Contract, the Awarding Authority shall be entitled to require the Concessionaire to display Contracting Authority Branding and/or Awarding Authority Branding at such places at a Site (including on the Concessionaire Equipment) as the Awarding Authority may reasonably require, but always on the basis that:
- 5.5.1 the Contracting Authority Branding and/or the Awarding Authority Branding (as applicable) will be secondary to the Concessionaire's own branding and the Awarding Authority's requirements will reflect this);
 - 5.5.2 subject to Clause 20.2.2 and Clause 20.5, the Contracting Authority shall indemnify the Concessionaire against costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability) or damages, which the Concessionaire suffers or incurs in respect of any proceedings brought against the Concessionaire by any third party in respect of any actual or alleged infringement of a third party's Intellectual Property Rights to the extent that the same arises out of the display of the Contracting Authority Branding at a Site in accordance with this Clause 5.5 provided that the Concessionaire shall use its reasonable endeavours to mitigate the consequences to it of any such third party proceedings and the costs, expenses, liabilities and damages which it may claim from the Contracting Authority pursuant to this Clause 5.5; and
 - 5.5.3 subject to Clause 20.2.2 and Clause 20.5, the Awarding Authority shall indemnify the Concessionaire against costs (including legal costs and costs of enforcement), expenses, liabilities (including any

tax liability) or damages, which the Concessionaire suffers or incurs in respect of any proceedings brought against the Concessionaire by any third party in respect of any actual or alleged infringement of a third party's Intellectual Property Rights to the extent that the same arises out of the display of the Awarding Authority Branding at a Site in accordance with this Clause 5.5 provided that the Concessionaire shall use its reasonable endeavours to mitigate the consequences to it of any such third party proceedings and the costs, expenses, liabilities and damages which it may claim from the Awarding Authority pursuant to this Clause 5.5.

6. SITE AGREEMENTS

The specific terms of the Site Agreement for each Site shall be determined by the Awarding Authority at its sole discretion and a copy of the Site Agreement for each Site shall be attached to the Request Form and the corresponding Call-Off Contract.

7. PAYMENTS

7.1 The Payments to be made by the Concessionaire to the Awarding Authority in respect of each Call-Off Contract shall comprise:

7.1.1 the Site Charge due in respect of each Site as stipulated in the relevant Call-Off Contract; and

7.1.2 the Turnover Charge due in respect of each Site under the Call-Off Contract, which shall be calculated and paid in accordance with (and subject to) the Financial Principles set out in Schedule 4 (Calculation and Payment of the Turnover Charge).

7.2 The Site Charge payable to the Awarding Authority in respect of a Site shall be no less than the Base Charge Reserve Value for that Site. The Turnover Percentage applicable to each Site shall be not less than 1% (one per cent).

7.3 An amount equal to one quarter of the Site Charge in respect of each Site pursuant to each Call-Off Contract shall be paid to the Awarding Authority within thirty (30) days of the end of each quarter of the Financial Year. The Concessionaire shall pay such funds in the most cost effective and timely manner and in accordance with any reasonable instructions issued by the Awarding Authority.

7.4 The Payments and other sums payable under a Call-Off Contract are exclusive of VAT (or similar tax) and shall be paid free and clear of all deductions and withholdings whatsoever, unless the deduction or withholding is required by law. If any deduction or withholding is required by law the Concessionaire shall pay the Awarding Authority such sum as will, after the deduction or withholding has been made, leave the Awarding Authority with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

- 7.5 The Payments and any other sums payable under a Call-Off Contract shall be paid in sterling to the credit of a bank account to be designated in writing by the Awarding Authority.
- 7.6 The Concessionaire shall bear its own costs and expenses incurred in the course of carrying out the activities envisaged under this Agreement and any Call-Off Contract and shall not be entitled to charge an Awarding Authority for any of its costs or expenses.
- 7.7 Interest shall accrue at the rate of two percent (2%) above the base rate of the Bank of England from time to time on all sums due and payable to the Awarding Authority under a Call-Off Contract from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The Parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.8 The provisions of this Clause 7 shall remain in effect notwithstanding termination or expiry of this Agreement or any Call-Off Contract until the settlement of all subsisting claims by the Awarding Authority.

8. WARRANTIES AND OBLIGATIONS

- 8.1 Without prejudice to any other warranties expressed elsewhere in this Agreement (which includes for this purpose, any Call-Off Contract) or implied by law, the Concessionaire warrants, represents and undertakes that:
- 8.1.1 it has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Agreement;
- 8.1.2 it will (and where Clause 3.14.2 applies, the SA Sub-Contractor will), at the point in time at which a Call-Off Contract and Site Agreement are entered into with an Awarding Authority, have all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company but excluding the Mobilisation Consents) to enter into and to perform the Call-Off Contract and related Site Agreement(s);
- 8.1.3 it will (and where Clause 3.14.2 applies, the SA Sub-contractor will) have obtained all applicable Mobilisation Consents by the Go-Live Date pursuant to a relevant Call-Off Contract and related Site Agreement(s);
- 8.1.4 it is aware of the purposes for which the Services are required at each of the Sites and acknowledges that the Awarding Authority is

reliant upon the Concessionaire's expertise and knowledge in the provision of the Services at those Sites;

- 8.1.5 it is entering into this Agreement and any relevant Call-Off Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement and any relevant Call-Off Contract;
- 8.1.6 the Agreement, Call-Off Contracts and Site Agreements are executed by a duly authorised representative of the Concessionaire (or, where Clause 3.14.2 applies, each relevant Site Agreement is executed by a duly authorised representative of the SA Sub-contractor);
- 8.1.7 all materials, equipment and goods under the relevant Call-Off Contract, including without limitation the Concessionaire Equipment used at each Site, shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Statement of Requirements and the Specification set out or referred to in the relevant Call-Off Contract; and
- 8.1.8 none of:
 - 8.1.8.1 the Concessionaire Equipment;
 - 8.1.8.2 documents, drawings, computer software and any other work or item prepared, developed or used by the Concessionaire pursuant to the relevant Call-Off Contract; nor
 - 8.1.8.3 the use of any of the items referred to in Clauses 8.1.8.1 or 8.1.8.2 by an Authority Charge Point Operator for the purpose of the continued operation and maintenance of the Concessionaire Equipment where and as envisaged in accordance with Clause 29.4,

shall infringe any Intellectual Property Rights or any other legal or equitable right of any person.

- 8.2 Each warranty and obligation in this Clause 8 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement (or any Call-Off Contract).

9. CONTRACTUAL MANAGEMENT

- 9.1 The Contracting Authority authorises the Procurement Manager to act as the Contracting Authority's representative for all purposes of this Agreement and the Concessionaire shall deal with the Procurement Manager (or his or her nominated representative) in respect of all matters arising under this

Agreement, unless notified otherwise. An Awarding Authority will appoint a Call-Off Co-ordinator in respect of each Call-Off Contract in relation to matters arising under a Call-Off Contract, unless otherwise notified by the Awarding Authority.

Concessionaire's Manager

- 9.2 The Concessionaire's Manager shall act as the Concessionaire's representative for all purposes of this Agreement. The Concessionaire's Manager shall:
- 9.2.1 diligently supervise the performance of the Services across all Call-Off Contracts entered into pursuant to this Agreement;
 - 9.2.2 attend all framework forum meetings with the Contracting Authority, Awarding Authority and the other concessionaires (the location, frequency and time of which shall be specified by the Procurement Manager from time to time). It is envisaged that such meetings will take place no more than twice each year; and
 - 9.2.3 be available to the Contracting Authority to resolve any issues arising in connection with this Agreement.
- 9.3 The Concessionaire may only make any changes to the Concessionaire's Manager (except in the event of sickness, incapacity or resignation) with the prior consent of the Contracting Authority (which shall not be unreasonably withheld).

Concessionaire's Call-Off Manager

- 9.4 The Concessionaire's Call-Off Manager shall act as the Concessionaire's representative for all purposes of a Call-Off Contract. The Concessionaire's Call-Off Manager shall:
- 9.4.1 diligently supervise the performance of the Services pursuant to the relevant Call-Off Contract;
 - 9.4.2 attend all contract meetings with the Awarding Authority in relation to the relevant Call-Off Contract (the location, frequency and time of which shall be specified by the Procurement Manager or the relevant Call-Off Co-ordinator from time to time); and
 - 9.4.3 be available to the Awarding Authority to resolve any issues arising in connection with the relevant Call-Off Contract at such time periods as are specified in the relevant Call-Off Contract.
- 9.5 The Concessionaire may only make any changes to the Concessionaire's Call-Off Manager (except in the event of sickness, incapacity or resignation) with the prior consent of the relevant Awarding Authority (which shall not be unreasonably withheld).

- 9.6 No act of or omission by or approval from either the Awarding Authority, the Procurement Manager, or any Call-Off Co-ordinator in performing any of their respective duties under or in connection with this Agreement or relevant Call-Off Contract shall in any way operate to relieve the Concessionaire of any its duties, responsibilities, obligations or liabilities under this Agreement and relevant Call-Off Contract.

10. CONCESSIONAIRE'S PERSONNEL

- 10.1 Nothing in this Agreement or any Call-Off Contract will render the Concessionaire's Personnel, an employee, agent or partner of the Awarding Authority or of any member of the Awarding Authority Group by virtue of the provision of the Services by the Concessionaire under this Agreement or Call-Off Contract and the Concessionaire shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Concessionaire's Personnel.
- 10.2 The Concessionaire shall provide the Concessionaire's Personnel as necessary for the proper and timely performance and management of the Services in accordance with the relevant Call-Off Contract. All Concessionaire Personnel deployed on work relating to the Call-Off Contract shall have the appropriate qualifications and competence, be properly managed and supervised.
- 10.3 Without prejudice to any of the Awarding Authority's other rights, powers or remedies, the Awarding Authority may (without liability to the Concessionaire) deny access to Concessionaire's Personnel to any Awarding Authority Premises and/or any Sites which are subject to a Site Agreement in the form of a lease granted by the Awarding Authority and/or require that any Concessionaire's Personnel be immediately removed from performing the Services if, in each case, such Concessionaire's Personnel in the Awarding Authority's view have not been properly trained in any way or are otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. The Awarding Authority shall notify the Concessionaire without delay of such denial and/or requirement in writing and the Concessionaire shall comply with such notice and provide a suitable replacement.
- 10.4 The Concessionaire shall give the Awarding Authority, if so requested, full particulars of all persons who are or may be at any time employed on the relevant Call-Off Contract.
- 10.5 The Concessionaire shall indemnify, keep indemnified and hold harmless the Awarding Authority from and against all Losses which the Awarding Authority or the Awarding Authority Group incur or suffer arising out of or in connection with any act or omission of the Concessionaire's Personnel (or any person who may allege to be the same) under or in connection with this Agreement or any Call-Off Contract (whenever such Losses may arise) or any failure by the Concessionaire to comply with Clause 10.3.

- 10.6 The Concessionaire shall pay to the Concessionaire's Personnel not less than the amounts to which the Concessionaire's Personnel are contractually entitled.

11. SUB-CONTRACTING AND CHANGE OF OWNERSHIP

- 11.1 The Concessionaire shall not assign or sub-contract all or a substantial part of the Services without the prior written consent of the Awarding Authority which may be refused or granted subject to such conditions as the Awarding Authority may reasonably require.

- 11.2 Where the Concessionaire sub-contracts all or any part of the Services to any person, the Concessionaire shall:

11.2.1 ensure that such person complies with all of the obligations and duties of the Concessionaire under the relevant Call-Off Contract insofar as they relate to the Services or any part of them (as the case may be) which that sub-contractor is required to provide;

11.2.2 be responsible for payments to that person;

11.2.3 remain solely responsible and liable to the Awarding Authority for any breach of the relevant Call-Off Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Concessionaire;

11.2.4 ensure that the activities of such person do not breach the relevant Site Agreement(s) and remain solely responsible and liable to the Awarding Authority for any breach of the relevant Site Agreement(s);

11.2.5 on or before the date of the Call-Off Contract notify the Awarding Authority in writing of the name, contact details and details of the legal representatives of any such sub-contractor (of any tier), to the extent that such information has not already been provided by the Concessionaire to the Awarding Authority under the Agreement (including Schedule 10 (Named SA Sub-contractors));

11.2.6 promptly notify the Awarding Authority in writing of any change to the information notified under Clause 11.2.5 and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the date of the Call-Off Contract;

11.2.7 without prejudice to the provisions of Clause 14, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor; and

11.2.8 include a term in each sub-contract (of any tier):

- 11.2.8.1 requiring payment to be made by the Concessionaire, or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract, to the sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements; and
 - 11.2.8.2 a requirement that any invoices for payment submitted by the sub-contractor are considered and verified by the Concessionaire, or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, in a timely manner and that any undue delay in doing so shall not in itself be sufficient justification for failing to treat an invoice as being valid and undisputed under the sub-contract requirements.
- 11.3 The Concessionaire shall give notice to the Awarding Authority within ten (10) Business Days where:
 - 11.3.1 there is any change in the ownership of the Concessionaire where such change relates to 50% or more of the issued share capital of the Concessionaire; and
 - 11.3.2 there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company; and
 - 11.3.3 (in the case of an unincorporated Concessionaire) give notice to the Awarding Authority if there is any change in the management personnel of the Concessionaire, which alone or taken with any other change in management personnel not previously notified to the Awarding Authority, equates to a change in the identity of 50% or more of the management personnel of the Concessionaire.

Upon the occurrence of any of the events referred to at Clauses 11.3.1 – 11.3.3 above, the Contracting Authority (acting reasonably) shall have the right to terminate the Agreement and the Awarding Authority (acting reasonably) shall have the right to terminate any relevant Call-Off Contract.

12. CONFLICT OF INTEREST

- 12.1 The Concessionaire warrants that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services, the Contracting Authority or any member of the Awarding Authority Group, save to the extent fully disclosed to and approved by the Awarding Authority and/or the Contracting Authority as appropriate.
- 12.2 The Concessionaire shall check for any conflict of interest at regular intervals throughout the Term and the duration of any Call-Off Contract and in any event not less than once in every six months and shall notify the Contracting Authority and any applicable Awarding Authority in writing immediately upon

becoming aware of any actual or potential conflict of interest with the Services, the Contracting Authority or any member of the Awarding Authority Group and shall work with the Contracting Authority and Awarding Authority(s) as appropriate to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Contracting Authority's and/or Awarding Authority's satisfaction, provided that, where the Contracting Authority is not (acting reasonably) so satisfied, it may terminate this Agreement and the Awarding Authority may (acting reasonably) terminate any Call-Off Contract, in existence, in accordance with Clause 28.1.6.

13. ACCESS TO PREMISES

- 13.1 The Concessionaire's access to the Sites (as distinct from the Awarding Authority Premises) shall be governed by the terms of the relevant Site Agreement(s). Without prejudice to the terms of any Site Agreement and rights of the Concessionaire thereunder, where access to a Site becomes unavailable during a Call-Off Term as a consequence of circumstances beyond the reasonable control of the Concessionaire, the Awarding Authority will (acting reasonably) work with the Concessionaire to seek to mitigate any resulting adverse impact on the Concessionaire or its business, which may include (if the Awarding Authority acting reasonably considers it appropriate in the circumstances) a temporary suspension of the Concessionaire's obligation to comply with the provisions of paragraph PI 1 of Schedule 3 (Service Levels) in respect of such Site for such period of time as the Awarding Authority (acting reasonably) may determine.
- 13.2 Subject to Clause 13.1 any access to any Awarding Authority Premises made available to the Concessionaire in connection with the proper performance of the Call-Off Contract shall be free of charge and shall be used by the Concessionaire solely for the purpose of performing its obligations under the Call-Off Contract. For the avoidance of doubt, the Concessionaire shall be responsible for its own costs of travel including either or both of any congestion charging or low emission zone charging. The Concessionaire shall:
- 13.2.1 have the use of such Awarding Authority Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Awarding Authority Premises;
 - 13.2.2 vacate such Awarding Authority Premises upon the termination or expiry of the relevant Call-Off Contract or at such earlier date as the Awarding Authority may determine;
 - 13.2.3 not exercise or purport to exercise any rights in respect of any Awarding Authority Premises in excess of those granted under this Clause 13;

- 13.2.4 ensure that the Concessionaire's Personnel carry any identity passes issued to them by the Awarding Authority at all relevant times and comply with the Awarding Authority's security procedures as may be notified by the Awarding Authority from time to time; and
- 13.2.5 not damage the Awarding Authority Premises or any assets on the Awarding Authority Premises.
- 13.3 Nothing in Clause 13.2 shall create or be deemed to create the relationship of landlord and tenant in respect of any Awarding Authority Premises between the Concessionaire and any member of the Awarding Authority Group.
- 13.4 The Awarding Authority shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Concessionaire except as may be specified in any Call-Off Contract.

14. COMPLIANCE WITH POLICIES AND LAW

- 14.1 The Concessionaire, at no additional cost to the Awarding Authority:
 - 14.1.1 undertakes to procure that all the Concessionaire's Personnel comply with all of the Awarding Authority's policies and standards that are relevant to the performance of the Services, including those set out in the Call-Off Contract and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Awarding Authority for personnel working at Awarding Authority Premises or accessing the Awarding Authority's computer systems. The Awarding Authority shall provide the Concessionaire with copies of such policies and standards on request;
 - 14.1.2 shall provide the Services in compliance with, and ensure that the Concessionaire's Personnel comply with, all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to either or both of the Concessionaire's business or the Awarding Authority's business, from time to time in force which are or may become applicable to the Services. The Concessionaire shall promptly notify the Awarding Authority if the Concessionaire is required to make any change to the Services for the purposes of complying with its obligations under this Clause 14.1.2;
 - 14.1.3 without limiting the generality of Clause 14.1.2, shall comply with all advertising laws, regulations, standards, guidelines and all instructions regarding advertising issued by the Contracting Authority or Awarding Authority from time to time;
 - 14.1.4 without limiting the generality of Clause 14.1.2, shall comply with all relevant enactments in force from time to time relating to

discrimination in employment and the promotion of equal opportunities;

14.1.5 acknowledges that the Awarding Authority is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a “**Relevant Protected Characteristic**”) (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Concessionaire shall assist and cooperate with Awarding Authority where possible in satisfying this duty and not do anything to put the Awarding Authority in breach of this duty;

14.1.6 acknowledges that the Awarding Authority is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:

14.1.6.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;

14.1.6.2 eliminate unlawful discrimination; and

14.1.6.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in providing the Services, the Concessionaire shall assist and co-operate with the Awarding Authority where possible to enable the Awarding Authority to satisfy its duty and not do anything to put the Awarding Authority in breach of this duty;

14.1.7 without prejudice to any other provision of this Clause 14.1 or the Schedules, shall comply with any provisions set out in the Schedules that relate to traffic management and shall comply with the reasonable instructions of Awarding Authority’s Traffic Manager as may be made available to the Concessionaire from time to time. For the purposes of this Clause 14.1.7, “**Traffic Manager**” means the Awarding Authority’s traffic manager appointed in accordance with section 17 of the Traffic Management Act 2004; and

14.1.8 shall promptly notify the Concessionaire's Personnel and the Awarding Authority of any health and safety hazards that exist or may arise in connection with the performance of the Services.

14.2 In all cases, the costs of compliance with this Clause 14.1 shall be borne by the Concessionaire.

- 14.3 In providing the Services, the Concessionaire shall (taking into account industry best practice not entailing excessive cost and the industry best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Concessionaire's activities may impact on the environment) to the need to:
- 14.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
 - 14.3.2 enhance the environment and have regard to the desirability of achieving sustainable development;
 - 14.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
 - 14.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

15. CORRUPT GIFTS AND PAYMENT OF COMMISSION

The Concessionaire shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Contracting Authority, Awarding Authority or any member of the Awarding Authority Group nor favour any employee, officer or agent of the Contracting Authority, Awarding Authority or any member of the Awarding Authority Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Contracting Authority, Awarding Authority or any member of the Awarding Authority Group other than as a representative of the Contracting Authority or Awarding Authority (as applicable), without the Contracting Authority's or the Awarding Authority's prior written approval (as applicable).

16. EQUIPMENT

- 16.1 The risk in all Concessionaire Property shall be with the Concessionaire at all times.
- 16.2 The Concessionaire shall ensure that all Concessionaire Property meets all minimum safety standards required from time to time by law.
- 16.3 The Concessionaire acknowledges that there may be certain equipment already installed at each Site to facilitate the power supply ("**Existing Equipment**"). The Awarding Authority makes no warranties regarding the suitability or fitness for purpose of the Existing Equipment and hereby excludes all warranties that may be implied by statute or otherwise. The Concessionaire shall be responsible for the Existing Equipment during the Call-Off Term including responsibility for all obligations owed to the relevant electricity distribution network operator in respect of the Existing Equipment. The parties acknowledge that the exclusion of liability in this Clause 16.3 is

reasonable on the basis that the Existing Equipment will be provided free of charge.

16.4 Ownership of the Concessionaire Equipment

16.4.1 Subject to Clause 16.4.3, ownership of the Concessionaire Equipment shall at all times during the Call-Off Term remain vested in the Concessionaire free from all encumbrances and the Concessionaire shall not charge, transfer, dispose of or otherwise alienate its interest or permit any interest or other encumbrance to be created in or over the Concessionaire Equipment or any part of it.

16.4.2 Without prejudice to Clause 16.4.1, and subject to Clause 16.4.3, the Concessionaire shall:

16.4.2.1 as part of any Proposal submitted pursuant to this Agreement provide to the Awarding Authority a certificate signed by a statutory director confirming that ownership of the Concessionaire Equipment is (or will at the Go-Live Date be) vested in the Concessionaire free from all encumbrances; and

16.4.2.2 on the date of the actual Go-Live Date and each anniversary of the actual Go-Live Date provide to the Awarding Authority a further certificate signed by a statutory director confirming that ownership of the Concessionaire Equipment continues to be vested in the Concessionaire free from all encumbrances,

except to the extent that (and the certificate states that) the Concessionaire Equipment is owned by (or is subject to an encumbrance in favour of) a Third Party Owner who has entered into (or in accordance with Clause 16.4.3.2, will enter into) a Third Party Direct Agreement. Any failure to provide such certificate or the provision of an inaccurate certificate will be a material breach of this Agreement and the applicable Call-Off Contract.

16.4.3 If the Concessionaire's business model involves ownership of any Concessionaire Equipment being vested in a third party or any charge or any other encumbrance whatsoever being created over any Concessionaire Equipment in favour of a third party (in each case a "**Third Party Owner**"):

16.4.3.1 the Concessionaire shall disclose this to the Awarding Authority:

(a) in any Proposal which it makes in response to a Request Form; or

(b) (where the proposed third party interest arises after the Call-Off Contract is entered into) prior

to any disposal of, or other creation of any third party interest in, the Concessionaire Equipment; and

16.4.3.2 it shall be a condition of:

- (a) the award of the relevant Call-Off Contract; and/or
- (b) agreement by the Awarding Authority to a subsequent disposal of, or other creation of any third party interest in, the Concessionaire Equipment,

that the Concessionaire procures the delivery to the Awarding Authority of a direct agreement executed by the Third Party Owner on terms reasonably acceptable to the Awarding Authority including the right for the Awarding Authority (or its nominee) to continue to use and/or purchase the Concessionaire Equipment on the expiry or earlier termination of the Call-Off Contract on the basis, and in the circumstances, described in Clause 29 of this Agreement (“**Third Party Direct Agreement**”).

17. QUALITY AND BEST VALUE

The Concessionaire acknowledges that the Contracting Authority and each Awarding Authority is a best value authority for the purposes of the Local Government Act 1999 and as such the Contracting Authority and each Awarding Authority is required to make arrangements to secure continuous improvement in the way it exercises its functions, (having regard to a combination of economy, efficiency and effectiveness), and as such, the Concessionaire shall, where reasonably requested by the Contracting Authority and/or an Awarding Authority (as applicable), participate in any relevant best value review.

18. RECORDS, AUDIT AND INSPECTION

18.1 The Concessionaire shall, and shall procure that its sub-contractors shall:

18.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Concessionaire’s obligations under this Agreement and the relevant Call-Off Contract and all transactions entered into by the Concessionaire for the purposes of this Agreement and the relevant Call-Off Contract including without limitation all records needed to evidence and calculate:

18.1.1.1 the Turnover Charge under each Call-Off-Contract; and

18.1.1.2 the Concessionaire’s performance in respect of the Service Levels,

(**“Records”**); and

18.1.2 retain all Records during the Term and Call-Off Term and for a period of not less than six (6) years (or such longer period as may be required by law), except Records containing Personal Data (as defined in section 1(1) of the Data Protection Act 1998) which shall only be retained for as long as necessary following termination or expiry of this Agreement or relevant Call-Off Contract (**“Retention Period”**).

18.2 The Awarding Authority and any person nominated by the Awarding Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Concessionaire what the Awarding Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Concessionaire’s performance of the Services (including compliance with Clause 14.1 and performance against the Service Levels and the accuracy of Management Information Data). The Concessionaire shall give all reasonable assistance to the Awarding Authority or its nominee in conducting such inspection, including making available documents and staff for interview.

18.3 The Concessionaire acknowledges:

18.3.1 that the Awarding Authority will be dependent on the Concessionaire for comprehensive and accurate reporting of the Concessionaire’s performance against the Service Levels; and

18.3.2 it will therefore be reasonable for the Awarding Authority to undertake spot checks on the accuracy of the Concessionaire’s Service Level reporting and accuracy of Management Information Data with little or no advance notice.

19. SET-OFF

All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Awarding Authority arising out of or attributable to a Call-Off Contract may be deducted by the Awarding Authority from monies due or which may become due to the Concessionaire under the Call-Off Contract.

20. INDEMNITY AND LIMITATIONS OF LIABILITY

20.1 Subject to Clauses 20.2.1, 20.3, 20.4, 20.5, 20.6, 20.7, 20.8 and 20.9 the Concessionaire is responsible for and shall indemnify, keep indemnified and hold harmless the Awarding Authority and the other members of the Awarding Authority Group (including their respective employees, sub-contractors and agents) (**“the Indemnified Party”**) against all Losses which the Indemnified Party incurs or suffers as a consequence of any breach (whether caused by the Concessionaire or any of its employees, agents or sub-contractors) or any negligent performance of this Agreement or any relevant Call-Off Contract or Site Agreement by the Concessionaire (or any

of its employees, agents or sub-contractors) (including in each case any non-performance or delay in performance of this Agreement or any relevant Call-Off Contract or Site Agreement) or of any breach of statutory duty, misrepresentation or misstatement by the Concessionaire (or any of its employees, agents or sub-contractors).

20.2 It is agreed that:

20.2.1 the Concessionaire is not responsible for and shall not indemnify the Awarding Authority (or any other member of the Awarding Authority Group) for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement or Call-Off Contract or Site Agreement by the Awarding Authority and/or any other member of the Awarding Authority Group including by any of their respective employees, agents or sub-contractors; and

20.2.2 neither the Contracting Authority nor the Awarding Authority (as the case may be) shall be responsible for and shall not indemnify the Concessionaire for any Losses to the extent that Losses are caused by any breach or negligent performance of any of its obligations under this Agreement or a Call-Off Contract or Site Agreement by the Concessionaire (including by any of its respective employees, agents or sub-contractors).

20.3 Subject to Clauses 20.7, 20.8 and 20.9, the Concessionaire's maximum aggregate liability arising out of or in connection with a Call-Off Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Concessionaire's obligations under such Call-Off Contract, in each case howsoever caused will be limited to an amount equal to the higher of:

20.3.1 £200,000 (Two Hundred Thousand Pounds Sterling); and

20.3.2 "**£A**" calculated as follows:

$$\mathbf{£A = TSC \times 2}$$

where:

TSC means the aggregate of the Site Charges payable across all Sites associated with the relevant Call-Off Contract for the duration of the Call-Off Term.

For example: for a Call-Off Contract where there are 2 Sites (A and B) with an annual Site Charge of Site A: £10,000 and Site B: £2,000, and a Call-Off Term of 9 years and 6 months, $TSC = £10,000 \times 9.5 + £2,000 \times 9.5$).

- 20.4 Subject to Clauses 20.7, 20.8 and 20.9, the maximum aggregate liability of each of the Contracting Authority and the Concessionaire arising out of or in connection with this Agreement (excluding, for these purposes, any liability arising out of or in connection with any Call-Off Contract), whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of their obligations under this Agreement shall not exceed £100,000 (One Hundred Thousand Pounds Sterling). For the avoidance of doubt, nothing in this Clause 20.4 shall limit the liability of the Concessionaire under a Call-Off Contract or Site Agreement.
- 20.5 Subject always to Clauses 20.6, 20.7, 20.8 and 20.9, none of the Contracting Authority, the Awarding Authority nor the Concessionaire will have any liability to any other party in respect of:
- 20.5.1 loss of profit (whether direct, indirect or consequential);
 - 20.5.2 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential);
 - 20.5.3 loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential);
 - 20.5.4 loss of bargain (whether direct, indirect or consequential);
 - 20.5.5 liability to third parties (whether direct, indirect or consequential), except as explicitly provided in Clauses 5.5 and 29.4.2.4; or
 - 20.5.6 indirect, consequential or special loss.
- 20.6 Clause 20.5 will not exclude or limit any liability of the Concessionaire to an Awarding Authority in respect of:
- 20.6.1 additional costs and expenses incurred by the Awarding Authority during the period of not more than two (2) years following termination of a Call-Off Contract in procuring and/or implementing alternative or replacement services for the Services including the additional cost of management time, other personnel costs, the costs of equipment, materials and software and the costs and expenses of transferring all or part of the Services to the Awarding Authority or a third party following termination of a Call-Off Contract; or
 - 20.6.2 loss of Future Site Charges.
- 20.7 Nothing in this Agreement or any Call-Off Contract will operate to exclude or restrict one party's liability (if any) to another:
- 20.7.1 for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);

- 20.7.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or
- 20.7.3 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

Any liability of the Concessionaire or Contracting Authority which falls within this Clause 20.7 will not be taken into account in assessing whether the financial limit in Clause 20.3 or Clause 20.4 (as applicable) has been reached.

20.8 Without prejudice to Clause 20.7 above, nothing in this Agreement or any Call-Off Contract will operate to exclude or restrict the Concessionaire's liability:

20.8.1 in respect of any claim or proceedings made, brought or threatened against the Contracting Authority and/or Awarding Authority (or other member of the Awarding Authority Group) by any person, including in respect of:

20.8.1.1 any death or personal injury or loss of or damage to property; or

20.8.1.2 the actual or alleged infringement of a third party's Intellectual Property Rights;

20.8.2 under the indemnity contained in Clause 10.5;

20.8.3 for any breach of Clause 14 (Compliance with Policies and Law);

20.8.4 for any breach of Clause 15 (Corrupt Gifts and Payment of Commission);

20.8.5 for any breach of Clause 23.1 (Intellectual Property Rights);

20.8.6 for any breach of Clause 24 (Privacy and Data Protection);

20.8.7 for any breach of Clause 25 (Confidentiality and Announcements);

20.8.8 for any breach of Clause 26 (Freedom of Information and Transparency);

20.8.9 under the indemnities contained in Clause CA20 (Transfer of Employees on Expiry or Termination) of Part 2 to Attachment 2 of Schedule 6 to any relevant Call-Off Contract;

20.8.10 under the indemnity contained in Clause CA27.3 (Waste Electrical and Electronic Equipment Regulations) of Part 2 to Attachment 2 of Schedule 6 to any relevant Call-Off Contract;

20.8.11 for any failure by it to pay the Removal and Clean Up Costs to the Awarding Authority in accordance with Clause 29.3.4 (where applicable); and

20.8.12 any Losses suffered by the Awarding Authority as a result of any breach by the Concessionaire of its obligations under Clauses 29.4.2 and 29.4.3 (where they apply).

Any liability of the Concessionaire which falls within this Clause 20.8 will not be taken into account in assessing whether the financial limit in Clause 20.3 or Clause 20.4 has been reached.

20.9 Without prejudice to Clause 20.7 above, nothing in this Agreement or any Call-Off Contract will operate to exclude or restrict one party's liability to another under a Site Agreement.

20.10 Mitigation of losses and handling of claims

20.10.1 Each of the Contracting Authority and Awarding Authority (as applicable) agree to use its reasonable endeavours to mitigate:

20.10.1.1 the consequences to it of any breach by the Concessionaire of this Agreement or any Call-Off Contract (as applicable) and the Losses it may claim as a result of that breach; and

20.10.1.2 the Losses it may claim under any indemnity contained in this Agreement or any Call-Off Contract (as applicable) where circumstances have arisen giving the Contracting Authority or the Awarding Authority (as applicable) a right to bring a claim against the Concessionaire under any such indemnity,

provided that this will not in any way restrict or reduce any obligation to mitigate loss or damage which may exist at common law.

20.10.2 The Concessionaire agrees to use its reasonable endeavours to mitigate:

20.10.2.1 the consequences to it of any breach by:

- (a) the Contracting Authority of this Agreement; or
 - (b) the Awarding Authority of any Call-Off Contract,
- and the losses it may claim as a result of that breach; and

20.10.2.2 the losses it may claim from an Awarding Authority under any indemnity contained in this Agreement or a relevant Call-Off Contract where circumstances have arisen giving the Concessionaire a right to bring a claim against the Awarding Authority under any such indemnity,

provided that this will not in any way restrict or reduce any obligation to mitigate loss or damage which may exist at common law.

20.10.3 In the event that a third party (a “**Claimant**”) brings (or threatens to bring) a claim (a “**Relevant Claim**”) against Awarding Authority in respect of a matter which is the subject of an indemnity in favour of the Awarding Authority in this Agreement or a Call-Off Contract, the Awarding Authority shall use its reasonable endeavours to persuade the Claimant to:

20.10.3.1 withdraw the Relevant Claim against the Awarding Authority; and

20.10.3.2 bring the relevant claim against the Concessionaire in place of the Awarding Authority.

20.11 Implications of a liability cap being reached under a Call-Off Contract or any Parent Company Guarantee

20.11.1 If at any time the aggregate liability which the Concessionaire has to the Awarding Authority under a Call-Off Contract and which is subject to the Relevant Call-Off Cap, exceeds ninety per cent (90%) of the Relevant Call-Off Cap (the amount of such aggregate liability being the “**Utilised Call-Off Cap Amount**”) then:

20.11.1.1 the Awarding Authority shall be entitled on notice in writing to terminate the relevant Call-Off Contract, subject to Clause 20.11.1.2;

20.11.1.2 a notice under Clause 20.11.1.1 shall not take effect if within 14 days from the date of such notice, the Concessionaire irrevocably agrees that the Relevant Call-Off Cap is increased by the Call-Off Cap Reset Amount and provided that:

(a) this Clause may be invoked by the Concessionaire on each occasion that the aggregate liability which the Concessionaire has to the Awarding Authority under a Call-Off Contract exceeds ninety per cent (90%) of the Relevant Call-Off Cap; and

(b) in the case of any increase to the Relevant Call-Off Cap pursuant to this Clause 20.11.1 any accrued liability shall continue to be counted for the purposes of determining whether, following such increase, ninety per cent (90%) of the Relevant Call-Off Cap has been exceeded pursuant to this Clause 20.11.1.

20.11.2 If at any time the aggregate liability which a Call-Off Guarantor has to the Awarding Authority under a Parent Company Guarantee exceeds ninety per cent (90%) of the Relevant PCG Cap (the amount of such aggregate liability being the “**Utilised PCG Cap Amount**”) then:

20.11.2.1 the Awarding Authority shall be entitled on notice in writing to terminate the relevant Call-Off Contract, subject to Clause 20.11.2.2;

20.11.2.2 a notice under Clause 20.11.2.1 shall not take effect if within 14 days from the date of such notice, the Call-Off Guarantor irrevocably agrees that the Relevant PCG Cap is increased by the PCG Cap Reset Amount and provided that:

(a) this Clause may be invoked by the Call-Off Guarantor on each occasion that the aggregate liability which the Call-Off Guarantor has to the Awarding Authority under a Parent Company Guarantee exceeds ninety per cent (90%) of the Relevant PCG Cap; and

(b) in the case of any increase to the Relevant PCG Cap pursuant to this Clause 20.11.2 any accrued liability shall continue to be counted for the purposes of determining whether, following such increase, ninety per cent (90%) of the Relevant PCG Cap has been exceeded pursuant to this Clause 20.11.2.

20.11.3 If at the time that the Awarding Authority serves a notice under Clause 20.11.1.1 or 20.11.2.1 (as the case may be) any liability of the Concessionaire or Call-Off Guarantor (as applicable) to the Awarding Authority is not liquidated, then the Awarding Authority shall:

20.11.3.1 be entitled to make a reasonable estimate of the expected amount of the liability for the purpose of calculating the Concessionaire's or Call-Off Guarantor's aggregate liability (as applicable) at that time;

20.11.3.2 state the amount of the estimate and the basis on which it has been calculated in the notice; and

20.11.3.3 provide such further detail of the basis on which it has been calculated as the Concessionaire or Call-Off Guarantor (as applicable) may reasonably request.

20.11.4 For the purposes of this Clause 20:

20.11.4.1 **“Call-Off Cap Reset Amount”** means an amount equal to:

- (a) one hundred per cent (100%) of the cap which applies under Clause 20.3 in respect of the Concessionaire’s liability to the Awarding Authority arising out of or in connection with a Call-Off Contract; **less**
- (b) the relevant Unutilised Call-Off Cap Amount;

20.11.4.2 **“PCG Cap Reset Amount”** means an amount equal to:

- (a) one hundred per cent (100%) of the cap which applies under paragraph (c) of the form of parent company guarantee at Appendix A of Schedule 8 in respect of a Call-Off Guarantor’s liability to the Awarding Authority pursuant to a Parent Company Guarantee; **less**
- (b) the relevant Unutilised PCG Cap Amount;

20.11.4.3 **“Relevant Call-Off Cap”** means the amount of the cap specified in Clause 20.3 in respect of the Concessionaire’s liability to the Awarding Authority arising out of or in connection with a Call-Off Contract, plus the sum of any and all Call-Off Cap Reset Amounts which have been agreed in respect of such cap;

20.11.4.4 **“Relevant PCG Cap”** means the amount of the cap specified in paragraph (c) of the form of parent company guarantee at Appendix A of Schedule 8 in respect of a Call-Off Guarantor’s liability to the Awarding Authority pursuant to a Parent Company Guarantee, plus the sum of any and all PCG Cap Reset Amounts which have been agreed in respect of such cap;

20.11.4.5 **“Unutilised Call-Off Cap Amount”** means an amount equal to:

- (a) the then current Relevant Call-Off Cap; **less**
- (b) the Utilised Call-Off Cap Amount; and

20.11.4.6 **“Unutilised PCG Cap Amount”** means an amount equal to:

- (a) the then current Relevant PCG Cap; **less**
- (b) the Utilised PCG Cap Amount.

21. INSURANCE

21.1 The Concessionaire will at its sole cost maintain employer's liability and motor insurance cover as required by law and insurance cover in the sum of five million pounds sterling (£5,000,000) per claim (in terms approved by the Awarding Authority) in respect of the following to cover the Services ("**the Insurances**") and will ensure that the Awarding Authority's interest is noted on the public liability insurance and will ensure that such public liability insurance includes an indemnity to principal clause:

21.1.1 public liability to cover injury and loss to third parties; and

21.1.2 insurance to cover the loss or damage to any item related to the Services.

21.2 The insurance cover will be maintained with a reputable insurer.

21.3 The Concessionaire will produce evidence to the Contracting Authority and/or the Awarding Authority on reasonable written request of the insurance policies set out in Clause 21.1 and payment of all premiums due on each policy.

21.4 The Concessionaire warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clause 21.1 being or becoming void, voidable or unenforceable.

21.5 In the event that any of the Insurances are cancelled or not renewed, the Concessionaire shall immediately notify the Awarding Authority and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the Awarding Authority.

22. THE AWARDING AUTHORITY'S DATA

22.1 The Concessionaire acknowledges the Awarding Authority's ownership of Intellectual Property Rights which may subsist in the Awarding Authority's data. Where applicable, the Concessionaire shall not delete or remove any copyright notices contained within or relating to the Awarding Authority's data.

22.2 Where applicable, the Concessionaire and the Awarding Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement and any relevant Call-Off Contract) to preserve the integrity of the Awarding Authority's data and to prevent any corruption or loss of the Awarding Authority's data.

23. INTELLECTUAL PROPERTY RIGHTS, OPERATING MATERIALS AND MAINTENANCE ARRANGEMENTS

23.1 The Concessionaire shall:

23.1.1 on commencement of a Call-Off Contract, deliver up to the Awarding Authority all operating instructions, specifications, software and any

other information necessary to install, operate and maintain the Concessionaire Equipment. This shall include sufficient interface information for the purpose of enabling, without further consent or permission from any person, the utilisation of the Charge Points with an Alternative Back Office System by direct connection between the Charge Point and the Alternative Back Office System without the requirement for that connection to be routed via the back office system of any third party **provided that**:

- 23.1.1.1 the Concessionaire shall not be required to include items necessary to maintain the Concessionaire Equipment to the extent that the Concessionaire's Exit Plan provides that a Maintenance Direct Agreement is entered into in respect of that Concessionaire's Equipment;
 - 23.1.1.2 where Clause 23.1.1.1 applies, the materials to be provided by the Concessionaire on commencement of the Call-Off Contract pursuant to this Clause 23.1.1 must include each Maintenance Direct Agreement duly completed by the Maintenance Provider; and
 - 23.1.1.3 it is acknowledged that a Maintenance Direct Agreement in respect of a Charge Point may provide for an interface to the Alternative Back Office System to be provided via a system operated by the Maintenance Provider rather than directly to the Charge Point; and
- 23.1.2 within twenty (20) Business Days of the actual Go-Live Date, supply to the Awarding Authority any replacement and/or additional materials for and to those referred to in Clause 23.1.1 such that they reflect the Concessionaire Equipment as installed, including a full set of as built drawings for each Site;
- 23.1.3 promptly provide updates to any of such materials to the Awarding Authority as and when they become relevant from time to time including to reflect:
- 23.1.3.1 any updates which are required to be made in connection with the Open Charge Point Protocol, where the specification of the Charge Points provides that they comply with the Open Charge Point Protocol; and
 - 23.1.3.2 any changes in the way in which Maintenance Services are provided in respect of any Concessionaire Equipment. If a new Maintenance Provider is engaged by the Concessionaire to replace a Maintenance Provider who has provided a Maintenance Direct Agreement, then (without prejudice to the existing Maintenance Direct Agreement) the Concessionaire shall procure and provide to the Awarding Authority a Maintenance Direct Agreement from the new Maintenance Provider; and

23.1.4 provide annually on each anniversary of the actual Go-Live Date a certificate signed by a statutory director confirming that the materials provided pursuant to this Clause 23.1 are complete and up to date,

(the materials described in this Clause from time to time being the “**Operating Materials**”). A failure to comply with the requirements of this Clause 23.1 shall be a material breach of this Agreement and the applicable Call-Off Contract for the purposes of Clause 28.1.1 and may lead to the Concessionaire being excluded from Mini-Competitions pursuant to Clause 3.3.

23.2 Subject always to Clause 23.3, the Concessionaire hereby grants to the Awarding Authority and/or shall procure that the Awarding Authority is granted a perpetual, irrevocable, royalty-free, sub-licensable and transferable licence to use the Operating Materials for the purpose of operating, maintaining and/or removing the Concessionaire Equipment following expiry or termination of a Call-Off Contract.

23.3 The Concessionaire shall not be required to deliver up or license to the Awarding Authority the Proprietary System or Proprietary Software or any part of it except to the extent (if any) required for the purpose of the provision and use of the interface information referred to in Clause 23.1.

23.4 The Concessionaire shall:

23.4.1 collect Management Information Data during the Call-Off Term for each Call-Off Contract and provide such Management Information Data to the Contracting Authority each Reporting Period in accordance with paragraph 1.6 of Schedule 3 (Service Levels). The Contracting Authority and each Awarding Authority shall be entitled to use such Management Information Data for the purpose of:

23.4.1.1 validating the Concessionaire’s performance of its obligations under the Call-Off Contract; and

23.4.1.2 understanding the actual and potential demand for services in the nature of the Services including for the purpose of planning future procurements; and

23.4.2 collect and provide Charge Point Data in real time to the Contracting Authority via such system as may be agreed between the Concessionaire and the Contracting Authority. The Concessionaire acknowledges that such Charge Point Data is not confidential and may be used by the Contracting Authority and made publically available for use by third parties in each case for any purpose and free of charge.

23.5 The Concessionaire acknowledges that:

23.5.1 a failure to collect and provide the Management Information Data and/or Charge Point Data pursuant to Clause 23.4 shall be a

material breach of this Agreement and the applicable Call-Off Contract for the purpose of Clause 28.1.1 and may lead to it being excluded from Mini-Competitions pursuant to Clause 3.3; and

23.5.2 without limiting any other rights they may have, any inaccurate reporting of Management Information Data by the Concessionaire which the Contracting Authority or any affected Awarding Authority (in each case, acting reasonably) considers to be deliberate shall be regarded as a material breach not capable of remedy for the purpose of Clause 28.1.1 (unless the Contracting Authority or the Awarding Authority, as the case may be, in its sole discretion elects to permit the Concessionaire to remedy the same).

23.6 The Concessionaire shall have no right (save where expressly permitted under the Call-Off Contract or with the Awarding Authority's prior written consent) to use any trademarks, trade names, logos or other Intellectual Property Rights of the Awarding Authority.

23.7 The Concessionaire shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with the Call-Off Contract (including those necessary to comply with the requirements of this Clause 23) have been paid.

24. PRIVACY AND DATA PROTECTION

The Concessionaire shall comply with all of its obligations under the Data Protection Act 1998 and, if Processing Personal Data (as such terms are defined in section 1(1) of that Act) on behalf of the Awarding Authority, shall only carry out such Processing for the purposes of carrying out its obligations in accordance with this Agreement and any relevant Call-Off Contract.

25. CONFIDENTIALITY AND ANNOUNCEMENTS

25.1 Subject to Clause 26, the Concessionaire will keep confidential:

25.1.1 the terms of this Agreement and all Call-Off Contracts; and

25.1.2 any and all Confidential Information that it may acquire in relation to the Contracting Authority and/or Awarding Authority.

25.2 The Concessionaire will not use the Confidential Information for any purpose other than to perform its obligations under this Agreement and any Call-Off Contract. The Concessionaire will ensure that its officers and employees comply with the provisions of Clause 25.1.

25.3 The obligations on the Concessionaire set out in Clause 25.1 will not apply to any Confidential Information which:

25.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 25); or

- 25.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
- 25.3.3 to the extent that such disclosure is to the Secretary of State for Transport (or the government department responsible for public transport in London for the time being), the Office of Rail and Road, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agent and sub-contractors.
- 25.4 The Concessionaire shall keep secure all materials containing any information in relation to the Agreement or to any Call-Off Contract and its performance.
- 25.5 The Concessionaire shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or any Call-Off Contract or in relation to any matter under or arising from the Agreement or any Call-Off Contract unless specifically granted permission to do so in writing by the Contracting Authority or, in the case of a Call-Off Contract, the Awarding Authority. The Contracting Authority shall have the right to approve any announcement before it is made.
- 25.6 The provisions of this Clause 25 will survive any termination of this Agreement or Call-Off Contract for a period of six (6) years from termination.

26. FREEDOM OF INFORMATION AND TRANSPARENCY

- 26.1 For the purposes of this Clause 26:
- 26.1.1 **“FOI Legislation”** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry for Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- 26.1.2 **“Information”** means information recorded in any form held by the Contracting Authority, Awarding Authority or by the Concessionaire on behalf of the Contracting Authority or Awarding Authority; and
- 26.1.3 **“Information Access Request”** means a request for any Information under the FOI Legislation.
- 26.2 The Concessionaire acknowledges that the Contracting Authority and Awarding Authority:
- 26.2.1 are subject to the FOI Legislation and agrees to assist and co-operate with the Contracting Authority and Awarding Authority to enable the Contracting Authority and Awarding Authority to comply with their obligations under the FOI Legislation; and

- 26.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Concessionaire.
- 26.3 Without prejudice to the generality of Clause 26.2, the Concessionaire shall and shall procure that its sub-contractors (if any) shall:
- 26.3.1 transfer to the Procurement Manager or Call-Off Co-ordinator (as applicable), or such other person as may be notified by the Contracting Authority or Awarding Authority (as applicable), to the Concessionaire, each Information Access Request relevant to this Agreement or a Call-Off Contract, the Services or any member of the Awarding Authority Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Access Request; and
- 26.3.2 in relation to Information held by the Concessionaire on behalf of the Contracting Authority or Awarding Authority (as applicable), provide the Contracting Authority or Awarding Authority (as applicable) with details about and/or copies of all such Information that the Contracting Authority or Awarding Authority (as applicable) requests and such details and/or copies shall be provided within five (5) Business Days of a request (or such other period as the Contracting Authority or Awarding Authority may reasonably specify), and in such forms as the Contracting Authority or Awarding Authority may reasonably specify.
- 26.4 The Contracting Authority or Awarding Authority (as applicable) 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.
- 26.5 The Concessionaire shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Contracting Authority or Awarding Authority (as applicable).
- 26.6 The Concessionaire acknowledges that the Contracting Authority and/or Awarding Authority (as applicable) are subject to the Transparency Commitment. Accordingly, notwithstanding Clause 25.1 and Clause 26, the Concessionaire hereby gives its consent for the Contracting Authority or Awarding Authority (as applicable) to publish the Contract Information to the general public.
- 26.7 The Contracting Authority or Awarding Authority (as applicable) 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 the Contracting Authority or Awarding Authority (as applicable) may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.

- 26.8 The Contracting Authority or Awarding Authority (as applicable) may in its absolute discretion consult with the Concessionaire regarding any redactions to the Contract Information to be published pursuant to Clause 26.6. The Contracting Authority or Awarding Authority (as applicable) shall make the final decision regarding publication and/or redaction of the Contract Information.

27. DISPUTE RESOLUTION

- 27.1 Any dispute or difference arising out of or related to this Agreement or a Call-Off Contract shall be referred to as a "**Dispute**". Each of the Disputing Parties shall use all reasonable endeavours to negotiate in good faith and settle any Dispute.
- 27.2 Notwithstanding any other provision of this Clause 27, where the Dispute under a Call-Off Contract concerns "construction operations" as defined in Section 105 of the Housing Grants, Construction and Regeneration Act 1996 (as amended) either Disputing Party may by notice in writing (the "**Notice of Adjudication**") refer that Dispute to adjudication at any time and the Scheme for Construction Contracts (as amended) shall apply subject to the following amendments:

Paragraph reference in the Scheme for Construction Contracts (as amended)	Amendments
7(4)	Add a new paragraph 7(4) "Save where the adjudicator shall otherwise direct, the other party shall serve on the adjudicator and the referring party within fourteen (14) days of service of the referral notice, his response to the referral notice to which the provisions of paragraph 7(2) and 7(3) shall apply."
13(f)	Delete in line 2 from "provided" to "intention" and insert "subject to notification to the parties and obtaining consent from at least one of them".
22	Delete "if requested by one of the parties to the dispute, the" and insert "The".

- 27.3 If the Dispute is not settled through discussion between the Procurement Manager or Call-Off Co-ordinator (as applicable) and a representative of the Concessionaire within a period of seven (7) Business Days of the date on which the Dispute arose, either Disputing Party may by notice to the other

refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Disputing Parties for resolution.

- 27.4 If the Dispute is not resolved within fourteen (14) Business Days of referral to the Senior Personnel, the Disputing Parties shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the assistance of a mediator. Either Disputing Party may give notice to the other Disputing Party ("**Notice**") to commence such process and the Notice shall identify one or more proposed mediators.
- 27.5 If the Disputing Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within twenty eight (28) Business Days of the service of the Notice, either Disputing Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Disputing Parties or as the Disputing Parties may otherwise agree in writing.
- 27.6 Where a dispute is referred to mediation under Clause 27.4, the Disputing Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 27.7 If the Disputing Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Disputing Parties' authorised representatives, shall be final and binding on the Disputing Parties.
- 27.8 Where the Dispute does not relate to "construction operations" as defined in Section 105 the Housing Grants, Construction and Regeneration Act 1996 (as amended), if either Disputing Party refuses at any time to participate in the mediation procedure and in any event if the Disputing Parties fail to reach agreement on the Dispute within forty (40) Business Days of the service of the Notice either Disputing Party may commence proceedings in accordance with Clause 41 (Governing Law).
- 27.9 Where a Dispute is referred to adjudication in accordance with Clause 27.2:
- 27.9.1 each Disputing Party shall facilitate the resolution of the Dispute as quickly and economically as possible;
- 27.9.2 if either Disputing Party is dissatisfied with the adjudicator's decision then either Party may notify the other Disputing Party of the matter which it disputes and state that it intends to commence court proceedings for the final determination of the Dispute. Court proceedings may not be commenced unless this notification is given within six (6) weeks of the notification of the adjudicator's decision; and
- 27.9.3 the Disputing Parties shall be entitled to summarily enforce the reliefs and remedies set out in an adjudicator's decision, even if the decision is subject to legal proceedings.

- 27.10 For the avoidance of doubt, the Concessionaire shall continue to: (i) act in accordance with the Agreement and/or Call-Off Contract; and (ii) provide Services in accordance with the Call-Off Contract, without delay or disruption while the Dispute is being resolved pursuant to this Clause 27.
- 27.11 Neither Disputing Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 27 and Clause 27 shall not apply in respect of any circumstances where such remedies are sought.

28. BREACH AND TERMINATION OF AGREEMENT

- 28.1 Without prejudice to any right to terminate at common law, the Contracting Authority may terminate this Agreement and the Awarding Authority may terminate any Call-Off Contract (and its related Site Agreement(s)) by giving notice to the Concessionaire (specifying that such termination will have immediate effect or otherwise stating the date on which such termination shall take effect) if:

28.1.1 in addition and without prejudice to Clauses 28.1.2 to 28.1.8 (inclusive), the Concessionaire has committed any material or persistent breach of this Agreement (in the case of the Contracting Authority) or Call-Off Contract or any related Site Agreement (in the case of the Awarding Authority) and in the case of such a breach that is capable of remedy fails to remedy that breach within thirty (30) calendar days (or such other timeframe as specified in writing by the Contracting Authority or Awarding Authority, as applicable) from the date of written notice to the Concessionaire giving details of the breach and requiring it to be remedied; or

28.1.2 the Concessionaire fails to meet the Go-Live Date in the Call-Off Contract, save for where a delay is caused by:

28.1.2.1 a failure by the Awarding Authority to perform its obligations pursuant to the Call-Off Contract (including where an approval has been unreasonably withheld or delayed), except where such failure by the Awarding Authority to perform its obligations is caused by any act or omission of the Concessionaire (or its employees, agents or sub-contractors); or

28.1.2.2 a Go-Live Delay Event,

in which case time shall be extended for a period equal to the delay caused by the Awarding Authority or the Go-Live Delay Event **provided always** that the Concessionaire has used and continues to use its reasonable endeavours to mitigate and/or resolve the Go-Live Delay Event and shall provide regular updates to the Awarding Authority on the actions being taken by it in such regard; or

28.1.3 the Concessionaire is subject to an Insolvency Event; or

- 28.1.4 in accordance with Clause 11.3 if there is a change of ownership or if the Concessionaire is in breach of Clause 11.3; or
 - 28.1.5 if the Concessionaire fails to meet any of the Acceptable Service Levels in three (3) consecutive Reporting Periods; or
 - 28.1.6 the Contracting Authority or the Awarding Authority (as applicable) is not satisfied (acting reasonably) on the issue of any conflict of interest in accordance with Clause 12; or
 - 28.1.7 the Concessionaire or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010 in respect of or otherwise in connection with this Agreement or any Call-Off Contract or related Site Agreement; or
 - 28.1.8 the Concessionaire commits any of the offences listed in Regulation 38 (mandatory exclusions) of the Concessions Contracts Regulations 2016; or
 - 28.1.9 the Concessionaire has abandoned or otherwise repudiated the Call-Off Contract; or
 - 28.1.10 notice is served under Clause 20.11.1.1 and Clause 20.11.1.2 does not apply; or
 - 28.1.11 notice is served under Clause 20.11.2.1 and Clause 20.11.2.2 does not apply; or
 - 28.1.12 the average price per kilowatt hour (kWh) charged to Customers for use of Charge Points on a PAYG Basis pursuant to a Call-Off Contract is greater than the PAYG Average Price which is specified in Part 2 of Attachment 4 to the relevant Call-Off Contract (or, as applicable, such increased PAYG Average Price as may be permitted in accordance with clause 6.2 of the relevant Call-Off Contract) in any four (4) Reporting Periods during any twelve (12) month period during the applicable Call-Off Term.
- 28.2 Without prejudice to any right to terminate at common law, the Contracting Authority may terminate this Agreement immediately upon giving notice to the Concessionaire if an Awarding Authority terminates any Call-Off Contract (and its related Site Agreement(s)) pursuant to Clause 28.1. For the avoidance of doubt this Clause 28.2 shall not entitle an Awarding Authority to terminate any other Call-Off Contract (or any Site Agreement which is not related to the terminated Call-Off Contract) on the grounds that the Contracting Authority has exercised its right to terminate this Agreement.
- 28.3 Without prejudice to any rights or remedies under the Agreement (which includes for this purpose, the relevant Call-Off Contract) or at common law, the parties agree that where a Site Agreement terminates in respect of individual Site(s) in accordance with its terms:

- 28.3.1 the Call-Off Contract will continue in respect of any remaining Site(s) under the terms of the Call-Off Contract and surviving Site Agreement(s); and
- 28.3.2 unless otherwise agreed between the Awarding Authority and the Concessionaire, the Awarding Authority shall have the same rights and the Concessionaire shall have the same obligations in respect of that Site and the Concessionaire Equipment relevant to that Site as if the termination of the Site Agreement was a termination of the relevant Call-Off Contract and the terms of this Agreement and the Call-Off Contract shall be interpreted accordingly (*mutatis mutandis*).
- 28.4 Without prejudice to any of the Contracting Authority's and/or the Awarding Authority's other rights, powers or remedies (whether under this Agreement, a relevant Call-Off Contract or otherwise) if the Concessionaire is in breach of any of its warranties and/or obligations under Clause 8 and/or any of its other obligations in respect of the Services under this Agreement or a Call-Off Contract, the Concessionaire shall, if required to do so by the Contracting Authority and/or Awarding Authority, promptly remedy the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations.
- 28.5 Force Majeure Events
- 28.5.1 Neither Party shall be deemed to be in breach of the relevant Call-Off Contract, or otherwise liable to the other Party to that Call-Off Contract in any manner whatsoever, for any failure or delay in performing its obligations under the relevant Call-Off Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 28.5.2 If a Force Majeure Event occurs, the Party affected will:
- 28.5.2.1 promptly upon becoming aware of the Force Majeure Event give the other Party written notice of the occurrence, anticipated duration and impact of the Force Majeure Event;
- 28.5.2.2 use reasonable endeavours to mitigate the effects of the Force Majeure Event, to continue to perform the affected obligations notwithstanding the occurrence of the Force Majeure Event and to ensure that the Force Majeure Event comes to an end; and
- 28.5.2.3 continue to perform all of its obligations under the relevant Call-Off Contract, the performance of which are not affected by the Force Majeure Event.
- 28.5.3 If a Force Majeure Event has continued for more than eight (8) weeks from the date on which that Force Majeure Event first arose and:

28.5.3.1 is having a material adverse effect on either Party's performance of its obligations under the relevant Call-Off Contract ("**the Affected Party**"); and

28.5.3.2 in the case of a Force Majeure Event affecting the Concessionaire, in the opinion of the Awarding Authority (acting reasonably) the occurrence of such Force Majeure Event would not prevent the Services from being capable of being provided by the Awarding Authority or a replacement concessionaire or service provider,

then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate the Call-Off Contract (and its related Site Agreement(s)) immediately upon giving notice to the Affected Party. If the Call-Off Contract and its related Site Agreements are terminated in accordance with this Clause 28.5.3 then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.

28.6 Termination by the Awarding Authority on notice

28.6.1 Without prejudice to the Contracting Authority's right to terminate this Agreement or the Awarding Authority's right to terminate a Call-Off Contract (and its related Site Agreement(s)) under Clause 28.1 or to terminate at common law, the Contracting Authority may terminate this Agreement or the Awarding Authority may terminate any Call-Off Contract (and its related Site Agreement(s)) at any time without cause subject to giving the Concessionaire six (6) months' written notice.

28.6.2 Without prejudice to Clause 29, if the Awarding Authority exercises its right to terminate a Call-Off Contract (and its related Site Agreement(s)) in accordance with Clause 28.6.1 then the Awarding Authority shall pay to the Concessionaire an amount equal to the aggregate of:

28.6.2.1 the unamortised capital and installation costs reasonably, properly and demonstrably incurred by the Concessionaire solely in performing its obligations under the Call-Off Contract (but only to the extent that the same would have been amortised over the remainder of the Call-Off Term and the Awarding Authority shall have no obligation to pay any such costs to the extent the same were to be amortised over a period following the end of the Call-Off Term);

28.6.2.2 any contractual breakage costs reasonably, properly and demonstrably incurred by the Concessionaire under any supply contracts entered into by the Concessionaire in

order to perform the Services and provided such breakage costs arise as a direct result of the termination of the Call-Off Contract by the Awarding Authority in accordance with Clause 28.6.1; and

28.6.2.3 any other costs reasonably, properly and demonstrably incurred by the Concessionaire solely in performing its obligations under the Call-Off Contract, which (and to the extent) the Concessionaire is able to demonstrate to the reasonable satisfaction of the Awarding Authority will have been wasted as a direct result of the termination of the Call-Off Contract by the Awarding Authority in accordance with Clause 28.6.1 **provided that:**

- (a) where any cost has been incurred by the Concessionaire partly in connection with the performance of the Call-Off Contract and partly for the purpose of performing other Call-Off Contracts (but for no other purpose), a reasonable proportion (having regard to the respective size and nature of each Call-Off Contract) of the costs associated with the Call-Off Contract which is being terminated will be treated for this purpose as if it had been incurred solely for the purpose of the performance of that Call-Off Contract;
- (b) “other costs” for these purposes shall not include any share of overhead, general management and/or administration costs of the Concessionaire nor any loss of profit, loss of goodwill, loss of savings, or loss of margin; and
- (c) in considering whether any cost is “wasted” consideration shall be given, without limitation, to the period of the Call-Off Term which has elapsed, and the revenues which have been recovered by the Concessionaire in connection with the Call-Off Contract, in each case prior to the termination and the extent to which the Concessionaire is able to demonstrate that it was expecting to recover those costs over the Call-Off Term;

provided always that:

28.6.2.4 the Concessionaire shall promptly notify the Awarding Authority of the amounts (if any) described in Clauses 28.6.2.1, 28.6.2.2 and 28.6.2.3, together with supporting information to evidence the amounts claimed, and provide to the Awarding Authority such further information and/or

evidence as the Awarding Authority may reasonably require. Where the Awarding Authority is contemplating the exercise of its rights under Clause 28.6.1 and prior to the service of notice under that Clause, it shall be entitled to request the Concessionaire to provide the information referred to in this Clause 28.6.2.4;

28.6.2.5 the Awarding Authority shall not be obliged to make any payment under this Clause 28.6.2 until such time as the requested information and/or evidence has been provided by the Concessionaire;

28.6.2.6 if, at the time the Awarding Authority's notice is given under Clause 28.6.1 or during the period between that notice being given and the termination date, circumstances exist which would have entitled the Awarding Authority to terminate the relevant Call-Off Contract in accordance with Clauses 28.1 or 28.5 had such notice not already been given (whether or not the Awarding Authority is aware of those circumstances), the Awarding Authority will not be required to pay the Concessionaire pursuant to this Clause 28.6.2. If the Awarding Authority pays the Concessionaire pursuant to this Clause 28.6.2 in circumstances where, in accordance with this Clause 28.6.2.6, that payment was not required, the Concessionaire will refund that payment to the Awarding Authority on demand; and

28.6.2.7 payment by the Awarding Authority in accordance with this Clause 28.6.2 will be in full and final settlement of any liability which the Awarding Authority may have to the Concessionaire as a consequence of or arising out of the exercise of the Authority's rights under Clause 28.6.1.

28.7 Request by Concessionaire to remove a Site from the scope of a Call-Off Contract

If in respect of a Site:

28.7.1 there has been a change in circumstances beyond the control of the Concessionaire relating specifically to that Site;

28.7.2 as a direct result of that change in circumstances, that Site has ceased to be economically viable for the Concessionaire as a result of a shortfall in revenue relating specifically to that Site and/or an increase in costs associated specifically with that Site (in each case when compared to those projected by the Concessionaire at the time of its Proposal for the relevant Call-Off Contract;

28.7.3 the Concessionaire gives written notice to the Awarding Authority that the Concessionaire wishes to remove the Site from the scope of

the relevant Call-Off Contract together with information evidencing the change in circumstances, the change in the revenues of and/or costs to the Concessionaire, and that the Site has as a direct result ceased to be economically viable. (For this purpose, and for the avoidance of doubt, if the Concessionaire's costs associated with the Site already (prior to the change of circumstances) exceeded its revenues associated with the Site, then the position must have worsened as a direct result of the identified change of circumstances for the Site to be regarded as having ceased to be economically viable for this purpose); and

- 28.7.4 the Concessionaire has provided such further information as the Awarding Authority may have reasonably requested in order to be satisfied (acting reasonably) that the conditions in Clauses 28.7.1 - 28.7.3 (inclusive) have been met,

then the Awarding Authority may (in its absolute discretion) agree to the removal of the Site from the scope of the Call-Off Contract from such time as the Awarding Authority is satisfied for the purposes and in accordance with this Clause 28.7 that the Site will cease to be economically viable (the "**Early Cessation Date**") provided that if the Awarding Authority so agrees (and without in any way limiting its discretion as to whether or not to agree):

- 28.7.5 the Awarding Authority's agreement shall be conditional on payment by the Concessionaire of:

28.7.5.1 any and all sums payable by the Concessionaire under or in respect of the Call-Off Contract in respect of the period up to the Early Cessation Date; and

28.7.5.2 seventy five per cent (75%) of the Future Site Charges ;
and

- 28.7.6 subject to Clause 28.7.5, such removal shall be treated in the same way as a removal of a Site pursuant to Clause 28.3.

29. Consequences of Termination or Expiry

- 29.1 Notwithstanding the provisions of Clause 25, wherever the Awarding Authority chooses to put out to tender for a replacement concessionaire or other service provider for some or all of the Services, the Concessionaire shall disclose to tenderers such information concerning the Services as the Awarding Authority may require for the purposes of such tender. The Concessionaire may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

- 29.2 The termination or expiry of this Agreement and/or any Call-Off Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to a Party prior to or after such termination or expiry.

29.3 Upon expiry or termination of a Call-Off Contract (howsoever caused) the Concessionaire shall, at no further cost to the Contracting Authority or Awarding Authority:

29.3.1 take all such steps as shall be necessary to agree with the Awarding Authority a plan for:

29.3.1.1 the orderly handover of Services to the Awarding Authority (or its nominee) to the extent that the Authority proposes to continue to provide or to procure the continued provision of any of the Services; and/or

29.3.1.2 the orderly discontinuance of the Services, to the extent that the Awarding Authority proposes to discontinue the provision of the Services,

such that the Services can be carried on or discontinued (as the case may be) with the minimum of interruption and inconvenience to the Awarding Authority and to customers and thereafter to effect such handover and discontinuance;

29.3.2 at all times comply with the provisions of Schedule 9 (Exit Plan) except in so far as it is inconsistent with any plan agreed pursuant to Clause 29.3.1;

29.3.3 on receipt of the Contracting Authority's (where it is this Agreement which has terminated or expired) or Awarding Authority's (where it is a Call-Off Contract which has terminated or expired) written instructions to do so (but not otherwise), arrange to remove all electronically held information provided by the Contracting Authority or Awarding Authority relating to the Agreement and/or Call-Off Contract (as applicable) by a date agreed by them (acting reasonably), including the purging of all disk-based information and the reformatting of all disks **provided that** nothing in this Clause shall require the Concessionaire to remove any information reasonably required to be retained by the Concessionaire for the purpose of:

29.3.3.1 complying with its obligations under this Agreement and any Call-Off Contract or to any third party (including customers) and evidencing that compliance; or

29.3.3.2 complying with any legal or accounting requirement and evidencing that compliance;

29.3.4 except where and to the extent the Awarding Authority serves notice under Clause 29.4, remove the Concessionaire Property and make good each of the Sites (complying with the terms (if any) of the Site Agreement dealing with the removal of Concessionaire Property following expiry or termination of the relevant Site Agreement or

otherwise with the reasonable requirements of the Awarding Authority in that respect). Where the Concessionaire fails to do so:

29.3.4.1 within ten (10) Business Days of termination or expiry (or such other period as the Awarding Authority and the Concessionaire may agree in writing); or

29.3.4.2 (where a Site is located on the highway) within the timeframe specified by the Awarding Authority (acting reasonably) in the applicable Request Form in respect of such Site,

then without prejudice to any of its other rights or remedies, the Awarding Authority may (upon seven (7) days prior notice) remove the Concessionaire Property and make good the Sites at the cost of the Concessionaire (payable by the Concessionaire on demand by the Awarding Authority) ("**Removal and Clean Up Costs**"). The Concessionaire authorises the Awarding Authority to dispose of or sell the Concessionaire Property as its agent and use the proceeds of sale (if any) towards the Removal and Clean Up Costs. If any such proceeds of sale exceed the Removal and Clean Up Costs, the balance shall be paid by the Awarding Authority to the Concessionaire;

29.3.5 where a relevant Site is located on the highway and Concessionaire Property is to be removed in accordance with Clause 29.3.4.2, the Concessionaire shall as soon as reasonably practicable notify the Awarding Authority of the date on which it proposes to remove the Concessionaire Property from such Site (such date to be within the timeframe specified by the Awarding Authority as referred to in Clause 29.3.4.2 above), and shall comply with any requirements the Awarding Authority may have in respect of such proposed date, the removal and the making good of such Site; and

29.3.6 the Concessionaire shall pay the Awarding Authority any Payments remaining due in accordance with the relevant Call-Off Contract up to the date of termination or expiry calculated so far as is possible in accordance with the rules set out in the Call-Off Contract or otherwise reasonably determined by the Awarding Authority.

29.4 **Continued use of Concessionaire Equipment following termination or expiry of a Call-Off Contract**

29.4.1 The Awarding Authority may:

29.4.1.1 not less than 3 months prior to the date on which the term of the Call-Off Contract is due to expire; or

29.4.1.2 with any notice of termination in respect of a Call-Off Contract served by the Awarding Authority pursuant to Clause 28.1, 28.5, or 30; or

29.4.1.3 within 20 Business Days of receipt of a notice of termination from the Concessionaire pursuant to Clause 28.5,

serve notice on the Concessionaire stating whether the Awarding Authority wishes to exercise the option (at its sole discretion):

29.4.1.4 to operate (or procure the operation by its nominee of) the Concessionaire Equipment located at the Sites relating to the Call-Off Contract (the “**Relevant Equipment**”) for a period of up to 3 months (the “**Temporary Operation Period**”) following the date of termination of the relevant Call-Off Contract (the “**Temporary Operation Notice**”), in which event Clause 29.4.2 shall apply; or

29.4.1.5 to purchase upon the date of termination of the Call-Off Contract any of the Concessionaire Equipment) located at the Sites relating to the Call-Off Contract (the “**Purchase Notice**”), in which event Clause 29.4.3 shall apply,

provided always that:

29.4.1.6 a Temporary Operation Notice may only be served where:

(a) the Awarding Authority has served notice under Clause 28.1.1 (but only in circumstances where the nature of the Concessionaire’s breach is such that the Awarding Authority (acting reasonably) considers that it is not appropriate (given the nature of the breach and all the circumstances) to continue to allow the Concessionaire to continue to provide the Services whilst the Awarding Authority seeks to secure the continued provision of the Services at the Site(s) itself or by a nominee), Clause 28.1.3, Clause 28.1.9, Clause 28.5 or Clause 30; or

(b) Clause 29.4.1.3 (termination by the Concessionaire under Clause 28.5) applies; and

29.4.1.7 if the Awarding Authority does not serve a Temporary Operation Notice or a Purchase Notice, then it will be deemed to have determined not to exercise the options to use the Concessionaire Equipment or purchase any of it on the expiry or termination of the Call-Off Contract.

29.4.2 Continued operation of the Concessionaire Equipment for the Temporary Operation Period

Where the Awarding Authority has served a Temporary Operation Notice the following shall apply:

- 29.4.2.1 the Awarding Authority and/or its nominee shall be entitled free of charge to use Relevant Equipment to continue to provide Services for the Temporary Operation Period;
- 29.4.2.2 responsibility for, and all risk associated with, any operation of Relevant Equipment during the Temporary Operation Period shall (subject to Clause 29.4.2.5) belong to the Awarding Authority (or its nominee);
- 29.4.2.3 the risk of loss and damage to the Relevant Equipment shall (subject to Clause 29.4.2.5) belong to the Awarding Authority during the Temporary Operation Period provided that the Awarding Authority shall (and shall procure that any nominee appointed in respect of the operation of the Relevant Equipment shall) exercise the same standard of care over the Relevant Equipment as a reasonable charge point operator would take over such equipment in its own operation, which shall be no lower standard than the Concessionaire is obliged to exercise pursuant to the Call-Off Contract;
- 29.4.2.4 subject to Clause 20.2.2, Clause 20.5 and Clause 29.4.2.5, the Awarding Authority shall indemnify the Concessionaire against costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability) or damages, which the Concessionaire suffers or incurs in respect of any proceedings brought against the Concessionaire by any third party in respect of any death or personal injury or loss or damage to property to the extent that the same arises out of the possession or operation of the Relevant Equipment by the Awarding Authority (or its nominee) during the Temporary Operation Period provided that the Concessionaire shall use its reasonable endeavours to mitigate the consequences of any such third party proceedings and the costs, expenses, liabilities and damages which it may claim from the Awarding Authority pursuant to this Clause 29.4.2.4;
- 29.4.2.5 nothing in this Clause 29.4.2 shall relieve the Concessionaire from liability for (and the Awarding Authority shall not be required to indemnify the Concessionaire pursuant to Clause 29.4.2.4 in respect of any costs, expenses, liabilities or damages which arise directly or indirectly as a result of) any breach of the Call-Off Contract or other failure to properly maintain any

Concessionaire Equipment or other negligent act or omission by the Concessionaire prior to the termination of the Call-Off Contract;

- 29.4.2.6 for the avoidance of doubt, the continued presence of Relevant Equipment at a Site during the Temporary Operation Period in accordance with the requirements of this Clause 29.4.2 shall not constitute a breach by the Concessionaire of the applicable Site Agreement;
- 29.4.2.7 the Awarding Authority or its nominee shall be entitled to take reasonable steps to cover up any proprietary logos and/or branding on or around the Relevant Equipment and/or to apply additional notices or branding as reasonably necessary to reflect the identity of the operator during the Temporary Operation Period so that customers are clear about who is operating the Relevant Equipment during the Temporary Operation Period;
- 29.4.2.8 the Awarding Authority shall be entitled by service of notice on the Concessionaire at any time during the Temporary Operation Period to require the Temporary Operation Period to end on such earlier date as is specified in the notice;
- 29.4.2.9 the Awarding Authority shall be entitled by service of notice (the **“Delayed Purchase Notice”**) on the Concessionaire at any time during the Temporary Operation Period to exercise the option to purchase some or all of the Relevant Equipment in which case:
 - (a) Clause 29.4.3 shall apply as if the Delayed Purchase Notice was a Purchase Notice served under Clause 29.4.1.5 except that the date of purchase for the purpose of Clause 29.4.3.1 shall be the date stated in the Delayed Purchase Notice;
 - (b) the date of purchase may be earlier (but not later) than the end of the Temporary Operation Period, and, if earlier, the Temporary Operation Period will be deemed to have ended on the date of purchase; and
 - (c) the price of the Relevant Equipment shall continue to be determined in accordance with Clause 29.4.3.3 by reference to the date of termination of the Call-Off Contract; and
- 29.4.2.10 except to the extent that a Delayed Purchase Notice has been served by the Authority, at the end of the Temporary

Operation Period the provisions of Clauses 29.3.4 and 29.3.5 shall apply mutatis mutandis as if the end of the Temporary Operation Period was the date of termination of the Call-Off Contract.

29.4.3 Purchase of some or all of the Concessionaire Equipment

Where the Awarding Authority has served a Purchase Notice the following shall apply:

- 29.4.3.1 all right title and interest in and to that Concessionaire Equipment described in the notice (the “**Acquired Equipment**”) shall automatically vest in and transfer with full title guarantee to the Awarding Authority (or its nominee stated in the Purchase Notice) at the time and date of expiry or earlier termination (as applicable) of the Call-Off Contract;
- 29.4.3.2 the Concessionaire shall do or procure all acts and things necessary to ensure the vesting and transfer in accordance with Clause 29.4.3.1 and shall deliver the Acquired Equipment by leaving it at the Sites;
- 29.4.3.3 the purchase price for the Acquired Equipment shall be the lower (as at the date of the expiry or earlier termination Call-Off Contract) of: (a) the depreciated value of the Acquired Equipment (calculated in accordance with Clause 29.4.3.5 below); and (b) the fair market value for the Acquired Equipment as determined by the Awarding Authority acting reasonably. The Concessionaire may dispute the value determined by the Awarding Authority pursuant to this Clause 29.4.3.3 and the Parties to the Call-Off Contract will seek to resolve any such dispute in accordance with the dispute resolution procedure in Clause 27; and
- 29.4.3.4 risk in the Acquired Equipment shall pass to the Awarding Authority or its nominee at the point when title passes to it in accordance with Clause 29.4.3.1.
- 29.4.3.5 **Calculation of depreciated value of Concessionaire Equipment**
 - (a) The depreciated value of the Concessionaire Equipment shall be calculated in accordance with the following equation:

$$DVI = \frac{IVI}{DP} \times (DP - MSI)$$

where:

DVI = The depreciated value of the Concessionaire Equipment

IVI = The initial value of Concessionaire Equipment installed at the Site (which shall include, in addition to the unamortised capital value of such Concessionaire Equipment, such unamortised installation costs as are reasonably, properly and demonstrably incurred by the Concessionaire as a direct consequence of the installation of the relevant Concessionaire Equipment at the applicable Site(s)) (the “**Initial Value**”)

DP = The period of depreciation for the Concessionaire Equipment in months (which can be no longer than the duration of the applicable Call-Off Contract)

MSI = The number of months that have passed since the Concessionaire Equipment was installed

(b) Subject to Clause 29.4.3.5(c) below, the Concessionaire’s reasonable indicative Initial Value and the period of depreciation for the Concessionaire Equipment in months shall be confirmed by Concessionaire as part of (and be evidenced by and consistent with) its Proposal in connection with a Mini-Competition process, and be reflected as such in the relevant Call-Off Contract, **provided that:**

- (1) the Concessionaire shall within thirty (30) Business Days of the Go-Live Date provide a certificate to the Awarding Authority confirming the actual Initial Value, such certificate to be signed by a statutory director of the Concessionaire confirming its accuracy;
- (2) the Concessionaire shall provide the Awarding Authority with such further information and/or evidence as it may reasonably require in order to satisfy itself as to the accuracy of the actual

Initial Value set out in the certificate referred to in Clause 29.4.3.5(b)(1) above; and

- (3) subject to the Awarding Authority confirming in writing to the Concessionaire (not to be unreasonably withheld or delayed) that it accepts the actual Initial Value set out in the certificate referred to in Clause 29.4.3.5(b)(1) above, the actual Initial Value set out in the certificate referred to in Clause 29.4.3.5(b)(1) above shall be considered to be the “Initial Value” for the purposes of the calculation in Clause 29.4.3.5(a) above.

- (c) If during the Call-Off Term the Concessionaire removes the original Concessionaire Equipment and replaces it with new equipment in substitution for the original Concessionaire Equipment (such replacement equipment thereby becoming “Concessionaire Equipment”), then (provided always that nothing in this Clause shall relieve the Concessionaire of its obligations under the relevant Call-Off Contract) the Concessionaire shall be entitled to revise the Initial Value for the purposes of the calculation in Clause 29.4.3.5(a) above to reflect the unamortised capital value of the replacement Concessionaire Equipment (and such unamortised installation costs as are reasonably, properly and demonstrably incurred by the Concessionaire as a direct consequence of the installation of the replacement Concessionaire Equipment at the applicable Site(s)), provided always that the Concessionaire shall not be entitled to revise the Initial Value in accordance with this Clause 29.4.3.5(c) unless and until:

- (1) the Concessionaire has confirmed to the Awarding Authority its proposed revised Initial Value for the purposes of this Clause 29.4.3.5(c) and provided such supporting evidence in relation to such proposed revised Initial Value as the Awarding Authority may reasonably require;

- (2) the Awarding Authority (acting reasonably) has accepted in writing the revised Initial Value proposed by the Concessionaire pursuant to Clause 29.4.3.5(c)(1) above; and
- (3) the replacement Concessionaire Equipment has been commissioned and is fully operational.

29.4.4 Additional terms following service of a Temporary Operation Notice, Delayed Purchase Notice or Purchase Notice

Following the service of a Temporary Operation Notice, a Delayed Purchase Notice and/or a Purchase Notice, the Concessionaire shall comply with its obligations under Clauses 29.3.1 and 29.3.2 to facilitate the continuance of Services and not do anything or permit anything to be done to interfere with that continuance. This will include but not be limited to:

- 29.4.4.1 co-operation with the Awarding Authority (or its nominee) to enable the Charge Points to operate with an Alternative Back Office System and to facilitate the continuation of Maintenance Services under any applicable Maintenance Direct Agreement; and
- 29.4.4.2 taking reasonable steps to ensure the continued availability to the Awarding Authority or its nominee of any manufacturer's or other guarantees provided to the Concessionaire in connection with the Relevant Equipment or Acquired Equipment (as the case may be).

- 29.5 On termination of this Agreement and any relevant Call-Off Contract under Clause 28.1, the Awarding Authority may enter into any agreement with any third party or parties as the Awarding Authority thinks fit to provide any or all of the Services and the Concessionaire shall be liable for all additional expenditure reasonably incurred by the Awarding Authority in having such services carried out and all other costs and damages reasonably incurred by the Awarding Authority in consequence of such termination. The Awarding Authority may recover such costs from the Concessionaire as a debt.

30. DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT

- 30.1 In the event that a court makes a Declaration of Ineffectiveness in respect of this Agreement and/or any relevant Call-Off Contract, the Contracting Authority and/or the Awarding Authority (as the case may be) shall promptly notify the Concessionaire. The Parties agree that the provisions of Clause 29 and Clauses 30.1, 30.2, 30.4 to 30.6 (inclusive) and 30.12 shall apply as from the time when the Declaration of Ineffectiveness is made. Where a Declaration of Ineffectiveness is made in respect of a Call-Off Contract, the

provisions of Clause 29.4 shall apply (*mutatis mutandis*) as if (for this purpose and no other) the notice of Declaration of Ineffectiveness was a notice by the Awarding Authority to terminate the Call-Off Contract under Clause 28.5.

30.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness, save as otherwise expressly provided to the contrary in Clauses 30.1 to 30.6 inclusive.

30.3 During any court proceedings seeking a Declaration of Ineffectiveness in respect of this Agreement and/or any Call-Off Contract, the Contracting Authority and/or the Awarding Authority (as the case may be) may require the Concessionaire to prepare a Cessation Plan in accordance with this Clause 30.3 by issuing a notice in writing. As from the date of receipt by the Concessionaire of such notification from the Contracting Authority and/or the Awarding Authority (as the case may be), the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Contracting Authority and/or the Awarding Authority (as the case may be) shall reasonably determine an appropriate Cessation Plan with the object of achieving:

30.3.1 where the proceedings are seeking a Declaration of Ineffectiveness in relation to this Agreement:

30.3.1.1 an orderly and efficient cessation of the rights and obligations contained within this Agreement; and

30.3.1.2 minimal disruption or inconvenience to the Contracting Authority; and/or

30.3.2 where the proceedings are seeking a Declaration of Ineffectiveness in relation to a Call-Off Contract:

30.3.2.1 an orderly and efficient cessation of the Services or (at the Awarding Authority's request) a transition of the Services to the Awarding Authority or such other entity as the Awarding Authority may specify; and

30.3.2.2 minimal disruption or inconvenience to the Awarding Authority or to customers of the Services or to public passenger transport services or facilities,

in each case, in accordance with the provisions of Clauses 30.2 to 30.6 (inclusive) and which the Parties agree would have effect in the event that a Declaration of Ineffectiveness is made.

30.4 Where there is any conflict or discrepancy between the provisions of Clause 29 and Clauses 30.2 to 30.6 (inclusive) and 30.12 (or, if applicable, the

Cessation Plan), the provisions of these Clauses 30.2 to 30.6 (inclusive) and 30.12 (and, if applicable, the Cessation Plan) shall prevail.

- 30.5 The Parties will comply with their respective obligations under the Cessation Plan (as agreed by the Parties or, where agreement cannot be reached, as reasonably determined by the Contracting Authority and/or the Awarding Authority (as the case may be)) in the event that a Declaration of Ineffectiveness is made.
- 30.6 The Contracting Authority and/or the Awarding Authority (as the case may be) shall pay the Concessionaire's reasonable costs in assisting the Contracting Authority and/or the Awarding Authority (as the case may be) in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or as otherwise reasonably determined by the Contracting Authority and/or the Awarding Authority. Neither the Contracting Authority nor the Awarding Authority (as the case may be) shall be liable to the Concessionaire for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement and/or any relevant Call-Off Contract pursuant to any Declaration of Ineffectiveness.
- 30.7 Notwithstanding that the Procurement Regulations do not apply to this Agreement, the Contracting Authority has a right to terminate this Agreement and the Awarding Authority has a right to terminate any relevant Call-Off Contract on any of the Public Procurement Termination Grounds. In the event that the Contracting Authority exercises its right to terminate this Agreement or the Awarding Authority exercises its right to terminate a relevant Call-Off Contract pursuant to this Clause 30.7 (a "**Public Procurement Termination Event**"), the Contracting Authority and/or Awarding Authority (as the case may be) shall promptly notify the Concessionaire and the Parties agree that:
- 30.7.1 the provisions of Clause 29 and these Clauses 30.7 to 30.12 (inclusive) shall apply as from the date of receipt by the Concessionaire of the notification of the relevant Public Procurement Termination Event;
- 30.7.2 where the termination is of a relevant Call-Off Contract, the provisions of Clause 29.4 shall apply (mutatis mutandis) as if (for this purpose and no other) the notice of termination on Public Procurement Termination Grounds was a notice by the Awarding Authority to terminate the relevant Call-Off Contract under Clause 28.5 and the period of notice required by Clause 28.5 had expired; and
- 30.7.3 if there is any conflict or discrepancy between the provisions of Clause 29 and these Clauses 30.7 to 30.12 (or, if applicable, the Cessation Plan), the provisions of these Clauses 30.7 to 30.12 (and, if applicable, the Cessation Plan) shall prevail.

30.8 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event, in respect of the period prior to the Public Procurement Termination Event, save as otherwise expressly provided in Clauses 30.7 to 30.11 inclusive.

30.9 As from the date of receipt by the Concessionaire of the notification of the Public Procurement Termination Event in respect of this Agreement and/or a Call-Off Contract, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Contracting Authority or the Awarding Authority (as the case may be) shall reasonably determine an appropriate Cessation Plan with the object of achieving:

30.9.1 where the notification relates to termination of this Agreement:

30.9.1.1 an orderly and efficient cessation of the rights and obligations contained within this Agreement; and

30.9.1.2 minimal disruption or inconvenience to the Contracting Authority; and/or

30.9.2 where the notification relates to termination of a Call-Off Contract:

30.9.2.1 an orderly and efficient cessation or (at the Awarding Authority's election) a transition to the Awarding Authority or such other entity as the Awarding Authority may specify of: (i) the Services; or (at Awarding Authority's election), (ii) the part of the Services which are affected by the Public Procurement Termination Event; and

30.9.2.2 minimal disruption or inconvenience to the Awarding Authority or to customers of the Services or to public passenger transport services or facilities,

in each case, in accordance with the provisions of Clauses 30.7 to 30.11 (inclusive) and to give effect to the terms of the Public Procurement Termination Event.

30.10 Upon agreement, or determination by the Contracting Authority and/or the Awarding Authority (as the case may be), of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

30.11 The Contracting Authority and/or the Awarding Authority (as the case may be) shall pay the Concessionaire's reasonable costs in assisting the Contracting Authority and/or the Awarding Authority (as the case may be) in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or as otherwise reasonably determined by the Contracting Authority and/or the Awarding Authority (as the case may be). Neither the Contracting Authority nor the Awarding Authority (as the case may be) shall be liable to the Concessionaire for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of

this Agreement and/or any relevant Call-Off Contract as a result of a Public Procurement Termination Event.

- 30.12 For the avoidance of doubt, the provisions of this Clause 30 (and applicable definitions) shall survive any termination of the Agreement and/or any relevant Call-Off Contract following a Declaration of Ineffectiveness or Public Procurement Termination Event.

31. SURVIVAL

The provisions of Clauses 1, 7, 8, 11.2.2, 11.2.3, 13.2.1, 13.2.2, 13.2.5, 13.3, 16, 18-22 (inclusive), 23.2, 25-27 (inclusive), 29-32 (inclusive), 34-41 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of this Agreement (or any relevant Call-Off Contract). In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement or relevant Call-Off Contract shall do so.

32. RIGHTS OF THIRD PARTIES

- 32.1 Save that:

32.1.1 any member of the Awarding Authority Group has the right to enforce the terms of this Agreement or any relevant Call-Off Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**"); and

32.1.2 a Call-Off Guarantor has the right to enforce Clauses 20.11.2.2 and 20.11.3.3 of this Agreement (as incorporated into the relevant Call-Off Contract) in accordance with the Third Party Act,

the Parties do not intend that any of the terms of this Agreement or any relevant Call-Off Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.

- 32.2 Notwithstanding Clause 32.1, the Parties are entitled to vary or rescind this Agreement or any relevant Call-Off Contract without the consent of any Call-Off Guarantor or any or all members of the Awarding Authority Group, other than:

32.2.1 in the case of this Agreement, the Contracting Authority; and

32.2.2 in the case of a Call-Off Contract, the Awarding Authority.

33. CONTRACT VARIATION

Save where the Contracting Authority may require an amendment to the Services, this Agreement may only be varied or amended with the written agreement of both the Contracting Authority and the Concessionaire. Any relevant Call-Off Contract may only be varied or amended with the written agreement of Awarding Authority and the Concessionaire. The details of any

variations or amendments shall be set out in such form as the Contracting Authority or Awarding Authority (as applicable) may dictate and which may be substantially in the form set out in Schedule 7 (Form for Variation) and shall not be binding unless completed in accordance with such form of variation.

34. NOVATION

- 34.1 The Contracting Authority may novate or otherwise transfer this Agreement and the Contracting Authority and/or Awarding Authority any relevant Call-Off Contracts (in whole or in part).
- 34.2 Within ten (10) Business Days of a written request from the Contracting Authority and/or Awarding Authority, the Concessionaire shall at its expense execute such agreement as the Contracting Authority and/or Awarding Authority may reasonably require to give effect to any such transfer all or part of its rights and obligations under this Agreement and any relevant Call-Off Contract to one or more persons nominated by the Contracting Authority and/or Awarding Authority (as the case may be).
- 34.3 Subject to Clause 11, this Agreement and each Call-Off Contract is personal to the Concessionaire who shall not assign the benefit or delegate the burden of this Agreement or any relevant Call-Off Contract or otherwise transfer any right or obligation under this Agreement or any relevant Call-Off Contract without the prior written consent of the Contracting Authority or the Awarding Authority (as the case may be).

35. NON-WAIVER OF RIGHTS

No waiver of any of the provisions of this Agreement or any relevant Call-Off Contract is effective unless it is expressly stated to be a waiver and communicated in writing in accordance with the provisions of Clause 37. The single or partial exercise of any right, power or remedy under this Agreement or any relevant Call-Off Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

36. ILLEGALITY AND SEVERABILITY

If any provision of this Agreement and/or any Call-Off Contract (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from this Agreement and/or any Call-Off Contract and the remaining provisions shall continue in full force and effect as if this Agreement and/or any Call-Off Contract had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Contracting Authority or Awarding Authority's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Agreement or Call-Off Contract (as applicable), the parties shall immediately commence good faith negotiations to remedy such invalidity.

37. NOTICES

- 37.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post or facsimile addressed to the recipient at its registered office, the address stated in Schedule 1 (Key Agreement Information) or any other address (including a facsimile number) notified to the other party in writing in accordance with this Clause as an address to which notices and other documents may be sent.
- 37.2 Any notice, demand or communication in connection with a Call-Off Contract will be in writing and may be delivered by hand, post or facsimile addressed to the recipient at its registered office, the address stated in Schedule 1 (Key Agreement Information) or the Call-Off Contract (as applicable) or any other address (including a facsimile number) notified to the other party in writing in accordance with this Clause as an address to which notices and other documents may be sent.
- 37.3 The notice, demand or communication will be deemed to have been duly served:
- 37.3.1 if delivered by hand, at the time of delivery;
 - 37.3.2 if delivered by post, two (2) Business Days after being posted or in the case of Airmail fourteen (14) Business Days after being posted; or
 - 37.3.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within twenty four (24) hours after transmission.

38. ENTIRE AGREEMENT

- 38.1 Subject to Clause 38.2:
- 38.1.1 this Agreement and any relevant Call-Off Contract and all documents referred to in this Agreement and any relevant Call-Off Contract, contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement (or, in the case of a Call-Off Contract, the subject matter of that Call-Off Contract) and such documents and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the subject matter of this Agreement (or, as applicable, the subject matter of the relevant Call-Off Contract). Neither Party has been induced to enter into this Agreement (or a relevant Call-Off Contract) by a statement which it does not contain; and
 - 38.1.2 and without prejudice to the Concessionaire's obligations under this Agreement and/or any relevant Call-Off Contract, the Concessionaire is responsible for and shall make no claim against the Contracting Authority or Awarding Authority (as the case may be)

in respect of any misunderstanding affecting the basis of the Concessionaire's tender in respect of this Agreement (or any Mini-Competition in respect of any Call-Off Contract) or any incorrect or incomplete information howsoever obtained.

- 38.2 Nothing in this Clause 38 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

39. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement or any Call-Off Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement and any Call-Off Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

40. FURTHER ASSURANCE

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement and any relevant Call-Off Contract.

41. GOVERNING LAW

The Agreement and any Call-Off Contract shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 27, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement or any Call-Off Contract (as the case may be) provided that the Contracting Authority or the Awarding Authority (as the case may be) has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Concessionaire is incorporated or in which any assets of the Concessionaire may be situated. The Parties agree irrevocably to submit to that jurisdiction.

THE AGREEMENT has been signed for and on behalf of the Parties the day and year written above.

Signed by)

for and on behalf of)

Transport for London)

Signature

Print name and position

Signed by)

for and on behalf of)

Fastned B.V.)

Signature

Print name and position

SCHEDULE 1 - KEY AGREEMENT INFORMATION

1. **Agreement Reference Number:** tfl_scp_001290

2. **Name of Concessionaire:** Fastned B.V.

3. **Agreement Commencement Date:** 25 April 2017

4. **Term:**

Initial Term: Three (3) years from the Agreement Commencement Date.

Extension Option: One (1) year from the expiry of the Initial Term.

5. **Details of the Procurement Manager**

Name: REDACTED

Address: REDACTED

Tel: REDACTED

Fax: REDACTED

Email: REDACTED

6. **Concessionaire's Manager:**

Name & Position	Contact Details	Area Of Responsibility
REDACTED	REDACTED	REDACTED

7. **Address for service of notices and other documents in accordance with Clause 37:**

For the Contracting Authority:

Palestra House,
197 Blackfriars Road,
London, SE1 8NJ

For the attention of: **REDACTED**

For the Concessionaire:

Fastned B.V.

James Wattstraat 77-79

1097 DL, Amsterdam

The Netherlands

For the attention of: **REDACTED**

Appendix 1 to Schedule 1 – Reporting Periods

Financial Year	Start of Reporting Period 1	Start of Reporting Period 2	Start of Reporting Period 3	Start of Reporting Period 4	Start of Reporting Period 5	Start of Reporting Period 6	Start of Reporting Period 7	Start of Reporting Period 8	Start of Reporting Period 9	Start of Reporting Period 10	Start of Reporting Period 11	Start of Reporting Period 12	Start of Reporting Period 13	End of Reporting Period 13
2015-16	01/04/2015	03/05/2015	31/05/2015	28/06/2015	26/07/2015	23/08/2015	20/09/2015	18/10/2015	15/11/2015	13/12/2015	10/01/2016	07/02/2016	06/03/2016	31/03/2016
2016-17	01/04/2016	01/05/2016	29/05/2016	26/06/2016	24/07/2016	21/08/2016	18/09/2016	16/10/2016	13/11/2016	11/12/2016	08/01/2017	05/02/2017	05/03/2017	31/03/2017
2017-18	01/04/2017	30/04/2017	28/05/2017	25/06/2017	23/07/2017	20/08/2017	17/09/2017	15/10/2017	12/11/2017	10/12/2017	07/01/2018	04/02/2018	04/03/2018	31/03/2018
2018-19	01/04/2018	29/04/2018	27/05/2018	24/06/2018	22/07/2018	19/08/2018	16/09/2018	14/10/2018	11/11/2018	09/12/2018	06/01/2019	03/02/2019	03/03/2019	31/03/2019
2019-20	01/04/2019	28/04/2019	26/05/2019	23/06/2019	21/07/2019	18/08/2019	15/09/2019	13/10/2019	10/11/2019	08/12/2019	05/01/2020	02/02/2020	01/03/2020	31/03/2020
2020-21	01/04/2020	03/05/2020	31/05/2020	28/06/2020	26/07/2020	23/08/2020	20/09/2020	18/10/2020	15/11/2020	13/12/2020	10/01/2021	07/02/2021	07/03/2021	31/03/2021
2021-22	01/04/2021	02/05/2021	30/05/2021	27/06/2021	25/07/2021	22/08/2021	19/09/2021	17/10/2021	14/11/2021	12/12/2021	09/01/2022	06/02/2022	06/03/2022	31/03/2022
2022-23	01/04/2022	01/05/2022	29/05/2022	26/06/2022	24/07/2022	21/08/2022	18/09/2022	16/10/2022	13/11/2022	11/12/2022	08/01/2023	05/02/2023	05/03/2023	31/03/2023
2023-24	01/04/2023	30/04/2023	28/05/2023	25/06/2023	23/07/2023	20/08/2023	17/09/2023	15/10/2023	12/11/2023	10/12/2023	07/01/2024	04/02/2024	03/03/2024	31/03/2024
2024-25	01/04/2024	28/04/2024	26/05/2024	23/06/2024	21/07/2024	18/08/2024	15/09/2024	13/10/2024	10/11/2024	08/12/2024	05/01/2025	02/02/2025	02/03/2025	31/03/2025
2025-26	01/04/2025	27/04/2025	25/05/2025	22/06/2025	20/07/2025	17/08/2025	14/09/2025	12/10/2025	09/11/2025	07/12/2025	04/01/2026	01/02/2026	01/03/2026	31/03/2026
2026-27	01/04/2026	03/05/2026	31/05/2026	28/06/2026	26/07/2026	23/08/2026	20/09/2026	18/10/2026	15/11/2026	13/12/2026	10/01/2027	07/02/2027	07/03/2027	31/03/2027
2027-28	01/04/2027	02/05/2027	30/05/2027	27/06/2027	25/07/2027	22/08/2027	19/09/2027	17/10/2027	14/11/2027	12/12/2027	09/01/2028	06/02/2028	05/03/2028	31/03/2028
2028-29	01/04/2028	30/04/2028	28/05/2028	25/06/2028	23/07/2028	20/08/2028	17/09/2028	15/10/2028	12/11/2028	10/12/2028	07/01/2029	04/02/2029	04/03/2029	31/03/2029
2029-30	01/04/2029	29/04/2029	27/05/2029	24/06/2029	22/07/2029	19/08/2029	16/09/2029	14/10/2029	11/11/2029	09/12/2029	06/01/2030	03/02/2030	03/03/2030	31/03/2030
2030-31	01/04/2030	28/04/2030	26/05/2030	23/06/2030	21/07/2030	18/08/2030	15/09/2030	13/10/2030	10/11/2030	08/12/2030	05/01/2031	02/02/2031	02/03/2031	31/03/2031

2031-32	01/04/2031	27/04/2031	25/05/2031	22/06/2031	20/07/2031	17/08/2031	14/09/2031	12/10/2031	09/11/2031	07/12/2031	04/01/2032	01/02/2032	29/02/2032	31/03/2032
2032-33	01/04/2032	02/05/2032	30/05/2032	27/06/2032	25/07/2032	22/08/2032	19/09/2032	17/10/2032	14/11/2032	12/12/2032	09/01/2033	06/02/2033	06/03/2033	31/03/2033
2033-34	01/04/2033	01/05/2033	29/05/2033	26/06/2033	24/07/2033	21/08/2033	18/09/2033	16/10/2033	13/11/2033	11/12/2033	08/01/2034	05/02/2034	05/03/2034	31/03/2034
2034-35	01/04/2034	30/04/2034	28/05/2034	25/06/2034	23/07/2034	20/08/2034	17/09/2034	15/10/2034	12/11/2034	10/12/2034	07/01/2035	04/02/2035	04/03/2035	31/03/2035

SCHEDULE 2 – STATEMENT OF REQUIREMENTS

In the event of any conflict between Part 1 and Part 2 of this Schedule 2, Part 1 will prevail.

Part 1 – Contracting/Awarding Authority Requirements

Part 2 – Tender Response

REDACTED

SCHEDULE 3 – SERVICE LEVELS

1. Service Level Monitoring

1.1 This Schedule sets out the Service Levels required for:

- (a) operation and maintenance of Charge Point infrastructure; and
- (b) Customer support and the processes to facilitate the monitoring of these Service Levels.

1.2 The Concessionaire shall implement systems to monitor the performance of its service to ensure that its Charge Points and Customer support functions adhere to the requirements of this Agreement and each relevant Call-Off Contract.

1.3 The Concessionaire's performance in meeting the Service Levels in respect of each PI (as defined in paragraph 1.10) shall be reported, monitored and assessed each Reporting Period in accordance with Schedule 2 (Statement of Requirements).

1.4 In addition to providing the Management Information Data each Reporting Period in accordance with Schedule 2 (Statement of Requirements), the Concessionaire shall measure and provide such data as is reasonably required by the Awarding Authority for the purposes of monitoring the Concessionaire's performance in meeting the Service Levels below in accordance with Appendix 1 to Schedule 2 (Statement of Requirements).

1.5 The Concessionaire shall be responsible for ensuring that all Management Information Data is accurately prepared, using up to date and accurate data.

1.6 In complying with its obligations under Clause 23.4.1, the Concessionaire shall:

- (a) make available Management Information Data to the Awarding Authority via a secure e-portal (a "**Portal**"), **provided that:**
 - (1) the Concessionaire shall ensure that the Management Information Data provided via the Portal is an accurate reflection of the data held by the Concessionaire;
 - (2) the Concessionaire shall be required to provide to the Awarding Authority such number of individual log-in permissions to the Portal as the Awarding Authority may require;
 - (3) the provision of the Management Information Data via the Portal shall in all other respects be in compliance with the requirements of the Agreement;
 - (4) the Portal must have sufficient functionality to enable the Awarding Authority to automatically generate a report setting out the relevant Management Information Data; and

- (5) where the Portal is unavailable for any reason, the Concessionaire shall provide the required Management Information Data via electronic transfer and in so doing shall ensure that all such Management Information Data is compatible with the Awarding Authority's software and is an accurate reflection of the data held by the Concessionaire; and
 - (b) at the Awarding Authority's request, transfer electronically such Management Information Data (or reports in relation to the same) as the Awarding Authority may specify and shall at all times ensure that all such Management Information Data, or reports in relation to the same, are compatible with the Awarding Authority's software and are an accurate reflection of the data held by the Concessionaire.
- 1.7 The Concessionaire shall ensure that the production and analysis of the Management Information Data does not affect the performance of any other element of the Services provided by the Concessionaire.
- 1.8 If the Awarding Authority or the Concessionaire identify any errors, omissions or discrepancies in the Management Information Data, without prejudice to any other rights and remedies of the Awarding Authority, the Concessionaire shall:
 - (a) promptly correct such errors, omissions or discrepancies; and
 - (b) republish the Management Information Data within five (5) Business Days of such errors, omissions or discrepancies being identified, or such other period as the Parties may agree.
- 1.9 Where the Concessionaire believes there are mitigating circumstances for any inaccurate and/or unavailable Management Information Data (as referred to in paragraph 1.8), the Concessionaire may present to the Awarding Authority:
 - (a) reasons why such data is inaccurate and/or unavailable;
 - (b) details of when the data will be accurate and/or available;
 - (c) what actions shall be taken to ensure it shall be accurate and/or available in future; and
 - (d) provide reasonable evidence that the relevant Service Levels were not adversely affected during the period of time in which the relevant data was inaccurate and/or unavailable.

It is then at the Awarding Authority's discretion as to whether these mitigating circumstances are accepted and that data can be temporarily removed from the Management Information Data for the relevant Reporting Period.

- 1.10 The table in Annex A (Performance Indicator Table) to this Schedule 3 sets out the Performance Indicators ("**PIs**") and the Service Levels for the Services (the "**Performance Indicator Table**"). The Performance Indicator Table sets out the following details in respect of the PIs:

- (a) the 'Performance Indicator Title' column in the Performance Indicator Table gives the name of the PI on which the performance of the Concessionaire shall be measured;
- (b) the 'Start Point' column in the Performance Indicator Table details the time from when the PI shall start to be measured (the "**Start Point**");
- (c) the 'End Point' column in the Performance Indicator Table details the time at which the relevant PI ceases to be measured (the "**End Point**"); and
- (d) the 'Acceptable Service Level' column in the Performance Indicator Table specifies the minimum Service Level that is expected of the Concessionaire (each an "**Acceptable Service Level**").

2. **SERVICE FAILURES**

If the Concessionaire fails to meet any of the Acceptable Service Levels in three consecutive Reporting Periods, Clause 28.1.5 of the Agreement shall apply.

Performance Indicators

PI 1 Charge Point Availability

- PI 1.1 Subject to paragraphs PI 1.4, 1.5 and 1.6 below, the Charge Points shall be available for use by Customers in charging their vehicles for more than 97% of the time that the Charge Points are accessible during each Reporting Period. For this purpose, a Charge Point will be deemed to be accessible at all times except to the extent that a Site Agreement explicitly provides otherwise (in which case the period of accessibility specified in the Site Agreement will be the period the Charge Points are or could be accessible for the purposes of this Schedule 3).
- PI 1.2 A Charge Point is "available" for use by a Customer for the purposes of this PI 1 if it is providing a Charge Point status of charging or available to the Charge Point management system and there is no issue at the Charge Point that prevents it from:
 - (a) allowing a Customer to start a charging session; and
 - (b) allowing a Customer to end a charging session
 and references to "unavailable" will be construed accordingly.
- PI 1.3 "Charge Point Availability" for the purposes of the Service Level will be calculated by dividing the sum of the time in minutes that each and every Charge Point within the scope of a Call-Off Contract was both accessible to Customers and available during the applicable Reporting Period (excluding scheduled maintenance time) by the sum of the maximum time in minutes that each and every Charge Point within the scope of a Call-Off Contract could be both accessible to Customers and available during the

applicable Reporting Period, expressed as a percentage, as illustrated below:

$$\text{Charge Point Availability} = \frac{\text{Actual minutes Charge Points accessible and available to Customers in Reporting Period}}{\text{Minutes Charge Points could be both accessible and available to Customers in Reporting Period}}$$

PI 1.4 In the event of a power failure, where such failure is outside of the control of the Concessionaire, those Charge Points affected by such power failure shall not be included in the calculation of Charge Point Availability for the purposes of this Service Level for so long as the power failure continues, provided that, to the extent that any continuation of the power failure is attributable to a failure by the Concessionaire to carry out any action required by the DNO to remedy the fault, any such continuation shall be included in the calculation of Charge Point Availability.

PI 1.5 Where a Charge Point is unavailable as a result of accidental user damage, vandalism or a road traffic accident, and where the nature and duration of the unavailability has been notified to the Awarding Authority, such Charge Point shall not be included in the calculation of Charge Point Availability for such period as the Parties agree is reasonable or in the absence of an agreement, for such periods as the Awarding Authority may reasonably determine, taking into account the extent of any damage to the Charge Point and provided that the Concessionaire promptly takes such steps as are in accordance with good industry practice to repair such Charge Point.

PI 1.6 Where a Charge Point is unavailable as a result of a Force Majeure Event, then (subject to the Concessionaire complying with its obligations under Clause 28.5) such Charge Point shall not be included in the calculation of Charge Point Availability for the period during which the Force Majeure Event continues to apply.

PI 2 Incident Management

PI 2.1 The Concessionaire may be susceptible to a number of incidents whilst operating Charge Points and these have been summarised below including the time frames for resolution which will be the service level for which this PI is measured (each an “**Incident**”):

	Incident 1	Incident 2	Incident 3	Incident 4	Incident 5	Incident 6
Incident Detail	Concessionaire's scheme assets present a potential public hazard or serious safety issue	Customer unable to release a vehicle from a Charge Point	Breach of Customer data or financial security	Serious incident impacting on reputation of Concessionaire or Awarding Authority	Environment and cleanliness of site and Concessionaire's Charge Points	Major services outage. More than 25% of Concessionaire's Charge Points (comprising a minimum of at least 5 Charge Points) are unavailable at

						any one time.
Concessionaire to Notify Awarding Authority	Yes – Within 30 minutes	No	Yes – Within two hours	Yes – Within two hours	No	Yes – Within two hours
Timeframe to Resolve	2 Hours	2 Hours	5 Days	3 Days	5 Days	5 Days
Incident Examples	a) Charge Point has exposed or live wiring b) Charge Point is causing an obstruction to carriageway		a) Cyber attack	a) Death or serious injury of a Customer or Concessionaire Personnel whilst on duty	a) Litter (not applicable in respect of on-highway Sites) b) Detritus (not applicable in respect of on-highway Sites) c) Fly Posting d) Graffiti	a) Power outage b) Communications failure

PI 2.2 An Incident is deemed as having started as soon as the Concessionaire is notified of the Incident either by a Customer, the Awarding Authority or automatically via the Concessionaire's own Charge Point management system.

PI 2.3 An Incident is deemed as having been resolved when:

- (a) in the case of an Incident relating to a Charge Point, a suitably qualified engineer has repaired, inspected and signed that the Charge Point has been made safe and/or is functioning correctly; or
- (b) in the case of any other Incident, the Concessionaire has provided satisfactory evidence to the Awarding Authority that the Incident has been resolved.

PI 2.4 Notifications to the Awarding Authority pursuant to this PI2 shall be provided to the Awarding Authority's Call-Off Co-ordinator or such other person as is in each case specified for the purpose in the relevant Call-Off Contract.

PI 2.5 The primary format for notifications pursuant to this PI2 will be e-mail communication, provided that an Awarding Authority shall be entitled to specify other methods or formats for notification as part of the applicable requirements associated with a Call-Off Contract.

PI 3 Contact Centre Availability

- PI 3.1 This PI measures the total amount of time that the Contact Centre is available for in a Reporting Period.
- PI 3.2 The Concessionaire shall ensure that the Contact Centre is available for 98.5% of the operational time it is open for within a Reporting Period.
- PI 3.3 “Contact Centre Availability” for the purposes of the Service Level is defined as the proportion of time during the Contact Centre’s operational hours on each Contact Centre operational day during a Reporting Period that the Contact Centre is available to receive calls from Customers.
- PI 3.4 “Available to receive calls” means, for the purposes of PI 3.3, that Customers are able to successfully connect to an operator who is able to take the call from the Customer.
- PI 3.5 Contact Centre Availability for the purposes of the Service Level shall be determined by reference to industry standard automated system performance reports, to be provided by the Concessionaire to the Awarding Authority each Reporting Period as part of the Management Information Data.

PI 4 Queuing Time

- PI 4.1 98.0% of calls into the Contact Centre each Reporting Period shall be answered by an operator within two hundred and forty (240) seconds of the call being received on the queue at the Contact Centre.
- PI 4.2 70.0% of calls into the Contact Centre each Reporting Period shall be answered by an operator within ninety (90) seconds of the call being received on the queue at the Contact Centre.
- PI 4.3 Where calls are queued from an Internal Voice Response (IVR) system, the PI shall be measured from when:
- (a) a Customer chooses to redirect the call to an operator; or
 - (b) a Customer is automatically redirected to an operator by the IVR system.
- PI 4.4 “Queuing Time” for the purposes of the Service Level shall be determined by reference to industry standard automated system performance reports, to be provided by the Concessionaire to the Awarding Authority each Reporting Period as part of the Management Information Data.
- PI 4.5 The Concessionaire shall acknowledge all other correspondence from Customers within two (2) Business Days of the correspondence being received at the Contact Centre.

PI 5 PAYG Average Price

- PI 5.1 The average price per kilowatt hour (kWh) charged to Customers for use of Charge Points on a PAYG Basis pursuant to a Call-Off Contract in each relevant Reporting Period (calculated in accordance with the formula set out in the definition of PAYG Average Price) shall be equal to or lower than the PAYG Average Price which is specified in Part 2 of Attachment 4 to the relevant Call-Off Contract (or, as applicable, such increased PAYG Average Price as may be permitted in accordance with clause 6.2 of the relevant Call-Off Contract).

Annex A – Performance Indicator Table

PI ref	PI title	Start Point	End Point	Acceptable Service Level
PI 1	Charge Point Availability	00:01 on 1st day of Reporting Period	23:59 on last day of Reporting Period	> 97%
PI 2	Incident Management	00:01 on 1st day of Reporting Period	23:59 on last day of Reporting Period	Various levels – please refer to the row entitled “Timeframe to Resolve” in the table at PI 2.1
PI 3	Contact Centre Availability	00:01 on 1st day of Reporting Period	23:59 on last day of Reporting Period	98.5%
PI 4	Queuing Time	00:01 on 1st day of Reporting Period	23:59 on last day of Reporting Period	98% of calls answered within 240 seconds of the call being received 70% of calls answered within 90 seconds of the call being received
PI 5	PAYG Average Price	00:01 on 1st day of Reporting Period	23:59 on last day of Reporting Period	The average price per kilowatt hour (kWh) charged to Customers for use of Charge Points on a PAYG Basis pursuant to a Call-Off Contract in the relevant Reporting

				Period (calculated in accordance with the formula set out in the definition of PAYG Average Price) is equal to or lower than the PAYG Average Price which is specified in Part 2 of Attachment 4 to the relevant Call-Off Contract (or, as applicable, such increased PAYG Average Price as may be permitted in accordance with clause 6.2 of the relevant Call-Off Contract)
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SCHEDULE 4 – CALCULATION AND PAYMENT OF THE TURNOVER CHARGE

1. Defined terms

1.1 In this Schedule:

1.1.1 “Gross Turnover” means, in relation to a Site (the “**Relevant Site**”), the total of all moneys or other consideration received or receivable by the Concessionaire or any other person for all goods and services sold or performed by the Concessionaire or on the Concessionaire’s behalf from the Relevant Site calculated in accordance with this Schedule, it being acknowledged and agreed that where any moneys or other consideration are received or receivable in part in relation to goods and services sold or performed by the Concessionaire (or on the Concessionaire’s behalf) from the Relevant Site and in part in relation to other activities of the Concessionaire which are not connected with the Relevant Site (including, for example, income deriving from any Customer subscription charging schemes operated by the Concessionaire across multiple sites within its portfolio of charge point locations) (the “**Intermingled Turnover**”):

1.1.1.1 a reasonable proportion of such Intermingled Turnover (having regard to all the circumstances, including the respective size and nature of the relevant Site) (the “**Reasonable Proportion**”) shall be included in the Gross Turnover for such Relevant Site; and

1.1.1.2 the Concessionaire shall provide such information as the Awarding Authority may reasonably require to evidence the total amount of the Intermingled Turnover received by the Awarding Authority and the basis on which the applicable Reasonable Proportion has been calculated by the Concessionaire;

1.1.2 “Turnover Certificate” means the certificate to be produced by the Concessionaire under paragraph 2.3 of this Schedule;

1.1.3 “Turnover Charge” means an amount equal to the Gross Turnover for a Turnover Period multiplied by the Turnover Percentage;

1.1.4 “Turnover Charge Advance Payment Dates” means:

1.1.4.1 31 March;

1.1.4.2 30 June;

1.1.4.3 30 September; and

1.1.4.4 31 December;

and references to “**Turnover Charge Advance Payment Date**” shall be construed accordingly;

1.1.5 “**Turnover Percentage**” means (subject always to Clause 7.2 of the Agreement) the percentage amount specified in the Call-Off Contract to which the Relevant Site relates;

1.1.6 “**Turnover Period**” means:

1.1.6.1 first, the annual period starting on the first day of the Call-Off Term of the Call-Off Contract to which the Relevant Site relates;

1.1.6.2 then, each subsequent annual period falling wholly within the Call-Off Term of the Call-Off Contract to which the Relevant Site relates; and

1.1.6.3 finally, the annual or shorter period ending on the last day of the Call-Off Term of the Call-Off Contract to which the Relevant Site relates; and

1.1.7 “**Turnover Records**” means all accounts, bank statements, tax records and other written or computer records or documents maintained or which ought to be maintained for the purpose of recording and verifying the Gross Turnover.

1.2 The following are to be included in the Gross Turnover:

1.2.1 all moneys received or receivable from any sales which are received, made at or fulfilled from the Relevant Site; and

1.2.2 all bonuses, commissions, payments or discounts received or receivable from third parties relating to any activity, transactions or services concluded at or from the Relevant Site.

1.3 Sums received or receivable in respect of VAT will not be included in the Gross Turnover.

1.4 For the purposes of calculating the Gross Turnover:

1.4.1 no deduction is to be made for bad or doubtful debts or for discounts or commissions payable to the provider of credit; and

1.4.2 moneys are to be treated as being received or receivable by the Concessionaire notwithstanding that payment is made or is payable in whole or in part to any other person.

2. Turnover Records

- 2.1 The Concessionaire must maintain Turnover Records at a place where the Awarding Authority can reasonably inspect them. The Concessionaire must allow the Awarding Authority and its accountants and other authorised agents to have access to and inspect the Turnover Records.
- 2.2 The Concessionaire acknowledges that it owes the Awarding Authority a duty of the utmost good faith to maintain full and accurate Turnover Records to enable the Awarding Authority properly and accurately to determine the Gross Turnover.
- 2.3 Within thirty (30) days after the end of each Turnover Period, the Concessionaire must deliver a Turnover Certificate to the Awarding Authority signed by a professionally qualified independent accountant from a reputable firm of chartered accountants certifying the amount of the Gross Turnover during that Turnover Period.
- 2.4 Without limiting any other rights the Awarding Authority may have:
 - 2.4.1 any inaccurate maintenance of Turnover Records by the Concessionaire; or
 - 2.4.2 the provision of an inaccurate Turnover Certificate by the Concessionaire,

which the Awarding Authority (acting reasonably) considers to be deliberate shall be regarded as a material breach not capable of remedy for the purpose of Clause 28.1.1 (unless the Awarding Authority in its sole discretion elects to permit the Concessionaire to remedy the same).

3. Calculation and payment of Turnover Charge

- 3.1 Upon receipt of a Turnover Certificate, the Awarding Authority will calculate the Turnover Charge payable for the relevant Turnover Period and serve a written demand on the Concessionaire for the relevant Turnover Charge. In calculating the Turnover Charge payable:
 - 3.1.1 the Awarding Authority will take into account any sums paid by the Concessionaire under paragraph 3.4; and
 - 3.1.2 if any sums paid by the Concessionaire under paragraph 3.4 exceed the Turnover Charge for the relevant Turnover Period, the excess is to be credited by the Awarding Authority against the next payment of Turnover Charge due from the Concessionaire under paragraph 3.4.
- 3.2 The Concessionaire must pay the Awarding Authority the amount of Turnover Charge demanded by the Awarding Authority within thirty (30) calendar days after the service of the demand. If the Concessionaire does not do so, the Concessionaire will be liable to pay the Awarding

Authority interest in accordance with Clause 7.7 of the Agreement calculated from the date the Authority demanded the Turnover Charge.

3.3 If the Concessionaire does not deliver a Turnover Certificate within the period required by paragraph 2.3:

3.3.1 the Awarding Authority's agent, acting as an expert, will make a reasonable estimate of the Turnover Charge that the Concessionaire should have paid for the relevant Turnover Period;

3.3.2 the Concessionaire must pay to the Awarding Authority on demand an amount equal to that reasonable estimate together with interest in accordance with Clause 7.7 of the Agreement on the amount demanded calculated for the period starting on the date by which the Concessionaire should have provided the Turnover Certificate under paragraph 2.3 and ending on the date on which the Concessionaire pays the Awarding Authority the amount demanded; and

3.3.3 any overpayment of Turnover Charge that results from this is to be credited by the Awarding Authority against the next payment of Turnover Charge due from the Concessionaire. The Concessionaire will not be entitled to any credit in respect of interest paid by the Concessionaire under this paragraph 3.3.

3.4 If the Awarding Authority requests the Concessionaire to do so, after the first Turnover Period the Concessionaire must pay to the Awarding Authority in advance on each Turnover Charge Advance Payment Date on account of the Concessionaire's liability for Turnover Charge an amount equal to one quarter of the Turnover Charge for the previous Turnover Period.

SCHEDULE 5 - Request Form (Mini-Competition)

Framework Number:

Request Form Number:

To:

Address:

From:

Date:

This is a Request Form issued in accordance with the Agreement referenced above. This is an enquiry document only, constituting an invitation to treat and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the Awarding Authority; however such acceptance will not occur unless and until the Awarding Authority posts notice of acceptance to you or until such other time stated in that notice of acceptance, which may include a requirement for execution by the Parties of a Call-Off Contract.

Attachment 1 of this Request Form confirms the Sites available, the requirements for the Charge Points required at each Site (including maximum size, colour and any other information relevant to the infrastructure) and other relevant information.

Attachment 2 of this Request Form confirms the form of Site Agreement(s) and applicable Special Conditions for Call-Off.

In your Proposal, you must respond to the information requested in Attachment 1 by completing Attachment 3.

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

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

Except as provided in this Request Form or any Attachment, the Mini-Competition process shall be subject to the provisions describing the Call-Off Procedure in Clause 3 of the Agreement.

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

Name:

e- mail address:

Postal address:

Telephone:

Fax:

Any queries regarding this Request Form should be directed to the above.

Signed: _____

for and on behalf of the Awarding Authority

Attachments:

Attachment 1: The Sites available, the Charge Point requirements for each Site and other relevant information

Attachment 2: Site Agreement(s) and Special Conditions for Call-Off

Attachment 3: Concessionaire's Proposal

Draft Call-Off Contract

Attachment 1 of Schedule 5

[To be completed by the Awarding Authority]

1. Package of Sites forming part of Call-Off Contract

[Insert full details]

2. Charge Points and deliverables

[Awarding Authority to detail here all services and deliverables with full descriptions of what is required.]

Awarding Authority to Include a Project Plan that clearly identifies the project milestones including the Awarding Authority's required Go-Live Date. This may be as simple as a plan that contains date(s) for the required Go-Live Date. If no plan is available, or if the milestones cannot be specified at this stage, the Awarding Authority must request the Concessionaire to include a proposed plan and milestones in their response.

Where possible, the Awarding Authority should also provide details of permits, consents, permissions etc which the Awarding Authority is aware will or may be required by the successful Concessionaire and (where those permits, consents or permissions are to be granted by the Awarding Authority) either: a) details of the cost, process and timescales associated with obtaining those permits/consents/permissions; or b) details of where that information can be obtained.

Awarding Authority should also define other requirements it wishes the Concessionaire to respond to such as:

- details of any technical and/or functional specifications and/or any service levels (as applicable) of any deliverable or service required by the Awarding Authority to be delivered or achieved by the Concessionaire;*
- estimated time-lines for each of the milestones and for the overall project;*
- the Concessionaire's proposed Site Charge, Turnover Percentage and PAYG Average Price;*
- any material assumptions or facts relied upon by the Awarding Authority in compiling it and any other material information which relates to the services required to be provided and/or performed;*
- Service levels, and measurement thereof;*
- any warranties and/or representations required from the Concessionaire.]*

3. Timetable

Commencement Date *[complete only if different from the date of the Call-Off Contract]*:

Go-Live Date *[subject to Clause 3.6 of the Agreement]*:

Call-Off Term: []¹

4. Site Preparation

[Awarding Authority to include details regarding any steps taken or to be taken (by the Contracting Authority or Awarding Authority) to prepare sites in advance e.g. (if applicable) in respect of the works carried out to facilitate power supply, obtaining planning rights / permitted development rights.]

5. [Any Policies and Procedures]

The Concessionaire will comply with the following and any other reasonable policies and procedures stipulated by the Awarding Authority from time to time:
[INSERT]

With respect to Clause 5.4 of the Agreement:-

[Awarding Authority to state here for the purpose of Clause 5.4 of the Agreement whether the Concessionaire is to be permitted to advertise at Site(s).]

Where the Concessionaire is to be permitted to advertise, Awarding Authority to state any requirements/guidelines that the Concessionaire must comply with. The Concessionaire will comply with the following advertising guidelines: [INSERT]]

6. The Awarding Authority Account Details

Relevant account code and cost centre:

7. The Awarding Authority's Call-Off Co-ordinator

Name:

Address:

Phone:

Fax:

Email:

8. Additional insurance (if any) to be held by Concessionaire:

[Delete as appropriate]

- (a) Employer's liability insurance to be increased to £[X] million per incident;
- (b) Public liability insurance to be increased to £[X] million per occurrence with financial loss extension;
- (c) Professional indemnity insurance to be increased to £[X] million in the aggregate per annum for the duration of the Call-Off Contract and for 6 years after expiry or termination of the Call-Off Contract; and
- (d) Product liability insurance to be increased to £[X] million in the aggregate per annum with financial loss extension.

9. Specific Exit Plan and related requirements

- (a) *[Awarding Authority to identify matters (if any) which are to be taken into account for the purposes of the Concessionaire's Exit Plan (in Schedule 9 of the Agreement)].*
- (b) *The Concessionaire must include with its Proposal the certificate required by Clause 16.4.2.1 and (where applicable) details of any Third Party Owner as described in Clause 16.4.3.2, and confirmation that the Third Party Owner(s) will enter into a Third Party Direct Agreement as a condition of the Call-Off Contract.*
- (c) *The Concessionaire must include with its Proposal confirmation of whether a Maintenance Direct Agreement is to be delivered with the Call-Off Contract (see Clause 23.1.1.2 of the Agreement)*

10. Assessment Criteria

The Evaluation process is to select the "Most Economically Advantageous Tender (MEAT). The "MEAT" is determined as the highest evaluated score in a 50:50 combination of Quality and Financial scores respectively. A Commercial response will also be included and this will cover the acceptance of the proposed Call-Off Contract on a pass/fail basis.

The Quality response must demonstrate how the bidder's proposed solution will meet the Awarding Authority's requirements for the Sites, as set out in Appendix 1 of the Request Form.

The Quality response will also include the Turnover Percentage that is being offered by the bidder in its Proposal when responding to the Sites specified in the applicable Request Form. The Turnover Percentage to be stated in the Proposal is over and above the 1% already agreed to at the ITS stage by the 'Minimum Base Charge and Turnover Declaration' in Appendix 6 to Volume 1 of the ITS.

The Turnover Percentage (i.e. the aggregate of the minimum 1% and any additional percentage offered) will be evaluated using the “Price Proportion” method, where the highest Turnover Percentage figure offered achieves the maximum score and the other bids will be awarded a score that is proportionate to the highest figure offered.

The Financial response will cover the financial aspects of the bidder’s proposal regarding the installation, operation and maintenance of Charge Points at the Sites specified in the applicable Request Form.

The Financial evaluation will be broken down into the following two (2) areas:

1) Site Charge offered above the Base Charge Reserve Value for the package of Sites specified in the applicable Request Form. This will be evaluated using the “Price Proportion” method, where the highest figure offered for the Site Charge achieves the maximum score and the other bids will be awarded a score that is proportionate to the highest figure offered; and

2) PAYG Average Price. This will be evaluated using the “Inverse Price Proportion” method, where the lowest figure offered achieves the maximum score. All other bids are awarded a score that is proportionate to the lowest figure offered.

The following evaluations weightings will apply:

Quality	Technical Requirements	35%
	Turnover Percentage	15%
Financial	Site Charge	25%
	PAYG Average Price	25%

The bidder that achieves the highest overall score for its Proposal, once the Quality and Financial evaluation scores have been combined, will be awarded the Call-Off Contract.

11. Call-Off Rules

[Awarding Authority to note any specific requirements in addition to Clause 3 of the Agreement]

12. [Timescale for removal of Concessionaire Equipment from Sites which are on highway

[Where Sites are on highway, this should be populated by the Awarding Authority to state the timescales which are to apply in relation to each such Site for the purposes of Clause 29.3.4.2]

Attachment 2 of Schedule 5

Site Agreement(s)

and

Special Conditions for Call-Off

Part 1 – Site Agreement(s)

Note: The applicable form of Site Agreement(s) will be set out here in place of the text set out in this box. The following indicative Site Agreement 'principles' have been included here to provide a non-binding indication of the potential types of provision which may be included in a Site Agreement:

1. Background

1.1 The Site Agreement principles set out in paragraphs 2 and 3 below are intended to give the Concessionaire an indicative view of the types of provision which may be included in a Site Agreement where the applicable Site(s):

1.1.1 are located on highway maintainable by the Awarding Authority (each a "**Licenced Site**");

1.1.2 do not otherwise fall within the scope of paragraph 1.1.1 above (each a "**Leased Site**").

1.2 An Awarding Authority shall be entitled to determine the form and terms of a Site Agreement for the purposes of a mini-competition in connection with the award of a Call-Off Contract at its absolute discretion.

2. Site Agreement principles - Licenced Sites

2.1 Sites(s): A Site Agreement (Licence) may cover:

2.1.1 all of the Sites comprised within the package of Sites under the associated Call-Off Contract (in which event it will provide a right for the Awarding Authority to remove individual Sites from the Site Agreement (Licence) with an associated automatic adjustment to the charges under the Call-Off Contract); or

2.1.2 a single Site comprised within the package of Sites under the associated Call-Off Contract (in which event it will provide a right for the Awarding Authority to terminate with an associated automatic adjustment to the charges under the Call-Off Contract).

2.2 User: Strictly limited to use for the purposes of performance of the Call-Off Contract.

2.3 Licence Fee: To pay the applicable charges as provided for in the associated Call-Off Contract to the Awarding Authority at the times

specified in the Site Agreement.

- 2.4 Co-termination with Call-Off Contract: Site Agreement to terminate upon the termination or expiry of the associated Call-Off Contract.
- 2.5 Repair / condition: Concessionaire to be responsible for the cleanliness and upkeep of the Site and the repair of any apparatus, subject always to statutory highway requirements (as applicable).
- 2.6 Reinstatement on termination of the Site Agreement: Concessionaire to be responsible for reinstatement on termination (subject to the Awarding Authority's right to purchase Concessionaire Equipment located at the Site(s) pursuant to the associated Call-Off Contract) and for complying with the requirements of the Awarding Authority in respect of such reinstatement.
- 2.7 Alterations / alienation: No alterations without consent and no alienation. Use of the Concessionaire Equipment by a person who is not the Concessionaire to be limited to authorised sub-contractors.
- 2.8 Insurance: Site Agreement to provide for the Concessionaire's insurance obligations in respect of the Concessionaire Equipment and public liability insurance (if applicable).
- 2.9 No obstruction: Site Agreement to ensure that neither the Concessionaire nor its contractors obstruct the highway in any manner not authorised by the Licence.
- 2.10 Where counterparty is to be SA Sub-contractor (as permitted by the Framework Agreement) inclusion of the additional terms required by the Framework Agreement.

3. Site Agreement principles – Leased Sites

- 3.1 Sites(s): A Site Agreement may cover:
 - 3.1.1 all of the Sites comprised within the package of Sites under the associated Call-Off Contract (in which event it will provide a right for the Awarding Authority to remove individual Sites from the Site Agreement with an associated automatic adjustment to the charges under the Call-Off Contract); or
 - 3.1.2 a single Site comprised within the package of Sites under the associated Call-Off Contract (in which event it will provide a right for the Awarding Authority to terminate with an associated automatic adjustment to the charges under the Call-Off Contract).
- 3.2 User: Strictly limited to use for the purposes of performance of the Call-Off Contract.
- 3.3 Rent: To pay the applicable charges as provided for in the associated Call-Off Contract to the Awarding Authority at the times specified in the Site

Agreement.

- 3.4 *Sections 24-28 Landlord and Tenant Act 1954: To be excluded.*
- 3.5 *Co-termination with Call-Off Contract: Site Agreement to terminate upon the termination or expiry of the associated Call-Off Contract.*
- 3.6 *Repair / condition: Concessionaire to be responsible for cleanliness, upkeep and repair of the Site(s) (as applicable).*
- 3.7 *Reinstatement on termination of the Site Agreement: Concessionaire to be responsible for reinstatement on termination (subject to the Awarding Authority's right to purchase Concessionaire Equipment located at the Site(s) pursuant to the associated Call-Off Contract).*
- 3.8 *Alterations / alienation: No alterations without consent and no alienation. Use of the Site(s) by a person who is not the Concessionaire to be limited to permitted sub-contractors.*
- 3.9 *Insurance: Site Agreement to provide for the Concessionaire's insurance obligations in respect of the Site (if applicable).*
- 3.10 *Denial of access: Site Agreement to permit the Awarding Authority the ability to deny access to personnel of the Concessionaire in line with the requirements of the associated Call-Off Contract.*
- 3.11 *Exceptions / reservations: Usual exceptions and reservations to apply as applicable based on the nature of the Site(s) in question.*
- 3.12 *Where counterparty is to be SA Sub-contractor (as permitted by the Framework Agreement) inclusion of the additional terms required by the Framework Agreement.*

Part 2 – Special Conditions for Call-Off

Note: See part 2 of Attachment 2 to Schedule 6 for the special conditions for Call-Off which will apply in relation to each Call-Off Contract. Any other special conditions – in addition to those set out in part 2 of Attachment 2 to Schedule 6 - will be set out here.

Attachment 3 of Schedule 5

Proposal

[To be completed by the Concessionaire]

1. Proposed Solution

[The Concessionaire should detail how it proposes to deliver the services at the Sites set out in Attachment 1, including (where requested) a Project Plan (this may be as simple as a plan that contains dates for completion depending on the particular project), details of any equipment and materials required and service levels – depending on what has been requested in the Request Form].

2. Site Agreement(s)

The Concessionaire should confirm that it accepts the terms of the relevant Site Agreement(s).

3. Site Charge, Turnover Percentage and PAYG Average Price

The Concessionaire should set out: (i) the Site Charge; and (ii) the Turnover Percentage, that it proposes for each Site.

The Concessionaire should also confirm the amount of the PAYG Average Price which it proposes in relation to the Charge Points to be operated pursuant to the proposed Call-Off Contract.

4. Service Team and Personnel

Details of the Concessionaire's Manager, Concessionaire's Call-Off Manager, and Concessionaire's Personnel, including grades and areas of responsibility. Please attach copies of CVs.

5. Proposed sub-contractors (if any)

Name and contact details of proposed sub-contractor(s) and details of any proposed sub-contracted work (including any proposal that an SA Sub-Contractor should enter into any Site Agreement(s):

6. Proposed Go-Live Date

[Complete only if different from Go-Live Date stated in Attachment 1 – and note the terms of Clause 3.6 of the Framework Agreement which must be complied with]:

7. Insurance

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

8. Indicative Initial Value of Concessionaire Equipment and period of depreciation in months for the purposes of Clause 29.4.3.5

- (a) The formula to calculate the depreciation of the Concessionaire Equipment is set out in Clause 29.4.3.5(a) of the Agreement.
- (b) The indicative Initial Value for the purposes of Clause 29.4.3.5(b) of the Agreement is: [].

[Note that a separate value must be stated by Site for:

- (i) *Charge Points; and*
 - (ii) *other Concessionaire Equipment which is not part of or otherwise required to operate the Charge Points; and*
 - (iii) *installation costs.*
- (c) The period[s] for depreciation in months for the purposes of Clause 29.4.3.5(a) [is][are]: []. *[Note: if different periods attach to different items of Concessionaire Equipment, these should be stated separately here*

9. Specific Exit Plan and related requirements

- (a) [Concessionaire to respond to matters (if any) which are to be taken into account for the purposes of the Concessionaire's Exit Plan (in Schedule 9 of the Agreement)].
- (b) The Concessionaire must include with its Proposal the certificate required by Clause 16.4.2.1 signed by a statutory director and (where applicable) details of any Third Party Owner as described in Clause 16.4.3.2, and confirmation that the Third Party Owner(s) will enter into a Third Party Direct Agreement as a condition of the Call-Off Contract.
- (c) The Concessionaire must include with its Proposal confirmation of whether any Maintenance Direct Agreement(s) is/are to be delivered with the Call-Off Contract (see Clause 23.1.1.2 of the Agreement).

10. Other Information

2.2 The corresponding Site Agreement(s) are included in Attachment 2 which shall be executed by each Party at the same time as this Call-Off Contract (subject to Clause 3.14 of the Agreement where it applies).

3. THE SERVICES

- 3.1 The Services to be performed by the Concessionaire pursuant to this Call-Off Contract are set out in Attachment 1.
- 3.2 The Concessionaire acknowledges that it has been supplied with sufficient information about the Agreement and the Services to be provided and that it has made all appropriate and necessary enquiries to enable it to perform the Services under this Call-Off Contract. The Concessionaire shall not be entitled to payment nor excused from any obligation or liability under this Call-Off Contract or the Agreement due to any misinterpretation or misunderstanding by the Concessionaire of any fact relating to the Services to be provided. The Concessionaire shall promptly bring to the attention of the Call-Off Co-ordinator any matter that is not adequately specified or defined in the Call-Off Contract or any other relevant document.
- 3.3 The timetable for any Services to be provided by the Concessionaire and the Go-Live Date and corresponding Milestones (if any) and Project Plan (if any) are set out in Attachment 1. The Concessionaire must provide the Services in respect of this Call-Off Contract in accordance with such timing. The Concessionaire shall be liable for the ongoing costs of providing Services in order to meet a Milestone.
- 3.4 The Concessionaire acknowledges and agrees that as at the commencement date of this Call-Off Contract it does not have an interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services provided to the Awarding Authority under this Call-Off Contract.

4. CALL-OFF TERM

This Call-Off Contract commences on the date of this Call-Off Contract or such other date as may be specified in Attachment 1 and subject to Clause 5.2 of the Agreement, shall continue in force for the Call-Off Term stated in Attachment 1 unless terminated earlier in whole or in part in accordance with the Agreement.

5. PAYMENTS

Part 1 of Attachment 4 specifies the Site Charge and Turnover Percentage which will apply in respect of each Site, which shall be paid in accordance with Clause 7 and Schedule 4 to the Agreement.

Subject to Clauses 29.4.3.5(b) and 29.4.3.5(c) of the Agreement, the depreciated value of the Concessionaire Equipment each year from installation is set out in paragraph 8.a of Attachment 1.

Concessionaire Property which is not to fall within the definition of Concessionaire Equipment for the purpose of the Call-Off Contract is set out in paragraph 8.b of Attachment 1.

6. PAYG AVERAGE PRICE

- 6.1 Part 2 of Attachment 4 specifies the PAYG Average Price which, subject always to clause 6.3 below, the Concessionaire undertakes to maintain during the first two (2) Call-Off Years during the Call-Off Term.
- 6.2 The Parties acknowledge and agree that, subject always to clause 6.3 below, the PAYG Average Price specified in Part 2 of Attachment 4 may be increased by a maximum amount equal to CPI + 3% per annum in the third Call-Off Year during the Call-Off Term and in each Call-Off Year during the Call-Off Term thereafter. The Parties further acknowledge and agree, subject always to clause 6.3 below, that the Awarding Authority has the right to revise the formula employed to increase the PAYG Average Price by an amount greater than CPI + 3% if it deems it necessary for the success and functioning of the network of Sites comprised in this Call-Off Contract.
- 6.3 The Parties agree that: (i) nothing in this clause 6 shall be taken as an acknowledgement or agreement from the Awarding Authority that Customers will be charged at the PAYG Average Price at any Charge Point which is the subject of this Call-Off Contract; and (ii) the Concessionaire shall be free to determine the price charged to Customers per kilowatt hour (kWh) for use of any Charge Point which is the subject of this Call-Off Contract on a PAYG Basis provided such price is equal to or lower than the PAYG Average Price (or, in a Call-Off Year after the second Call-Off Year, is equal to or lower than the PAYG Average Price as increased in accordance with clause 6.2).

7. CALL-OFF CO-ORDINATOR

The Awarding Authority's Call-Off Co-ordinator in respect of this Call-Off Contract is named in Attachment 1.

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

SIGNED

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

Signature: _____

Name: _____

Title: _____

Date: _____

SIGNED

For and on behalf of [*the Concessionaire*]

Signature: _____

Name: _____

Title: _____

Date: _____

Attachment 1 of Schedule 6

[To be completed by the Awarding Authority – where appropriate based on the Proposal of the successful bidding concessionaire]

1. Package of Sites forming part of Call-Off Contract

[Insert full details]

2. Concessionaire Property and deliverables

3. Timetable

Go-Live Date: *[insert the date by which the Charge Points will have been installed and fully operational]*

Call-Off Term: []**2**

Attach Project Plan (if any) (including Milestones if applicable)

4. Any Policies and Procedures

The Concessionaire will comply with the following and any other reasonable policies and procedures stipulated by the Awarding Authority from time to time: *[INSERT]*

Advertising at Sites permitted or not: *[yes/no/any conditions]*

[Where advertising permitted, without prejudice to Clause 5.4 of the Agreement, the Concessionaire will comply with the following advertising guidelines: [INSERT]]

5. Awarding Authority Account Details

Relevant account code and cost centre:

6. Awarding Authority Call-Off Co-ordinator

Name:

Address:

Phone:

Fax:

Email:

7. **Awarding Authority address for service of notices and other documents in accordance with Clause 37:**
8. **Description of and value of Concessionaire Equipment and Depreciation**
 - (a) **Value and Depreciation calculation:** *[insert]*
 - (b) **Concessionaire Property which is not to be included in the definition of Concessionaire Equipment:** *[insert]*³
9. **Specific Exit Plan and related requirements**
 - (a) *[Additional provisions (if any) in respect of the Concessionaire's Exit Plan (in Schedule 9 of the Agreement)]*
 - (b) *[(Where applicable) list here any Third Party Owner as described in Clause 16.4.3.2 of the Agreement referred to in the successful concessionaire's Proposal and the and confirmation that the Third Party Owner(s) will enter into a Third Party Direct Agreement(s) to be entered into as a condition of the Call-Off Contract. These should be delivered by the Concessionaire, signed by the Third Party Owner, before the Call-Off Contract is completed]]*
 - (c) *[(Where applicable) list here the Maintenance Direct Agreement(s) to be delivered with the Call-Off Contract (see Clause 23.1.1.2 of the Agreement). These should be delivered by the Concessionaire, signed by the Third Party Owner before the Call-Off Contract is completed]*
10. **Other information or conditions**

Specify any other information or special conditions relevant to provision of Services under this Call-Off Contract

[Include here details of the time periods in which the Concessionaire's Call-Off Manager is to be available to resolve issues arising for the purposes of Clause 9.4.3 of the Agreement]

[Include here any activities ancillary to the provision of the Services which the Concessionaire has indicated in its Proposal that it wishes to undertake and which the Awarding Authority has agreed as permitted for the purpose of the Site Agreement(s)]

³ *Note: It may not be necessary or appropriate for the Awarding Authority to have the right to require temporary use or the right to purchase ancillary equipment/property which the bidder proposes to make available at the Sites. The bidder should include with its Proposal the equipment it proposes to install at each Site and the Awarding Authority will then confirm in the final form of Call-Off Contract any items to be excluded for this purpose.*

Attachment 2 of Schedule 6
Site Agreement(s)
and
Special Conditions for Call-Off

Part 1 – Site Agreement(s)

Note: The applicable form of Site Agreement(s) will be set out here.

Part 2 – Special Conditions for Call-Off⁴

Contents

CA1	NOT USED	[5]
CA2	NOT USED	[]
CA3	NOT USED	[]
CA4	NOT USED	[]
CA5	NOT USED	[]
CA6	NOT USED	[]
CA7	NOT USED	[]
CA8	NOT USED	[]
CA9	NOT USED	[]
CA10	Interface with the European Union - Continuity Of The Call-Off Contract.....	[]
CA11	NOT USED	[]
CA12	NOT USED	[]
CA13	NOT USED	[]
CA14	NOT USED	[]
CA15	NOT USED	[]
CA16	NOT USED	[]
CA17	Construction (Design And Management) Regulations 2015.....	[]
CA18	Awarding Authority Obligation Of Confidentiality	[]
CA19	NOT USED	[]
CA20	Transfer Of Employees On Expiry Or Termination	[]
APPENDIX 1 TO CLAUSE CA20		[]
CA21	NOT USED	[]
CA22	NOT USED	[]
CA24	NOT USED	[]

⁴ **Note: Any additional special conditions set out in the applicable Request Form will also be included here.**

⁵ **Note: Page numbering to be updated accordingly in any Call-Off Contract.**

CA25	[Specific LU Standards	[]
CA26	Timber Standards – Detailed	[]
CA27	Waste Electrical And Electronic Equipment Regulations 2006	[]
CA28	Work Related Road Risk Requirements	[]
CA29	NOT USED	[]
CA31	NOT USED	[]
CA32	NOT USED	[]
CA33	London Living Wage	[]
CA34	Ethical Sourcing	[]
CA35	Supplier Diversity	[]
	Timber Standards Appendix	[]
	Ethical Sourcing Appendix: The ETI Base Code	[]

CA1 NOT USED

CA2 NOT USED

CA3 NOT USED

CA4 NOT USED

CA5 NOT USED

CA6 NOT USED

CA7 NOT USED

CA8 NOT USED

CA9 NOT USED

CA10 INTERFACE WITH THE EUROPEAN UNION - CONTINUITY OF THE CALL-OFF CONTRACT

CA10.1 The Parties confirm that the occurrence or non-occurrence of an event associated with: (i) economic and monetary union in the European Union; or (ii) the UK's relationship and/or interface with the European Union, will not have the effect of altering any term of, or discharging or excusing performance under the Call-Off Contract or any transaction, or give either Party the right unilaterally to alter or terminate the Call-Off Contract or any transaction.

CA10.2 The words "an event associated with economic and monetary union in the European Union" will include each and any combination of the following:

CA10.2.1 the introduction of, changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise);

CA10.2.2 the fixing of conversion rates between a member state's currency and the new currency or between the currencies of member states;

CA10.2.3 the introduction of that new currency as lawful currency in a member state;

CA10.2.4 the withdrawal from legal tender of any currency which, before the introduction of the new currency, was lawful currency in one of the member states;

CA10.2.5 the disappearance or replacement of a relevant rate option or other price source for the national currency of any member state, or the failure of the agreed sponsor (or successor sponsor) to publish or display a relevant rate, index, price, page or screen; or

CA10.2.6 the withdrawal of any member state from a single or unified European currency.

CA11 NOT USED

CA12 NOT USED

CA13 NOT USED

CA14 NOT USED

CA15 NOT USED

CA16 NOT USED

**CA17 CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS
2015**

CA17.1 Unless the Awarding Authority notifies the Concessionaire that the Awarding Authority (or another person) will be the client for the purposes of the CDM Regulations, then by entering into the Call-Off Contract, the Concessionaire agrees, for the purposes of regulation 4(8) of the CDM Regulations, to be treated as the only client in respect of the Services pursuant to such Call-Off Contract. The Awarding Authority agrees to the Concessionaire's election to be treated as the only client.

CA17.2 To the extent that the CDM Regulations apply to the Services, the Concessionaire shall:

CA17.2.1 comply with its obligations as the client under the CDM Regulations;

CA17.2.2 procure that its employees, agents and permitted sub-contractors and sub-consultants comply with their obligations and duties under the CDM Regulations;

CA17.2.3 procure that designers and contractors for the purposes of the CDM Regulations comply with their obligations in the CDM Regulations; and

CA17.2.4 procure that where required by the CDM Regulations, full details of the Services are given to the Health and Safety Executive in accordance with regulation 6 of the CDM Regulations.

CA17.3 The Concessionaire shall at all times co-operate, so far as is reasonably practicable, with all persons having health and safety responsibilities on or adjacent to the applicable Sites pursuant to the Call-Off Contract, including any principal contractor and principal designer (as such terms are defined in the CDM Regulations) for the effective discharge of those responsibilities.

CA17.4 The Concessionaire to the extent that it is in control of the applicable Sites pursuant to the Call-Off Contract or any part of them within the meaning of Section 4 of the Health and Safety at Work etc. Act 1974 keeps such Sites, any access and egress, safe and without risk to the health of persons using it.

CA17.5 For the purpose of this Clause CA17, "**CDM Regulations**" means the Construction (Design and Management) Regulations 2015 and any amendment, consolidation, revision and/or replacement thereto and related

guidance together with any requirements issued from time to time by the Health and Safety Executive.

CA18 AWARDING AUTHORITY OBLIGATION OF CONFIDENTIALITY

CA18.1 Notwithstanding Clause 26.6 (but subject always to paragraph 2 of Schedule 8 (Special Conditions of Agreement) to the Agreement) the Awarding Authority shall have the same obligations as those imposed on the Concessionaire under Clause 25 of the Agreement in respect of the Concessionaire Confidential Information, except that the Awarding Authority may:

CA18.1.1 disclose the Concessionaire Confidential Information where the Awarding Authority considers that it is obliged to do so under any of the legislation referred to in Clause 26 of the Agreement;

CA18.1.2 use the Concessionaire Confidential Information to the extent necessary to obtain the benefit of the Concessionaire's performance under this Contract;

CA18.1.3 disclose the Concessionaire Confidential Information to any member of the Awarding Authority Group; and

CA18.1.4 disclose such Concessionaire Confidential Information as may be required to be published in the Official Journal of the European Union.

CA18.2 For the purposes of this Clause CA18, "**Concessionaire Confidential Information**" means all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Concessionaire (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Concessionaire, **provided that** Charge Point Data shall not comprise Confidential Information for the purposes of the Agreement or any Call-Off Contract entered into pursuant to it.

CA19 NOT USED

CA20 TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION

CA20.1 For the purposes of this Clause CA20, unless the context indicates otherwise, the following expressions shall have the following meanings:

CA20.1.1 "**Employment Costs**" means all salaries, wages, commissions, bonuses, holiday pay (including payment for accrued but untaken holiday), sick pay, national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other emoluments);

CA20.1.2 "**Employment Liabilities**" means all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, awards, compensation, claims, demands, proceedings and legal costs (on a full indemnity basis);

CA20.1.3 “**Final Staff List**” has the meaning set out in Clause CA20.5;

CA20.1.4 “**Further Transfer Date**” means the date on which the Services (or any part of them) cease to be provided by the Concessionaire and start to be performed by the Awarding Authority or any Replacement Concessionaire when the transfer of employment of the Re-Transferring Personnel from the Concessionaire to the Awarding Authority or any Replacement Concessionaire occurs;

CA20.1.5 “**Relevant Period**” means the period starting on the earlier of:

- (a) the date falling 6 calendar months before the date of expiry of the Call-Off Contract; or
- (b) if the Call-Off Contract is terminated by either Party in accordance with Clause 28.3 or by the Awarding Authority in accordance with Clause 28.1, 28.2, 28.4 or 28.5, the date of the relevant termination notice;

and ending on the Further Transfer Date;

CA20.1.6 “**Replacement Concessionaire**” means any replacement supplier or provider to the Awarding Authority of the Services (or any part of the Services) and any Sub-Contractor to such replacement supplier or provider;

CA20.1.7 “**Re-Transferring Personnel**” means any Concessionaire’s Personnel who are assigned (for the purposes of TUPE) to the relevant Services immediately before the Further Transfer Date and whose employment contract will transfer to the Awarding Authority or the Replacement Concessionaire pursuant to TUPE with effect from the Further Transfer Date;

CA20.1.8 “**Staff List**” has the meaning set out in Clause CA20.2.1;

CA20.1.9 “**Staffing Information**” has the meaning set out in Clause CA20.2;

CA20.1.10 “**Sub-Contractor**” means any subcontractor to the Concessionaire or the Replacement Concessionaire as the context dictates which is engaged in the provision of the Services or any part of them (or services substantially similar to the Services or any part of them); and

CA20.1.11 “**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

CA20.2 The Concessionaire will promptly provide (and procure that its Sub-Contractors provide) when requested by the Awarding Authority (but not more than twice in any 12 month period) and not more than 7 days after the date of any notice to terminate this Call-Off Contract given by either Party, the following information to the Awarding Authority:

CA20.2.1 an anonymised list of current Concessionaire’s Personnel and employees and workers of its Sub-Contractors engaged in the

provision of the Services (each identified as such in the list) (the "**Staff List**");

CA20.2.2 such of the information specified in Appendix 1 to this Clause CA20 as is requested by the Awarding Authority in respect of each individual included on the Staff List;

CA20.2.3 in the situation where notice to terminate this Call-Off Contract has been given, a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the Services, whom the Concessionaire considers will not transfer under TUPE for any reason whatsoever together with details of their role and a full explanation of why the Concessionaire thinks such persons will not transfer,

such information together being the "**Staffing Information**".

CA20.3 The Concessionaire will notify the Awarding Authority as soon as practicable and in any event within five (5) days of the Concessionaire becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.

CA20.4 The Concessionaire warrants to the Awarding Authority that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.

CA20.5 Subject to Clause CA20.6, the Concessionaire will provide the Awarding Authority with a final Staff List (the "**Final Staff List**") and Staffing Information relating to persons on that list not less than 28 days before the Further Transfer Date.

CA20.6 If the Call-Off Contract is terminated by either Party in accordance with Clause 28.1 or by the Awarding Authority in accordance with Clause 28.1, 28.2 or 28.5 then the Final Staff List will be provided by the Concessionaire to the Awarding Authority as soon as practicable and no later than 14 days after the date of termination of the Call-Off Contract.

CA20.7 The Concessionaire warrants that as at the Further Transfer Date:

CA20.7.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;

CA20.7.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and

CA20.7.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Awarding Authority.

CA20.8 During the Relevant Period the Concessionaire will not and will procure that its Sub-contractors do not without the prior written consent of the Awarding Authority (such consent not to be unreasonably withheld or delayed):

CA20.8.3 terminate or give notice to terminate the employment or engagement or replace the persons listed on the most recent Staff List or any Re-Transferring Personnel (save for any

termination for gross misconduct, provided that the Awarding Authority is informed promptly of such termination);

- CA20.8.4 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;
 - CA20.8.5 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List or any Re-Transferring Personnel;
 - CA20.8.6 increase to any significant degree the proportion of working time spent on the Services by any of the Concessionaire's Personnel; or
 - CA20.8.7 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List or any Re-Transferring Personnel.
- CA20.9 The Concessionaire will promptly notify the Awarding Authority of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in Clause CA20.8 regardless of when such notice takes effect.
- CA20.10 The Awarding Authority agrees to keep any information provided under Clause CA20 confidential, save that the Concessionaire agrees that the Awarding Authority will be permitted to disclose any information provided to it under this Clause CA20 in anonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any third party engaged by the Awarding Authority to review the delivery of the Services and to any Replacement Concessionaire, subject to such persons entering into an agreement with the Awarding Authority requiring them to keep such information confidential.
- CA20.11 If TUPE applies on the expiry or termination of the Call-Off Contract or the appointment of a Replacement Concessionaire, the following will apply:
- CA20.11.1 The contracts of employment of each member of the Re-Transferring Personnel will have effect from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the Awarding Authority or Replacement Concessionaire (as appropriate) (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005).
 - CA20.11.2 During the Relevant Period the Concessionaire will:
 - CA20.11.2.1 provide the Awarding Authority or Replacement Concessionaire (as appropriate) with access to such employment and payroll records as the Awarding Authority or Replacement Concessionaire (as appropriate) may require to put in place the

administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the Awarding Authority or Replacement Concessionaire (as appropriate);

CA20.11.2.2 allow the Awarding Authority or Replacement Concessionaire (as appropriate) to have copies of any of those employment and payroll records;

CA20.11.2.3 provide all original employment records relating to the Re-Transferring Personnel to the Awarding Authority or Replacement Concessionaire (as appropriate); and

CA20.11.2.4 co-operate with the Awarding Authority and any Replacement Concessionaire in the orderly management of the transfer of employment of the Re-Transferring Personnel.

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

CA20.11.3 The Concessionaire warrants to each of the Awarding Authority and the Replacement Concessionaire that as at the Further Transfer Date no Re-Transferring Personnel (except where the Concessionaire has notified the Awarding Authority and the Replacement Concessionaire (if appointed) in writing to the contrary) to the Concessionaire's knowledge:

CA20.11.3.1 is under notice of termination;

CA20.11.3.2 is on long-term sick leave;

CA20.11.3.3 is on maternity, parental or adoption leave;

CA20.11.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;

CA20.11.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Awarding Authority or Replacement Concessionaire (as appropriate);

CA20.11.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;

CA20.11.3.7 has received a written warning (other than a warning that has lapsed);

CA20.11.3.8 has taken or been the subject of a grievance procedure within the previous two years; or

CA20.11.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Awarding Authority or Replacement Concessionaire (as appropriate) under TUPE.

CA20.11.4 The Concessionaire undertakes to each of the Awarding Authority and any Replacement Concessionaire that it will (and will procure that its Sub-Contractors will):

CA20.11.4.1 continue to perform and observe all of its obligations under or in connection with the contracts of employment of the Re-Transferring Personnel and any collective agreements relating to the Re-Transferring Personnel up to the Further Transfer Date;

CA20.11.4.2 pay to the Re-Transferring Personnel all Employment Costs to which they are entitled from the Concessionaire or any Sub-Contractor which fall due in the period up to the Further Transfer Date;

CA20.11.4.3 to pay to the Awarding Authority or the Replacement Concessionaire (as appropriate) within seven (7) days of the Further Transfer Date an apportioned sum in respect of Employment Costs as set out in Clause CA20.11.5; and

CA20.11.4.4 to comply in all respects with its information and consultation obligations under TUPE and to provide to the Awarding Authority or Replacement Concessionaire (as appropriate) such information as the Awarding Authority or Replacement Concessionaire may request in order to verify such compliance.

CA21.11.5 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:

CA20.11.5.1 the Concessionaire will be responsible for any Employment Costs relating to the period up to and including the Further Transfer Date;

CA20.11.5.2 the Awarding Authority or (where appointed) any Replacement Concessionaire will be responsible for the Employment Costs relating to the period after the Further Transfer Date

and will if necessary be apportioned on a time basis (regardless of when such sums fall to be paid) except that there will be no apportionment in respect of the Re-Transferring Personnel's holiday entitlements.

CA20.11.6 The Concessionaire will indemnify and keep indemnified each of the Awarding Authority and any Replacement Concessionaire from and against all Employment Liabilities which the Awarding Authority and/or the Replacement Concessionaire incurs or suffers arising directly or indirectly out of or in connection with:

CA20.11.6.1 any failure by the Concessionaire to comply with its obligations under this Clause CA20.11;

CA20.11.6.2 any act or omission by or on behalf of the Concessionaire (or its Sub-Contractors) in respect of the Re-Transferring Personnel whether occurring before on or after the Further Transfer Date;

CA20.11.6.3 any failure by the Concessionaire (or its Sub-Contractors) to comply with Regulation 13 of TUPE (except to the extent that such failure arises from a failure by the Awarding Authority or the Replacement Concessionaire to comply with Regulation 13 of TUPE);

CA20.11.6.4 any claim or demand by HMRC or any other statutory authority in respect of any financial obligation including but not limited to PAYE and national insurance contributions in relation to any Re-Transferring Personnel to the extent that such claim or demand relates to the period from the Contract Commencement Date to the Further Transfer Date;

CA20.11.6.5 any claim or demand or other action taken against the Awarding Authority or any Replacement Concessionaire by any person employed or engaged by the Concessionaire (or its Sub-Contractors) (other than Re-Transferring Personnel included on the Final Staff List) who claims (whether correctly or not) that the Awarding Authority or Replacement Concessionaire has inherited any liability from the Concessionaire (or its Sub-Contractors) in respect of them by virtue of TUPE.

CA20.12 If TUPE does not apply on the expiry or termination of the Call-off Contract, the Concessionaire will remain responsible for the Concessionaire Personnel and will indemnify and keep indemnified the Awarding Authority against all Employment Liabilities which the Awarding Authority incurs or suffers arising directly or indirectly out of or in connection with the employment or termination of employment of any of the Concessionaire Personnel or former Concessionaire Personnel.

CA20.13 The Concessionaire will use reasonable endeavours to procure that whenever the Awarding Authority so requires on reasonable notice at any time during the continuance in force of this Contract and for 2

years following the date of expiry or earlier termination of the Call-Off Contract the Awarding Authority will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

CA20.13.1 is still an employee or sub-contractor of the Concessionaire or any of the Concessionaire's associated companies; and

CA20.13.2 was at any time employed or engaged by the Concessionaire in order to provide the Services to the Awarding Authority under the Call-Off Contract,

and such access and consultation will be provided on the first occasion free of charge and thereafter be charged at reasonable rates for the time spent by the Concessionaire and/or its employees or Sub-Contractors on such consultation. The Concessionaire will use all reasonable endeavours to procure that such persons co-operate with the Awarding Authority's requests.

CA20.14 Clause 32.1 shall be amended so that benefits conferred on the Replacement Concessionaire under this Clause CA20 shall be enforceable by them.

Appendix 1 to Clause CA20

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

- Amount of time spent on the Services (or any part of the Services specified by the Awarding Authority)
- Date of birth
- Role Title/Designation and Role Profile
- Annual Salary £
- Bonus and Commission Amount and Frequency
- Pay Frequency and Date
- Overtime - Contractual or Non Contractual and Rates
- Contractual Working Hours
- Contract Type - Perm/Temp
- Geographical Area Of Work / Location
- Commencement of Employment Date
- Continuous Service Date
- Car Allowance
- Pension Contributions

- 1) Employer
 - 2) Employee
- Details of any Contracting Out Certificate
 - Details of the relevant employee representative body or bodies and relevant collective agreements
 - Date of Annual Pay Award
 - Annual Leave Entitlement
 - Contractual Notice Period
 - Public Holiday /Concessionary Days Entitlement
 - Sickness Entitlement (in 12 month rolling period)
 - Salary/wage increases pending
 - Eligibility for enhanced redundancy pay and any other contractual or non-contractual termination of severance arrangements (including methods of calculation)
 - Details of any other benefits provided, whether contractual or non-contractual
 - Copy of employment contract or applicable standard terms and employee handbook
 - Any loans or educational grants
 - For those employees who are foreign nationals the country of citizenship, immigrant status and all documentation required by law to demonstrate a right to work in the United Kingdom
 - Information on any disciplinary or grievance procedure taken against or by an employee in the two years immediately preceding the information being provided
 - Information about any tribunal claims in the immediately preceding two years or whether there are reasonable grounds to believe a claim may be brought
 - Department and place on organisation chart
 - Average absence due to sickness
 - Training and competency records

CA21 NOT USED

CA22 NOT USED

CA24 NOT USED

CA25 [Specific LU Standards]⁶

In this Clause CA25, unless the context indicates otherwise the following expressions shall have the following meanings:

“London Underground”	the stations and depots, assets, systems, track and other buildings which are used in the maintenance and provision of underground services known as “London Underground”.
“LUL”	London Underground Limited.
“LUL Standards”	the mandatory requirements in force on the London Underground from time to time that the Concessionaire must comply with in the provision of the Services, comprising mandatory category 1 standards, applicable LUL rules, procedures, codes, standards and safety agreements in relation to, without limitation, health and safety, environment, security, operational, engineering and ambience standards and other customer service delivery standards (including, without limitation, the Contract QUENSH Conditions).
“Contract QUENSH Conditions”	the Quality Environmental Safety and Health Contract Conditions in force and as supplied to the Concessionaire by LUL from time to time.

Without prejudice to any other provision of the Call-Off Contract:

CA25.1 The Concessionaire acknowledges its awareness of the Contracting Authority’s statutory duty to provide or secure a safe, economic and efficient public passenger transport services by railway for Greater London and shall at all times during the Call-Off Contract have regard to the Contracting Authority’s statutory duties. The Concessionaire shall not, in the performance of the Services, in any manner endanger the safety of or interfere with the operation of the London Underground or endanger the public and shall minimise any disruption to both the London Underground and the public.

CA25.2 The Concessionaire acknowledges, and undertakes to inform all its employees, agents and subcontractors who will be using the Contracting Authority’s communication facilities that the Contracting Authority reserves the right from time to time to:

- CA25.2.1 intercept, for the purposes of monitoring and / or recording, any communication made through any system capable of transmitting communications including but not limited to telephone, electronic mail, facsimile, voicemail or internet facility provided by the Contracting Authority; and
- CA25.2.2 use any information obtained as a result of any intercepted communication referred to in Clause CA25.2.1 for the purposes permitted by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.
- CA25.3 In providing the Services, the Concessionaire shall comply with LUL Standards.
- CA25.4 One of the LUL Standards which may be of relevance to the Call-Off Contract is QUENSH which governs safety for places of work on or around the operational railway. If relevant, the Concessionaire shall be required to comply with LUL's Contract QUENSH Conditions as indicated and respond to the menu provided by the Call-Off Co-ordinator.
- CA25.5 It is the responsibility of the Concessionaire to ensure that it receives the LUL Standards from LUL for the required Services and must ensure that it has been appraised by LUL as capable of providing the Services in terms of the LUL Standards. If the Concessionaire has not been appraised or has not been provided with the Contract QUENSH Conditions, it is the Concessionaire's obligation to raise this with the Call-Off Co-ordinator and if necessary cease work until the appraisal is completed.
- CA25.6 Where there is a requirement indicated in the Contract QUENSH Conditions to comply with one or more conditions, it is the responsibility of the Concessionaire to satisfy itself of the requirements of the indicated conditions as contained in Contract QUENSH Conditions. Access to LUL Standards can be gained through the intranet, which access can be obtained on request through the Call-Off Co-ordinator.]

CA26 TIMBER STANDARDS – DETAILED

CA26.1 For the purposes of this Clause CA26, unless the context indicates otherwise, the following expressions shall have the following meanings:

- “Independent Report”** an independent report by an individual or body:
- (a) whose organisation, systems and procedures conform to:
 - (i) ISO Guide 65:1996 (EN 45011:1998); and
 - (ii) general requirements for bodies operating product certification systems; and
 - (b) who is accredited to audit against forest management standards by a national or international body whose organisation, systems and procedures conform to ISO Guide 61 General Requirements for

Assessment and Accreditation of Certification Bodies;

“Legal Timber”

Timber in respect of which the organisation that felled the trees and/or provided the Timber from which the wood supplied under the Contract derived:

- (a) had legal rights to use the forest;
- (b) holds a register of all local and national laws and codes of practice relevant to forest operations; and
- (c) complied with all relevant local and national laws and codes of practice including environmental, labour and health and safety laws and paid all relevant royalties and taxes;

**“Recycled Timber”
“Reclaimed Timber”**

and recovered wood that has been reclaimed or re-used and that has been in previous use and is no longer used for the purpose for which the trees from which it derives were originally felled. The terms ‘recycled’ and ‘reclaimed’ are interchangeable and include, but are not limited to the following categories: pre-consumer recycled wood and wood fibre or industrial by-products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of Virgin Timber), post-consumer recycled wood and wood fibre and drift wood. Recycled or Reclaimed Timber must be capable of being evidenced as such to the Awarding Authority’s satisfaction in order to satisfy this definition;

“Sustainable Timber”

Timber, which in order to meet the Awarding Authority’s criteria for sustainable timber, must be:

- (a) Recycled Timber; or
- (b) Sustainably Sourced Timber; or
- (c) a combination of (a) and (b);

**“Sustainably
Timber”**

Sourced Timber sourced from organisational, production and process methods that minimise harm to ecosystems, sustain forest productivity, ensure that both forest ecosystem health and vitality, and forest biodiversity is maintained. In order to satisfy this definition, Timber must be accredited to meet the Forest Stewardship Council (FSC) or equivalent. Where it is not practicable to use Forest Stewardship Council (FSC) standard accredited timber, the Awarding Authority will accept timber accredited through other schemes approved by the Central Point of Expertise on Timber (CPET), as

listed below:

- (a) Canadian Standards Association (CSA);
- (b) Programme for the Endorsement of Forest Certification (PEFC); or
- (c) Sustainable Forestry Initiative (SFI),

or such other source as the Concessionaire may demonstrate to the Awarding Authority's satisfaction is equivalent;

“Timber”

wood from trees that have been felled for that purpose, but excludes any item where the manufacturing processes applied to it has obscured the wood element (by way of example only, paper would not be treated as timber). Where the term Timber is used as a generic term it includes both Virgin Timber and Recycled Timber; and

“Virgin Timber”

Timber supplied or used in performance of the Call-Off Contract that is not Recycled Timber.

CA26.2 Concessionaire's Obligations and the Awarding Authority's Rights

- CA26.2.1 The Concessionaire shall ensure that all Timber supplied or used in the performance of the Call-Off Contract shall be Sustainable Timber. If it is not practicable for the Concessionaire to meet this condition the Concessionaire must inform the Awarding Authority in writing prior to the supply of any Timber that is not Sustainable Timber, and stating the reason for the inability to comply with this condition. The Awarding Authority reserves the right, in its absolute discretion, to approve the use of Timber that is not Sustainable Timber. Where the Awarding Authority exercises its right to reject any Timber, the provisions of Clause CA26.2.4 shall apply.
- CA26.2.2 Without prejudice to Clauses CA26.2.1 and CA26.4.2, all Virgin Timber procured by the Concessionaire for supply or use in performance of the Call-Off Contract shall be Legal Timber.
- CA26.2.3 The Concessionaire shall ensure that Virgin Timber it procures for supply or use in performance of the Call-Off Contract shall not have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) unless the supplier can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under that Convention.
- CA26.2.4 The Awarding Authority reserves the right to reject at any time any Timber that does not comply with the conditions of the Call-Off Contract or the Specification. Where the Awarding Authority exercises its right to reject any Timber, the Concessionaire shall supply contractually compliant alternative Timber, at no

additional cost to the Awarding Authority and without causing delay to the performance of the Call-Off Contract.

- CA26.2.5 The Concessionaire shall maintain records of all Timber supplied and used in the performance of the Call-Off Contract. Such information shall be made available to the Awarding Authority promptly if requested at any time.

CA26.3 Awarding Authority's Reporting Requirements

- CA26.3.1 Unless the Awarding Authority has given its written approval in accordance with Clause CA26.2.1 that Timber that is not Sustainable Timber may be used, then, if requested, the Concessionaire shall promptly provide evidence to the Awarding Authority's satisfaction that the Timber is Sustainable Timber.
- CA26.3.2 Not used.
- CA26.3.3 The Concessionaire shall report quarterly on its use of Sustainable Timber in the performance of the Call-Off Contract, in accordance with the Timber Standards Appendix (as appended to this Part 2 of Attachment 2).
- CA26.3.4 The Concessionaire shall report on the amount of Timber that has been supplied to the Awarding Authority in accordance with Clause CA26.2.1 which is not Sustainable Timber.

CA26.4 Verification

CA26.4.1 Evidence of Sustainable Timber

The Awarding Authority reserves the right to determine whether the evidence supplied by the Concessionaire is sufficient to satisfy it that the Specification and the conditions of the Call-Off Contract have been fully complied with. In the event that the Awarding Authority is not so satisfied, the Concessionaire shall, on written request by the Awarding Authority, commission and meet the costs of an Independent Report to:

- (a) verify the source of the Timber; and
- (b) assess whether the forests of origin were managed in accordance with the specified local laws and regulations.

CA26.4.2 Evidence of Legal Timber

- CA26.4.2.1 The Concessionaire shall, before delivering any Virgin Timber under the Call-Off Contract, obtain documentary evidence to the Awarding Authority's satisfaction that the Timber is both Legal and Sustainable Timber. If requested in writing by the Awarding Authority, the Concessionaire shall submit such documentary evidence to the Awarding Authority either prior to delivery or at such other times as the Awarding Authority may require. For the avoidance of doubt, the Concessionaire shall identify, as part of the evidence submitted, a chain of custody from the source of the Timber through to delivery of the final product.

CA26.4.2.2 The Awarding Authority reserves the right at any time during the execution of the Call-Off Contract and for a period of six (6) years from final delivery of any Timber under the Call-Off Contract to require the Concessionaire to produce the evidence required for the Awarding Authority's inspection within fourteen (14) days of the Awarding Authority's written request.

CA27 WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT REGULATIONS 2006

CA27.1 For the purposes of this Clause CA27, unless the context indicates otherwise, the following expressions shall have the following meanings:

“Waste Electrical and Electronic Equipment”	has the same meaning as is given to “WEEE” in the WEEE Regulations;
“WEE Equipment”	means any Concessionaire Equipment which falls within the scope of the WEEE Regulations; and
“WEEE Regulations”	means Waste Electrical and Electronic Equipment Regulations 2006 (as amended by the Waste Electrical and Electronic Equipment (Amendment) Regulations 2007).

CA27.2 When procuring any WEE Equipment for use in accordance with the Services whether by direct purchase by the Concessionaire, purchase on behalf of the Awarding Authority, lease or otherwise the Concessionaire will ensure that in accordance with the WEEE Regulations that the producer of the WEE Equipment (whether that be the Concessionaire or a third party) shall assume responsibility for financing the costs of the collection, treatment, recovery and environmentally sound disposal of:

- (a) all Waste Electrical and Electronic Equipment arising from the WEE Equipment; and
- (b) 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.

CA27.3 The Concessionaire shall indemnify and keep indemnified the Awarding Authority as a result of any Losses which it incurs as a result of any failure on the part of the Concessionaire or the relevant producer to comply with the terms of this Clause CA27.

CA28 WORK RELATED ROAD RISK REQUIREMENTS

CA28.1 For the purposes of this Clause CA28, the following expressions shall have the following meanings:

“Bronze Accreditation”	the minimum level of accreditation within the FORS Standard, the requirements of
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which are more particularly described at:

www.fors-online.org.uk

“Car-derived Vans”

a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

“Collision Report”

a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;

“Delivery and Servicing Vehicle”

a Lorry, a Van or a Car-derived Van;

“Driver”

any employee of the Concessionaire (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Concessionaire while delivering the Services;

“DVLA”

Driver and Vehicle Licensing Agency;

“FORS”

the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;

“FORS Standard”

the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at:

www.fors-online.org.uk

“Gold Accreditation”

the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk

“Lorry”

a vehicle with an MAM exceeding 3,500 kilograms;

“MAM”

the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;

“Side Guards”

guards that are fitted between the front and rear axles of a Lorry and that comply with

EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

“Silver Accreditation”

the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at:

www.fors-online.org.uk

“Van”

a vehicle with a MAM not exceeding 3,500 kilograms.

Fleet Operator Recognition Scheme Accreditation

CA28.2 Where the Concessionaire operates Delivery and Servicing Vehicles to provide the Services, it shall within ninety (90) days of the date on which the Call-Off Contract comes into force:

CA28.2.1 (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Awarding Authority, is an acceptable substitute to FORS (the **“Alternative Scheme”**); and

CA28.2.2 (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Concessionaire has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Equipment on Vehicles

CA28.3 The Concessionaire shall ensure that every Lorry, which it uses to provide the Services, shall:

CA28.3.1 have Side Guards, unless the Concessionaire can demonstrate to the reasonable satisfaction of the Awarding Authority that the Lorry will not perform the function for which it was built if Side Guards are fitted;

CA28.3.2 have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;

CA28.3.3 have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and

CA28.3.4 have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

Driver Licence Checks

CA28.4 Where the Concessionaire operates Delivery and Servicing Vehicles to provide the Services the Concessionaire shall ensure that:

CA28.4.1 it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Drivers licence; and

CA28.4.2 each of its Drivers engaged in the provision of the Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Services and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Concessionaire's risk scale, provided that the Concessionaire's risk scale has been Approved in writing by the Awarding Authority within the last twelve (12) months:

CA28.4.2.1 0 – 3 points on the driving licence – annual checks;

CA28.4.2.1. 4 – 8 points on the driving licence – six monthly checks;

CA28.4.2.3 9 – 11 points on the driving licence – quarterly checks; or

CA28.4.2.4 12 or more points on the driving licence – monthly checks.

Driver Training

CA28.5 Where the Concessionaire operates Delivery and Servicing Vehicles to provide the Services the Concessionaire shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on the job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazard awareness, throughout the term of the Call-Off Contract.

Collision Reporting

CA28.6 Where the Concessionaire operates Delivery and Servicing Vehicles to provide the Services, the Concessionaire shall:

CA28.6.1 ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and

CA28.6.2 within fifteen (15) days of the date on which the Call-Off Contract comes into force, provide to the Awarding Authority a Collision Report. The Concessionaire shall provide to the Awarding Authority an updated Collision Report within five (5) working days of a written request from the Awarding Authority.

Self Certification of Compliance

CA28.7 Where the Concessionaire operates Delivery and Servicing Vehicles to provide the Services, within 90 days of the Commencement Date, the Concessionaire shall make a written report to the Awarding Authority detailing its compliance with Clauses **and CA28.5 CA28.3, CA28.4** (the **“WRRR Self-certification Report”**). The Concessionaire shall provide updates of the WRRR Self-certification Report to the Awarding Authority on each three month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Concessionaire Regarding Subcontractors

CA28.8 The Concessionaire shall ensure that those of its sub-contractors who operate Delivery and Servicing Vehicles to provide the Services shall:

CA29.8.1 comply with Clause CA28.2; and

CA29.8.2 where its subcontractors operates the following vehicles to provide the Services shall comply with the corresponding provisions of the Call-Off Contract:

CA29.8.2.1 For Lorries – Clauses CA28.3, CA28.4, CA28.5 and CA28.6; and

CA29.8.2.2 For Vans – Clauses CA28.4, CA28.5, and CA28.6,
as if those sub-contractors were a party to the Call-Off Contract.

Failure to Comply with Work Related Road Risk Obligations

CA28.9 Without limiting the effect of any other clause of the Call-Off Contract relating to termination, if the Concessionaire fails to comply with Clauses CA28.2, CA28.3, CA28.4, CA28.5, CA28.6, CA28.7 and CA28.8:

CA28.9.1 the Concessionaire has committed a material breach of the Call-Off Contract; and

CA28.9.2 the Awarding Authority may refuse the Concessionaire, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Awarding Authority for any purpose (including but not limited to deliveries).

CA29 NOT USED

CA31 NOT USED

CA32 NOT USED

CA33 LONDON LIVING WAGE

For the purposes of this Clause CA33, unless the context indicates otherwise, the expression “**London Living Wage**” means a basic hourly wage (as at the date of the Agreement) of ⁷[£9.40] (before tax, other deductions and any increase for overtime) but as is updated from time to time and notified to the Concessionaire.

CA33.1 Not used.

CA33.2 Without prejudice to any other provision of the Call-Off Contract, the Concessionaire shall:

CA33.2.1 ensure that none of its employees engaged in the provision of the Services (in Greater London or on the Awarding Authority’s estate but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

CA33.2.3 ensure that none of its employees engaged in the provision of the Services is paid less than the amount to which they are entitled in their respective contracts of employment;

CA33.2.4 provide to the Awarding Authority such information concerning the London Living Wage and as the Awarding Authority or its nominees may reasonably require from time to time;

CA33.2.5 disseminate on behalf of the Awarding Authority to its employees engaged in the provision of the Services such perception questionnaires as the Awarding Authority may reasonably require from time to time and promptly collate and return to the Awarding Authority responses to such questionnaires; and

CA33.2.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

CA33.3 For the avoidance of doubt the Concessionaire shall implement any updated London Living Wage on or before 1 April in the year following notification of such updated London Living Wage.

CA33.4 The Awarding Authority reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Concessionaire’s staff and the staff of its sub-contractors.

CA33.5 Any breach by the Concessionaire of the provisions of this Clause CA33 shall be treated as a material breach capable of remedy in accordance with Clause 28.1.1.

CA34 ETHICAL SOURCING

- CA34.1 The Awarding Authority is committed to ensuring that workers employed in its supply chains throughout the world are treated fairly, humanely and equitably. In the course of complying with the Call-Off Contract, the Concessionaire shall comply with and shall procure that its sub-contractors (as applicable) comply with those principles of the Ethical Trading Initiative (ETI) Base Code as are detailed in “Ethical Sourcing Appendix” to this Part 2 of Attachment 2, or an equivalent code of conduct (the “**Ethical Sourcing Principles**”) in relation to the provision of the Services.
- CA34.2 As at the date on which the Call-Off Contract comes into force, the Concessionaire shall be registered with an ethical supplier database, such as SEDEX (Supplier Ethical Data Exchange). The Concessionaire agrees that for the duration of the Call-Off Contract, it shall permit and enable the Awarding Authority to have access to the information relating to the Concessionaire that subsists in such ethical supplier database.
- CA34.3 During the course of the Call-Off Contract, the Awarding Authority has the right to request the Concessionaire to carry out one or more audits using a reputable auditor to verify whether the Concessionaire is complying with the Ethical Sourcing Principles. The identity of the auditor is to be approved by the Awarding Authority, such approval not to be unreasonably withheld or delayed. The costs of the audit shall be borne by the Awarding Authority.
- CA34.4 During the course of the Call-Off Contract, if the Awarding Authority has reasonable cause to believe that the Concessionaire is not complying with any of the Ethical Sourcing Principles, then the Awarding Authority shall notify the Concessionaire and the Parties shall agree an action plan with appropriate timeframes for compliance by the Concessionaire (the “**Action Plan**”), such Action Plan to be agreed by the Parties by no later than 30 days from the date of the Awarding Authority notifying the Concessionaire that remedial action is required or such other period as the Parties may otherwise agree in writing. The costs of the creation and implementation of the Action Plan shall be borne by the Concessionaire.
- CA34.5 Following the agreement of the Action Plan, the Awarding Authority reserves the right to conduct one or more audits, (either itself or via a third-party auditor approved by the Awarding Authority) in relation to compliance by the Concessionaire with the Action Plan.
- CA34.6 For the avoidance of doubt, the rights of audit contained in this Clause CA34 shall include without limitation the right of the Awarding Authority (or an Awarding Authority-approved auditor) acting reasonably to undertake physical inspections of relevant sites/factories, to conduct interviews with relevant personnel and to inspect relevant documents. The Concessionaire shall co-operate and shall procure that its sub-contractors (as applicable) co-operate with the Awarding Authority in relation to all aspects of any audit.

CA35 Supplier Diversity

CA35.1 Compliance

- CA35.1.1 Without limiting the generality of any other provision of the Call-Off Contract, the Concessionaire:

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

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

CA35.1.2 The Concessionaire acknowledges that the Awarding Authority as a public authority is subject to a statutory duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a “**Relevant Protected Characteristic**”) (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Concessionaire shall assist and cooperate with the Awarding Authority where possible in satisfying this duty.

CA35.1.3 The Concessionaire acknowledges that where the Awarding Authority is the Contracting Authority, the Contracting Authority is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:

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

CA35.1.4 The Awarding Authority's Harassment, Bullying and Discrimination Policy (“**Policy**”) as up-dated from time to time (copies of which are available on request from the Awarding Authority) requires Awarding Authority's own staff and those of its direct and indirect subcontractors to comply fully with the Policy to eradicate harassment in the workplace. The Concessionaire shall:

- (a) ensure that its staff, and those of its direct and indirect subcontractors who are engaged in the performance of the Call-Off Contract are fully conversant with the requirements of the Policy;
- (b) fully investigate allegations of workplace harassment in accordance with the Policy; and

- (c) ensure that appropriate, effective action is taken where harassment is found to have occurred.

CA35.2 Not used

CA35.3 Not used

CA35.4 Not used

CA35.5 Not used

CA35.6 Not used

CA35.7 Not used

CA35.8 Not used

TIMBER STANDARDS APPENDIX

Aim of KPI :

Implement the Mayor's Green Procurement Code

Implement the GLA Sustainable Timber Policy

Implement TfL environmental objective: Reduce resource consumption and improve green procurement

Reporting period	
Date	
Completed by	
Title	

Desired Outcome	Service Performance Indicator	Quantity (KG)	Value (£)	% of good represented	Reporting Frequency	objective	2007	2008	2009	2010	2011
Reduce resource consumption and improve green procurement (TfL Env' KPI)	Timber complies with Sustainable Timber definition and obligations as				Quarterly, with Annual report.	Increase/maintain % of sustainable timber supplied					

	per Contract.										
Reduce resource consumption and improve green procurement (TfL Env' KPI)	Timber does NOT comply with Sustainable Timber definition and obligations as per Contract				Quarterly, with Annual report.	Reduce amount of Non Sustainable Timber procured.					

ETHICAL SOURCING APPENDIX: THE ETI BASE CODE

1 EMPLOYMENT IS FREELY CHOSEN

- 1.1 There is no forced, bonded or involuntary prison labour.
- 1.2 Workers are not required to lodge "deposits" or their identity papers with their employer and are free to leave their employer after reasonable notice.
- 1.3 Not used

2 WORKING CONDITIONS ARE SAFE AND HYGIENIC

- 2.1 A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- 2.2 Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.
- 2.3 Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided.
- 2.4 Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.
- 2.5 The company observing the code shall assign responsibility for health and safety to a senior management representative.

3 CHILD LABOUR SHALL NOT BE USED

- 3.1 There shall be no new recruitment of child labour.
- 3.2 Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child.
- 3.3 Children and young persons under 18 shall not be employed at night or in hazardous conditions.
- 3.4 These policies and procedures shall conform to the provisions of the relevant ILO standards.

4 LIVING WAGES ARE PAID

- 4.1 Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is

higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.

- 4.2 All workers shall be provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.
- 4.3 Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.

5 WORKING HOURS ARE NOT EXCESSIVE

- 5.1 Working hours comply with at least UK national laws and benchmark industry standards, whichever affords greater protection.
- 5.2 Not used.

6 NO DISCRIMINATION IS PRACTISED

There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

7 REGULAR EMPLOYMENT IS PROVIDED

- 7.1 To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice.
- 7.2 Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub- contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.

8 NO HARSH OR INHUMANE TREATMENT IS ALLOWED

Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

Attachment 3 of Schedule 6

[To be completed by the Awarding Authority based on information provided by the bidder in its Proposal]

1. Proposed sub-contractors (if any)

Name and contact details of proposed sub-contractor(s) and details of any proposed sub-contracted work:

Attachment 4 of Schedule 6

Part 1 – Payments

1. Site Charge

[The Site Charge for each Site (as proposed by the successful bidder in its Proposal) will be listed here]

2. Turnover Percentage

[The Turnover Percentage for each Site (as proposed by the successful bidder in its Proposal) will be listed here]

Part 2 – PAYG Average Price

[The PAYG Average Price (as proposed by the successful bidder in its Proposal) will be stated here.]

SCHEDULE 7 - FORM FOR VARIATION

Agreement Parties: *[to be inserted]*

[Call-Off Contract Number: *[to be inserted]*]*[where applicable]*

Variation Number: *[to be inserted]*

[Contracting/Awarding]*[delete as applicable]* Authority Contact Telephone *[to be inserted]*

Fax *[to be inserted]*

Date: *[to be inserted]*

AUTHORITY FOR VARIATION TO [AGREEMENT][CALL-OFF CONTRACT] (AVC)

Pursuant to Clause 33 of the Agreement, authority is given for the variation as detailed below. The duplicate copy of this form must be signed by or on behalf of the Concessionaire and returned to the [Procurement Manager *[for variations of the Framework Agreement]*][Call-Off Co-ordinator *[for variations of a Call-Off Contract]*] as an acceptance by the Concessionaire of the variation shown below.

DETAILS OF VARIATION	[FINANCIAL IMPACT (£)] <i>(where applicable)</i>

.....

For the [Contracting][Awarding] Authority

ACCEPTANCE BY THE CONCESSIONAIRE	
Date	Signed

SCHEDULE 8 - SPECIAL CONDITIONS OF AGREEMENT

1 Counterparts

This Agreement and any Call-Off Contract may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

2 Sharing of information

The Contracting Authority or an Awarding Authority shall be entitled to share any and all information available to it in respect of or ancillary to this Agreement or any Call-Off Contract (including Confidential Information and/or Concessionaire Confidential Information) with any other Awarding Authority or, as applicable, the Contracting Authority.

APPENDIX A – FORM OF PARENT COMPANY GUARANTEE

(Letterhead of Parent Company)

To: *[insert name and address of the Awarding Authority]* (the “**Awarding Authority**”)

Date:

Dear Sir/Madam

We, *[insert name of Guarantor]* (“**the Guarantor**”), understand that you have agreed to enter into a Call-Off Contract No *[insert Contract number]* (“**the Contract**”) with *[insert name of Concessionaire]* (“**the Concessionaire**”) in respect of *[briefly describe nature of Contract]* on the condition that the obligations of the Concessionaire under the Contract be guaranteed by a Guarantor.

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

WE HEREBY AGREE AND UNDERTAKE with you as follows:-

- (a) Subject to paragraph (c) below, we unconditionally guarantee on demand:
 - (i) the proper, complete and punctual performance by the Concessionaire of any and all its obligations, undertakings and responsibilities under the Contract and we shall forthwith make good any default thereunder on the part of the Concessionaire; and
 - (ii) the due and punctual payment by the Concessionaire of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable to you under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Concessionaire

when and as the same shall become due for performance or payment (as the case may be).

- (b) Subject to paragraph (c) below, as a separate and primary obligation we unconditionally guarantee to you that in the case of default by the Concessionaire in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in paragraph (a) above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Concessionaire were the primary obligor. Any payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.
- (c) Our maximum aggregate financial liability to you arising out of or in connection with this Guarantee shall be limited to £50,000,000 (fifty million

pounds Sterling), it being acknowledged and agreed that you shall be entitled to make more than one demand under this Guarantee provided that in total those demands do not exceed £50,000,000 (fifty million pounds Sterling).

- (d) This Guarantee shall be a continuing security and shall remain in full force and effect until all obligations to be performed or observed by the Concessionaire under or arising out of the Contract have been duly and completely performed and observed and the Concessionaire shall have ceased to be under any actual or contingent liability to you thereunder.
- (e) Any demand or other notice made by you under this Guarantee shall be duly made if sent by first class recorded delivery post to us.
- (f) You shall be entitled to enforce this Guarantee without first notifying the Concessionaire of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Concessionaire or any other person or taking any action to enforce any other security, bond or guarantee held by you or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Concessionaire or any person.
- (g) If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to you, such sum shall still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.

PROVIDED THAT:

- 1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Contract if we had been named as the Concessionaire in the Contract.
- 2. Our obligations hereunder are those of primary obligor and shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Contract made by agreement between you and the Concessionaire (including, without limitation, any increase in the Concessionaire's obligations under the Contract or any alteration in the extent or nature or sequence or method or timing of the Services to be carried out under the Contract) or any novation of the Contract (in whole or in part); or
 - (b) any time being given to the Concessionaire or any other indulgence, waiver, concession, forbearance or forgiveness to the Concessionaire (whether express or by conduct) or any other thing done, omitted or neglected to be done under the Contract; or

- (c) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Concessionaire under the Contract; or
 - (d) the release or waiver of any such bond, security or guarantee referred to in paragraph 2(c) above; or
 - (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Concessionaire; or
 - (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Concessionaire; or
 - (g) any legal limitation, disability or incapacity relating to the Concessionaire or discharge by operation of law or any change in the constitution, name or style of the Concessionaire or any other person (whether or not known to you); or
 - (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Concessionaire under the Contract; or
 - (i) the termination or partial termination of the Contract or the cessation of any Services for any reason or the making of any variation to the Services in accordance with the Contract; or
 - (j) any claim or enforcement of payment from the Concessionaire or any other person;
 - (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.
3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Concessionaire in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Concessionaire in competition with you for any sums or liabilities owing or incurred to us by the Concessionaire in respect of any such payment by or recovery from us or take or hold any security from the Concessionaire in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you.
4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provision of this Guarantee.
5. This Guarantee is irrevocable.

6. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.

[For non-UK resident Guarantors only:

7. For the purposes of this Guarantee we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.]
8. You will be entitled to assign the benefit of this Guarantee in whole or in part but we may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
9. If any provision (in whole or in part) of this Guarantee is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by) _____

[Parent Company]) Director

acting by a Director and the)

Secretary or by two Directors) _____

Director/Secretary

OR

The common seal of) _____

[Parent Company]) Director

was affixed in the presence of:)

) _____

Director/Secretary

APPENDIX B - FORM OF LEGAL OPINION FOR USE WITH GUARANTEE

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

Date:

Dear Sir/Madam

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

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

assets is bound. Further, no event has occurred that, with the giving of notice, lapse of time, determination of materiality or other conditions might constitute a default under or in respect of such agreement, instrument or judgment;

- (d) the Guarantee has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Guarantee, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid, legally binding on and enforceable against the Guarantor under the laws of and in the courts of
- (e) the signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
- (f) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other requirements of governmental, judicial and public bodies and authorities of or in [COUNTRY] required or advisable in connection with the entry into, performance, validity and enforceability of the Guarantee and the transactions contemplated thereby have been obtained or effected and are in full force and effect;
- (g) the obligations of the Guarantor under the Guarantee rank at least equally and rateably (pari passu) in point of priority and security with any and all other unsecured obligations of the Guarantor;
- (h) all amounts payable by the Guarantor under the Guarantee may be made free and clear of, and without deduction for, or on account of, any taxes imposed, assessed or levied by [COUNTRY] or any authority of or in [COUNTRY];
- (i) there are no registration, stamp or other taxes or duties of any kind payable in in connection with the Guarantor including its signature, performance or enforcement by legal proceedings;
- (j) the Awarding Authority will not violate any law or regulation in nor become liable to tax in by reason of entering into the Guarantee or performing its obligations thereunder. It is not necessary to establish a place of business in in order to enforce any provisions of the Guarantee;
- (k) the choice of English law to govern the Guarantee will be upheld as a valid choice of law in any action in respect of the Guarantee in the Courts;

- (l) the consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation;
 - (m) any judgment obtained in the courts of England against the Guarantor would be recognised and accepted by the courts without re-trial or re-examination of the merits of the case;
 - (n) neither the Guarantor nor any of its assets enjoys any right or immunity from set-off, suit or execution in respect of its obligations under the Guarantee;
 - (o) so far as I am aware after due enquiry, no litigation, arbitration or administrative proceedings are at present current, pending or threatened that might, if adversely determined, have a material effect on the business, assets or financial condition of the Guarantor.
3. This legal opinion is confined to matters of [tbc] law in force as at the date on which this opinion is given [(including any European Union law applicable in [tbc]]. I express no opinion on European law as it affects or would be applied in any jurisdiction other than [tbc]. I express no opinion on any laws of any jurisdictions other than [tbc]. This legal opinion is given on the basis that all matters relating to its enforceability will be governed by, and that it (including all terms used in it) will be construed in accordance with English law and that any question arising from the interpretation of this letter of opinion will be subject to the exclusive jurisdiction of the English courts.
- This legal opinion is based solely on an examination of the documents and the enquiries listed in Schedule 1 (Documents and Enquiries), subject to the assumptions set out in Schedule 2 (Assumptions) and to the qualifications and observations, set out in Schedule 3 (Qualifications and Observations). I have assumed that any matters which are or could be material in the context of my delivery of this legal opinion have been disclosed to me.
4. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of and accordingly express no legal opinion herein based upon any law other than the laws of

Signed

Schedule 1 (Documents and Enquiries): [tbc to the reasonable satisfaction of the Awarding Authority]]

Schedule 2: (Assumptions): [tbc to the reasonable satisfaction of the Awarding Authority]]

Schedule 3 : (Qualifications): [tbc to the reasonable satisfaction of the Awarding Authority]]

SCHEDULE 9 – EXIT PLAN

Please refer to paragraph 1.1 (Exit Management) of Part 2 (Tender Response) of Schedule 2 (Statement of Requirements).

SCHEDULE 10 – NAMED SA SUB-CONTRACTORS

A SA Sub-contractor can be an wholly owned company of the Concessionaire notified to and approved by the Contracting Authority (acting reasonably) in writing.

This Schedule will be updated accordingly.