

Agreement Reference Number: TfL 94244

Date: 18 October 2019

**Framework Agreement  
for the Provision of Services**

**between**

**Transport for London**

**and**

**Aon Hewitt Limited**

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**THIS AGREEMENT** is made the 18<sup>th</sup> day of October 2019

#### **BETWEEN:**

- (1) Transport for London a statutory corporation whose principal place of business is at 55 Broadway, London SW1H 0BD (“**the Contracting Authority**”); and
- (2) Aon Hewitt Limited, a company registered in England and Wales (Company Registration Number 04396810) whose registered office is at The Aon Centre, The Leadenhall Building, 122 Leadenhall Street, London, EC2V 4AN (“**the Service Provider**”).

#### **RECITALS:**

- A. The Parties wish to enter into a framework agreement which will enable the Authority, from time to time, to enter into a Call-Off Contract or a series of Call-Off Contracts with the Service Provider for some or all of the Services of the type described in Schedule 3.
- B. The terms and conditions of this Agreement shall apply to the Services to be provided by the Service Provider under any Call-Off Contract.
- C. This framework agreement can be utilised by the Contracting Authority or any other member of the TfL Group, the GLA Group or any other GLA Functional Bodies.
- D. The terms and conditions of this Agreement provide that the Greater London Authority or any of its other functional bodies may, if the Service

Provider so agrees, contract with the Service Provider on the terms set out in this Agreement.

## **THE PARTIES AGREE THAT:**

In consideration of the payment of five pounds (£5.00) by the Authority to the Service Provider (receipt of which the Service Provider acknowledges), it is agreed that:

### **1. Definitions and Interpretations**

In the Agreement (including the Recitals):

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

**“Affected Party”** has the meaning given to it in Clause 29.3;

**“Affiliate”** means an entity which is controlled by, controlling or in common control with a Party, where **“control”** means the power to direct or cause the direction of an entity, whether through the ownership of voting shares, by contract or otherwise.

**“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;

**“Agreement Reference Number”** the reference number for this Agreement as set out in Schedule 1;

**“Authority”** the Contracting Authority and or any TfL Group member utilising this Agreement;

**“Business Day”** any day excluding Saturdays, Sundays or public or bank holidays in England;

**“Call-Off Contract”** a call-off contract in the form set out in Schedule 6 that has been executed by the Service Provider and the Authority, which incorporates this Agreement and includes any attachments and any documents expressly referred to in that Call-Off Contract;

<b>“Call-Off Contract Number”</b>	the reference number for a Call-Off Contract, as specified in the relevant Call-Off Contract;
<b>“Call-Off Co-ordinator”</b>	the person named as such in a Call-Off Contract or such other person as notified to the Service Provider by the Authority;
<b>“Call-Off Term”</b>	the duration of a Call-Off Contract, as set out in the relevant Call-Off Contract;
<b>“Cessation Plan”</b>	<p>a plan agreed between the Parties or determined by the Authority pursuant to Clause 31:</p> <ul style="list-style-type: none"> <li>(a) to give effect to a Declaration of Ineffectiveness; or</li> <li>(b) to give effect to a Public Procurement Termination Event;</li> </ul>
<b>“Charges”</b>	the charges payable by the Authority, in consideration of the due performance of the Services, as specified in or calculated in accordance with a Call-Off Contract;
<b>“Confidential Information”</b>	all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to a Party (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 that Party;
<b>“Contract Information”</b>	<ul style="list-style-type: none"> <li>(i) the Agreement and any Call-Off Contract in their entirety (including from time to time agreed changes to the Agreement or to any Call-Off Contract); and</li> <li>(ii) data extracted from the invoices submitted pursuant to Clause 7 which shall consist of the Service Provider’s name, the expenditure</li> </ul>

account code, the expenditure  
account code description, the  
document number, the clearing date  
and the invoice amount;

**“Data Protection Legislation”**

means:

- (a) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data;
- (b) Directive (EU) 2016/680 (the Law Enforcement Directive);
- (c) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including but not limited to the Data Protection Act 2018;
- (d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation; and
- (e) the Privacy and Electronic Communications (EC Directive) Regulations 2003;

**“Declaration of Ineffectiveness”**

a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulation 113(2)(a) or 118(3) the Utilities Contracts Regulations 2016;

**“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 Affected Party to perform its obligations in accordance

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

**“Holding Company”**

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

**“Insolvency Event”**

any of the following:

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

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

**“Intellectual Property Rights”**

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

**“Key Personnel”**

the Service Provider’s key personnel named as such in Schedule 1 or any relevant Call-Off Contract;

**“Losses”**

all direct costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, claims, demands, proceedings and judgements; and excluding all indirect or inconsequential losses, including pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss.

**“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 Authority may from time to time utilise to select a service provider to carry out Services from time to time;

**“Parties”**

the Authority and the Service Provider (including their successors and permitted assignees) and **“Party”** shall mean either of them as the case may



	be;
<b>“Personal Data”</b>	has the meaning given to it in the Data Protection Legislation;
<b>“Processing”</b>	has the meaning given to it in the Data Protection Legislation;
<b>“Project Plan”</b>	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;
<b>“Procurement Manager”</b>	the person named as such in Schedule 1 or such other person as notified to the Service Provider by the Authority;
<b>“Proposal”</b>	the Service Provider’s offer to provide Services in response to a Request Form. A Proposal must include a draft Call-Off Contract signed by the Service Provider;
<b>“Public Procurement Termination Event”</b>	has the meaning given to it in Clause 31.7;
<b>“Public Procurement Termination Grounds”</b>	any one or more of the grounds described in either Regulation 73(1) of the Public Contracts Regulations 2015 or Regulation 89(1) of the Utilities Contracts Regulations 2016;
<b>“Request Form”</b>	a document produced by the Authority pursuant to Clause 3, setting out its request for a Proposal, which document shall be in the form set out in Schedule 5A or Schedule 5B or in such other form as may be notified to the Service Provider by the Authority from time to time;
<b>“Required Date”</b>	the date or dates on or by which each Milestone is required to be completed as set out in the Project Plan or, in the absence of any Milestones, the date or dates on or by which the Services are required to be provided as set out in the Project Plan;

<b>“Service Provider Equipment”</b>	the equipment and materials of whatsoever nature used by the Service Provider in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the Authority under any Call-Off Contract;
<b>“Service Provider’s Manager”</b>	the person who is identified as the Service Provider’s Manager in the Call-Off Contract for the relevant Services;
<b>“Service Provider’s Personnel”</b>	all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Service Provider as are engaged in the performance of any of the Services and including the Key Personnel;
<b>“Services”</b>	<p>(a) all or any part of the services to be provided to, or activities to be undertaken and completed for, the Authority by the Service Provider under a Call-Off Contract as detailed in such Call-Off Contract including any variations to such services and/or activities pursuant to Clause 34; and</p> <p>(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;</p>
<b>“Specification”</b>	the specification and other requirements set out in Attachment 1 of the Call-Off Contract;
<b>“Supply Chain Finance Option”</b>	has the meaning given to it in paragraph 1 of Part B of Schedule 7;
<b>“Term”</b>	the period during which this Agreement continues in force as set out in Schedule 1;
<b>“TfL”</b>	Transport for London, a statutory corporation established under the

Greater London Authority Act 1999;

**“TfL Group”**

TfL in its own right and as holding company of all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any **“member of the TfL Group”** shall refer to TfL or any such subsidiary;

**“TfL Premises”**

any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the TfL Group (including for the avoidance of doubt the Authority);

**“Transparency Commitment”**

means the Authority’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Authority’s own published transparency commitments; 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 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.5 headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.6 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;

- 1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:
- 1.7.1 the conflicting part of the Schedule is explicitly expressed to take precedence; or
  - 1.7.2 the conflict is with a provision in Schedule 2 (Special Conditions of Agreement), in which case the provisions in Schedule 2 shall prevail; or
  - 1.7.3 the conflict is with a provision in Attachment 3 (Special Conditions of Call-Off), in which case the provisions in Attachment 3 shall prevail;
- 1.8 except as otherwise expressly provided in any Call-Off Contract, and subject to Clause 1.7, if there is any inconsistency between any of these Clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
- 1.8.1 each Call-Off Contract;
  - 1.8.2 these Clauses;
  - 1.8.3 the Schedules;
  - 1.8.4 any other document referred to in or incorporated by reference into this Agreement or any Call-Off Contract;
- 1.9 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;
- 1.10 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.11 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;
  - 2.1.2 provide the framework to administer each Call-Off Contract; and
  - 2.1.3 set out the obligations of the Parties.

- 2.2 The Services that may be requested by the Authority and provided by the Service Provider are of the type described in Schedule 3 or as more particularly described in each Call-Off Contract. The Authority's requirements may vary and this Agreement shall not place the Authority under any obligation to procure the Services from the Service Provider at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent the Authority from engaging any other organisations or persons to provide services similar to or the same as the Services.
- 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 Service Provider shall commence provision of the relevant Services in accordance with the Call-Off Contract. The Service Provider must not commence any Services without an agreed Call-Off Contract.
- 2.5 All Charges in respect of a Call-Off Contract shall be set out in the relevant Call-Off Contract and shall not exceed the rates set out in Schedule 4.

### **3. CALL-OFF PROCEDURE**

- 3.1 At any time during the duration of this Agreement, the Authority may identify Services which at its sole discretion it wishes to let under the terms of this Agreement.
- 3.2 Where the Authority opts to appoint the Service Provider direct without the need for a Mini-Competition, it will issue to the Service Provider a Request Form substantially in the form set out in Schedule 5A, specifying the Services to be provided, in which event:
- 3.2.1 the Service Provider shall promptly confirm receipt of such Request Form;
- 3.2.2 the Service Provider shall respond to the Request Form by completing a Proposal as an offer capable of acceptance, or by notifying the Authority in writing that it does not intend to submit a Proposal. The Service Provider shall so respond to the Authority by the date specified in the Request Form or, if no such date is specified, within 10 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 90 Business Days from the date it is submitted to the Authority;
- 3.2.3 after receipt of an acceptable Proposal, the Authority will forward to the Service Provider two copies of the Call-Off Contract. The Service Provider shall sign both copies and return the same to the Authority within 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 Authority and will send a completed signed Call-Off Contract to the Service Provider.

- 3.3 Where the Authority opts to undertake a Mini-Competition it will issue to those Service Providers on the framework that are the subject of this Agreement, that it assesses in its sole discretion, are capable of providing the Services to the Authority's satisfaction, a Request Form as set out in Schedule 5B, specifying the Services to be provided. In the event that the Service Provider receives such a Request Form:
- 3.3.1 the Service Provider shall immediately confirm receipt of such Request Form;
  - 3.3.2 the Service Provider shall respond to a Request Form by completing a Proposal as an offer capable of acceptance or by notifying the Authority in writing that it does not intend to submit a Proposal. The Service Provider shall respond to the Authority by the date specified in the Request Form or, if no such date is specified, within 10 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 90 Business Days from the date it is submitted to the Authority;
  - 3.3.3 the Authority will award the relevant Call-Off Contract to the Proposal that is the most economically advantageous with reference to the assessment criteria set out in the Request Form as they relate to the Service(s) in question.
- 3.4 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.
- 3.5 A Request Form and anything prepared or discussed by the Authority shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by the Service Provider. The Authority shall not be obliged to consider or accept any Proposal submitted by the Service Provider.
- 3.6 A draft Call-Off Contract shall only become a Call-Off Contract upon execution of the draft Call-Off Contract by the Authority.
- 3.7 The Authority is not obliged to approve or sign any Call-Off Contract.
- 3.8 Unless otherwise expressly agreed in writing with the Authority, the Service Provider shall not be entitled to charge under this Agreement for any work involved in any receipt and/or confirmation of any Request Form, and/or any response to any Request Form as contemplated in this Clause 3.

- 3.9 Where reasonably requested to do so by the Greater London Authority (“**GLA**”) or any of its other functional bodies (currently, the London Legacy Development Corporation, the Mayor’s Office for Policing and Crime, the London Fire Commissioner and the Old Oak and Park Royal Development Corporation) (“**Functional Bodies**”) and provided the Service Provider is willing to so contract, the Service Provider shall contract with the GLA or appropriate Functional Body on the terms of this Agreement mutatis mutandis. The GLA or the Functional Bodies cannot affect or amend this Agreement and each Call-Off Contract is specifically between the Service Provider and the GLA or appropriate Functional Body and the TfL Group shall in no way be liable for the GLA or appropriate Functional Bodies obligations arising out of such Call-Off Contract.

#### **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 continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.
- 4.2 Each Call-Off Term shall be set out in the relevant Call-Off Contract. 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.
- 4.3 A Call-Off Contract may expire or be terminated in accordance with its terms or Clause 29 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 Service Provider:
- 5.1.1 shall provide the Services specified in a Call-Off Contract to the Authority 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 Authority and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the relevant Call-Off Contract;
  - 5.1.3 shall neither be entitled to any additional 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 Service Provider of any fact relating to

the Specification or otherwise to the Agreement or relevant Call-Off Contract; and

- 5.1.4 shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services under any Call-Off Contract.
- 5.2 Notwithstanding anything to the contrary in this Agreement, the 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 Service Provider 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 Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;
  - 5.3.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
  - 5.3.4 so that they are properly managed and monitored and shall immediately inform the Authority if any aspect of the Call-Off Contract is not being or is unable to be performed.
- 5.4 Where in the reasonable opinion of the Authority the Service Provider has failed to provide the Services or any part of them in accordance with this Agreement and/or the relevant Call-Off Contract, the Service Provider shall, without prejudice to any of the Authority's other rights, re-perform the Services or part thereof as requested by the Authority at no additional cost and within such period of time as reasonably specified by the Authority.

## **6. Charges**

- 6.1 The Service Provider shall invoice the Authority in accordance with the procedures set out in Clause 7 and in consideration of, and subject to the due performance of the Services by the Service Provider in accordance with the relevant Call-Off Contract, the Authority shall pay the Service Provider the Charges in accordance with those procedures and any other terms and conditions of the relevant Call-Off Contract.



- 6.2 The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in a Call-Off Contract or have been incurred with the prior written consent of the Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Authority.
- 6.3 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

## **7. Payment Procedures and Approvals**

- 7.1 The Service Provider shall invoice the Authority in respect of the Charges:
- 7.1.1 monthly in arrears during the Call-Off Contract Term; or
  - 7.1.2 at such dates or at the end of such other periods as may be specified in the relevant Call-Off Contract; or
  - 7.1.3 if specified in a Call-Off Contract, on completion of each Milestone. It is a condition precedent of the submission of an invoice on completion of a Milestone that all preceding Milestones specified in the relevant Call-Off Contract have been completed.
- 7.2 The Service Provider shall submit invoices to the address set out in each Call-Off Contract or where an electronic format for submission of invoices is set out in each Call-Off Contract, such electronic format shall, unless the Authority requires otherwise, be used. Each such invoice shall contain all information required by the Authority including the Agreement Number, relevant Call-Off Contract Number, SAP order number, the Authority account details, the Service Provider's name, address and bank account details to which payment should be made, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.
- 7.3 In the event of a variation to the Services in accordance with this Agreement or the relevant Call-Off Contract that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoice.
- 7.4 The Authority shall consider and verify each invoice, which is submitted in accordance with this Clause 7, in a timely manner. If the Authority considers that the Charges claimed by the Service Provider in any invoice have under the relevant Call-Off Contract:
- 7.4.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or

such other method as the Authority may choose from time to time within 30 days of receipt of such invoice;

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

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

- 7.5 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or Procurement Manager or Call-Off Co-ordinator (whether related to payment or otherwise) shall:

- 7.5.1 indicate or be taken to indicate the Authority's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under this Agreement or a Call-Off Contract; or

- 7.5.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to Clause 20, the Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt under this Agreement or a Call-Off Contract.

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

- 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 under this Agreement or 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.

## **8. Warranties and Obligations**

8.1 Without prejudice to any other warranties expressed elsewhere in this Agreement or implied by law, the Service Provider warrants, represents and undertakes that:

8.1.1 the Service Provider:

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

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

8.1.1.3 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;

8.1.2 the Agreement and Call-Off Contract is executed by a duly authorised representative of the Service Provider;

8.1.3 all materials, equipment and goods under the relevant Call-Off Contract or supplied by the Service Provider shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Specification set out in the relevant Call-Off Contract; and

8.1.4 all documents, drawings, computer software and any other work prepared or developed by the Service Provider or supplied to the Authority under the relevant Call-Off Contract shall not 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.

## **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 Service Provider shall deal with the Procurement Manager (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise. The 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 Authority.

- 9.2 The Service Provider Manager shall act as the Service Provider's representative for all purposes of this Agreement. In respect of each Call-Off Contract, the Service Provider shall provide the Key Personnel. The Service Provider Manager and the Key Personnel shall procure that they:

9.2.1 diligently supervise the performance of the Services;

9.2.2 attend all contract meetings with the Authority (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

9.2.3 be available to the Authority to resolve any issues arising in connection with this Agreement or any relevant Call-Off Contract at such time periods as are specified in the relevant Call-Off Contract.

- 9.3 The Service Provider may only make any changes to the Service Provider Manager or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Authority (which shall not be unreasonably withheld).

- 9.4 No act of or omission by or approval from either the 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 Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement and relevant Call-Off Contract.

## **10. SERVICE PROVIDER'S PERSONNEL**

- 10.1 The Parties agree that:

10.1.1 the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) do not apply on the Agreement Commencement Date or on the expiry or termination of this Agreement; and

10.1.2 where the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) apply to any Call-off Contract, the relevant optional clauses will be included in the Call-Off Contract.

- 10.2 Nothing in this Agreement or any Call-Off Contract will render the Service Provider's Personnel, an employee, agent or partner of the Authority or of any member of the TfL Group by virtue of the provision of the Services by

the Service Provider under this Agreement or Call-Off Contract and the Service Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider's Personnel.

- 10.3 The Service Provider shall provide the Service Provider's Personnel as necessary for the proper and timely performance and management of the Services in accordance with the relevant Call-Off Contract. All Service Provider Personnel deployed on work relating to the Call-Off Contract shall have the appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Authority.
- 10.4 Without prejudice to any of the Authority's other rights, powers or remedies, the Authority may (without liability to the Service Provider) deny access to such Service Provider's Personnel to any TfL Premises and/or require that any Service Provider's Personnel be immediately removed from performing the Services if such Service Provider's Personnel in the Authority's view have not been properly trained in any way required by a relevant Call-Off Contract, are otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. The Authority shall notify the Service Provider of such denial and/or requirement in writing and the Service Provider shall comply with such notice and provide a suitable replacement (with the Call-Off Co-ordinator's prior consent in the case of Key Personnel).
- 10.5 The Service Provider shall give the Authority, if so requested, full particulars of all persons who are or may be at any time employed on the relevant Call-Off Contract and shall take all reasonable steps to avoid changes to any of its staff designated as Key Personnel. The Service Provider shall give the Authority reasonable notice of any proposals to change Key Personnel and Clause 10.2 shall apply to the proposed replacement personnel.
- 10.6 Not used.
- 10.7 The Service Provider shall pay to the Service Provider's Personnel not less than the amounts declared to the Authority (if any) as part of the tender process for this Agreement and the relevant Call-Off Contract and not less than the amounts to which the Service Provider's Personnel are contractually entitled.

## **11. SUB-CONTRACTING AND CHANGE OF OWNERSHIP**

- 11.1 The Service Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of the Authority which may be refused or granted subject to such conditions as the Authority sees fit. Notwithstanding the foregoing, the Service Provider may assign or sub-contract all or any part of the Services to any of its Affiliates without the prior written consent of the Authority.

- 11.2 Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall:
- 11.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under the relevant Call-Off Contract insofar as they relate to the Services or 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; and
  - 11.2.3 remain solely responsible and liable to the 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 Service Provider;
  - 11.2.4 on or before the Agreement Commencement Date notify the 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 Service Provider to the Authority under the Agreement;
  - 11.2.5 promptly notify the Authority in writing of any change to the information notified under Clause 11.2.4 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 Agreement Commencement Date;
  - 11.2.6 without prejudice to the provisions of Clause 15, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor;
  - 11.2.7 include a term in each sub-contract (of any tier):
    - 11.2.7.1 requiring payment to be made by the Service Provider, 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 30 days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements;
    - 11.2.7.2 a requirement that any invoices for payment submitted by the sub-contractor are considered and verified by the Service Provider, or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract, 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; and

11.2.7.3 entitling the Service Provider or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law; and

11.2.7.4 a requirement that the sub-contractor includes a provision having the same effect as Clause 11.2.7.3 above in any sub-contract it awards.

11.3 The Service Provider shall give notice to the Authority within 10 Business Days where:

11.3.1 there is any change in the ownership of the Service Provider where such change relates to 50% or more of the issued share capital of the Service Provider; and

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 Service Provider) give notice to the Authority if there is any change in the management personnel of the Service Provider, which alone or taken with any other change in management personnel not previously notified to the Authority, equates to a change in the identity of 50% or more of the management personnel of the Service Provider.

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

## **12. CONFLICT OF INTEREST**

12.1 The Service Provider 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 or any member of the TfL Group, save to the extent fully disclosed to and approved by the Authority.

12.2 The Service Provider shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and shall notify the Contracting Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any member of the TfL Group and shall work with the Contracting Authority to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in

question) to manage such conflict to the Contracting Authority's satisfaction, provided that, where the Contracting Authority is not so satisfied, it may terminate this Agreement and all Call-Off Contracts, in existence, in accordance with Clause 29.1.4.

### **13. ACCESS TO PREMISES**

13.1 Subject to Clause 10.4 any access to any TfL Premises made available to the Service Provider in connection with the proper performance of the Call-Off Contract shall be free of charge and shall be used by the Service Provider solely for the purpose of performing the Services during the Call-Off Contract Term, for the avoidance of doubt, the Service Provider shall be responsible for its own costs of travel including either or both of any congestion charging or low emission zone charging. The Service Provider shall:

13.1.1 have the use of such TfL 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 TfL Premises;

13.1.2 vacate such TfL Premises upon the termination or expiry of the relevant Call-Off Contract or at such earlier date as the Authority may determine;

13.1.3 not exercise or purport to exercise any rights in respect of any TfL Premises in excess of those granted under this Clause 13.1;

13.1.4 ensure that the Service Provider's Personnel carry any identity passes issued to them by the Authority at all relevant times and comply with the Authority's security procedures as may be notified by the Authority from time to time; and

13.1.5 not damage the TfL Premises or any assets on the TfL Premises.

13.2 Nothing in this Clause 13 shall create or be deemed to create the relationship of landlord and tenant in respect of any TfL Premises between the Service Provider and any member of the TfL Group.

13.3 The Authority shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Service Provider except as may be specified in any Call-Off Contract.

### **14. COMPLIANCE WITH POLICIES AND LAW**

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

14.1.1 undertakes to procure that all the Service Provider's Personnel comply with all of the Service Provider's policies and standards and, when performing Services at the Authority's premises, the



Authority's policies and standards that are relevant to the performance of the Services;

- 14.1.2 shall provide the Services in compliance with and shall ensure that the Service Provider'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 Service Provider's business or the Authority's business, from time to time in force which are or may become applicable to the Services. The Service Provider shall promptly notify the Authority if the Service Provider 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 relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- 14.1.4 acknowledges that the Authority is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "**Relevant Protected Characteristic**") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with Authority where possible in satisfying this duty;
- 14.1.5 where possible, shall provide the Services in such a manner as to:
  - 14.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
  - 14.1.5.2 eliminate unlawful discrimination; and
  - 14.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation;
- 14.1.6 where applicable and without limiting the generality of Clause 14.1.2, shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it;
- 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 TfL's Traffic Manager as may be made available to the Service Provider from time to time. For the purposes of this Clause 14.1.7, "Traffic Manager" means TfL's traffic manager appointed in accordance with section 17 of the Traffic Management Act 2004; and

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

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

14.2 Without prejudice to Clause 14.1, the Service Provider shall comply with the Authority's workplace harassment policy as updated from time to time (copies of which are available on request from the Authority) and with the Authority's Code of Conduct (which is available on the Authority's website, [www.tfl.gov.uk](http://www.tfl.gov.uk)).

14.3 In providing the Services, the Service Provider shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) 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. London Living Wage**

15.1 For the purposes of this Clause 15, the following expressions have the corresponding meanings:

<b>"CCSL"</b>	the Centre for Civil Society Limited or any relevant replacement organisation as notified by the Authority from time to time;
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<b>"London Living Wage"</b>	the London rate for the basic hourly wage as updated and published annually by the CCSL (or any relevant replacement
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organisation) on its website  
([www.livingwage.org.uk](http://www.livingwage.org.uk));

**“Subcontractor”**

a sub-contractor (of any tier) of the Service Provider.

- 15.2 The Service Provider acknowledges and agrees that the Mayor of London pursuant to section 155 of the Greater London Authority Act 1999 has directed that members of the Authority Group ensure that the London Living Wage be paid to anyone engaged by any member of the Authority Group who is required to discharge contractual obligations (whether as a direct contractor or a sub-contractor (of any tier) of that direct contractor) on the Authority’s estate in the circumstances set out in Clause 15.3.1.
- 15.3 Without prejudice to any other provision of this Agreement and any Call-Off Contract, the Service Provider shall:
- 15.3.1 ensure that its employees and procure that the employees of its Sub-contractors engaged in the provision of the Services:
- 15.3.1.1 for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year; and
- 15.3.1.2 on the Authority’s estate including (without limitation) premises and land owned or occupied by the Authority,
- be paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage;
- 15.3.2 ensure that none of:
- 15.3.2.1 its employees; nor
- 15.3.2.2 the employees of its Sub-contractors;
- engaged in the provision of the Services be paid less than the amount to which they are entitled in their respective contracts of employment;
- 15.3.3 provide to the Authority such information concerning the London Living Wage as the Authority or its nominees may reasonably require from time to time, including (without limitation):
- 15.3.3.1 all information necessary for the Authority to confirm that the Service Provider is complying with its obligations under Clause 15; and
- 15.3.3.2 reasonable evidence that Clause 15.3.1 has been implemented;

**Note:** Any information deemed to be commercially sensitive or confidential may be redacted.

15.3.4 Not used.

15.3.5 cooperate and provide all reasonable assistance in monitoring the effect of the London Living Wage including (without limitation):

15.3.5.1 allowing the CCSL to contact and meet with the Service Provider's employees and any trade unions representing the Service Provider's employees;

15.3.5.2 procuring that the Service Provider's Sub-contractors allow the CCSL to contact and meet with the Sub-contractors' employees and any trade unions representing the Sub-contractors' employees,

in order to establish that the obligations in Clause 15.3.1 have been complied with.

15.4 For the avoidance of doubt the Service Provider shall:

15.4.1 implement the annual increase in the rate of the London Living Wage; and

15.4.2 procure that its Sub-contractors implement the annual increase in the rate of the London Living Wage,

on or before 1 April in the year following the publication of the increased rate of the London Living Wage.

15.5 The Authority reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Service Provider's staff and the staff of its Sub-contractors. General audit restrictions of one audit per 12 month contracting period with reasonable notice will apply, any further audit will be subject to agreement by the Service Provider.

15.6 Without limiting the Authority's rights under any other termination provision in this Agreement or any Call-Off Contract, the Service Provider shall remedy any breach of the provisions of this Clause 15 within four (4) weeks' notice of the same from the Authority (the "**Notice Period**"). If the Service Provider remains in breach of the provisions of this Clause 15 following the Notice Period, the Authority may by written notice to the Service Provider immediately terminate this Agreement and/or any Call-Off Contract.

## **16. CORRUPT GIFTS AND PAYMENT OF COMMISSION**

The Service Provider shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Contracting Authority or any member of the TfL Group nor favour any employee, officer or agent of the Contracting Authority or any member of the TfL 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 or any member of the TfL Group other than as a representative of the Authority, without the Authority's prior written approval.

## **17. EQUIPMENT**

### **17.1 Risk in:**

17.1.1 all Service Provider Equipment shall be with the Service Provider at all times; and

17.1.2 all other equipment and materials forming part of the Services (title to which will pass to the Authority) ("**Materials**") shall be with the Service Provider at all times until completion of the Services in accordance with the relevant Call-Off Contract,

regardless of whether or not the Service Provider's Equipment and Materials are located at TfL Premises:

17.2 The Service Provider shall ensure that all Service Provider's Equipment and all Materials meet all minimum safety standards required from time to time by law.

## **18. QUALITY AND BEST VALUE**

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

## **19. RECORDS, AUDIT AND INSPECTION**

19.1 The Service Provider shall, and shall procure that its sub-contractors shall:

19.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service Provider's obligations under this Agreement and the relevant Call-Off Contract and all transactions entered into by the Service Provider for the purposes of this Agreement and the

relevant Call-Off Contract (including time-sheets for the Service Provider's Personnel where such records are material to the calculation of the Charges) ("**Records**"); and

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

19.2 The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Service Provider what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Service Provider's performance of the Services (including compliance with Clause 14.1) and the Service Provider shall give all reasonable assistance to the Authority or its nominee in conducting such inspection, including making available documents and staff for interview. General audit restrictions of one audit per 12 month contracting period with reasonable notice will apply, any further audit will be subject to agreement by the Service Provider.

## **20. SET-OFF**

Not used.

## **21. LIABILITY AND INDEMNITY**

21.1 Not used.

21.2 The Service Provider is not responsible for and shall not indemnify the Authority 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 by the Authority and/or any other member of the TfL Group including by any of their respective employees or agents.

21.3 This clause sets out the Service Provider's and its Affiliates' aggregate civil liability to the Authority arising out of or in connection with the Services the Service Provider and its Affiliates provide under this Agreement and any related Call-Off Contracts.

21.4 Subject always to Clause 21.7, the maximum aggregate liability of the Service Provider and its Affiliates, collectively, to the Authority, collectively, for all claims and losses (including damages, legal costs, interest and any expenses) under or in connection with this Agreement and any Call-Off Contract whether arising in or for breach of contract, tort (including negligence), breach of statutory duty or otherwise will not exceed 200% of the fees paid under this Agreement and any Call-Off Contracts.

- 21.5 Subject to Clause 21.7, the Service Provider will not be liable to the Authority for any loss of profits (whether direct, indirect, actual or anticipated), business, revenue, goodwill, anticipated saving or any consequential or indirect loss, in each case howsoever arising, whether or not foreseeable or in the contemplation of the Parties and whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty or otherwise.
- 21.6 The Authority agrees that it will not (and shall procure that none of its Affiliates will) make any claim against any director or employee of the Service Provider or its Affiliates personally for any legal liability they have arising out of this Agreement and the services and work provided by them.
- 21.7 Nothing in this Agreement shall exclude or restrict the Service Provider's liability to the extent that such liability cannot be excluded or restricted by law.
- 21.8 In the event any loss is suffered by any of the Authority entity that is not a party to this Agreement or a Call-Off Contract, that loss will be treated as if it had been suffered by the Contracting Authority. Any claim against the Service Provider for such losses must be claimed against the Service Provider by the Contracting Authority on behalf of the relevant Authority entity. If and to the extent that the Contracting Authority is unable to recover a loss suffered by an Authority entity under this Clause, the relevant entity will be entitled to seek recovery of such Loss, subject to the other provisions of this Clause, directly from the Service Provider and to enforce this Agreement against the Service Provider for this purpose under the Contracts (Rights of Third Parties) Act 1999. However, the Parties may withdraw from or vary or terminate this Agreement in accordance with its terms without the agreement of any of the Authority entities other than the Contracting Authority. The limitations of liability in this Agreement will apply to all Authority entities as a whole so that they apply in aggregate to all liabilities incurred under or in connection with this Agreement. The Contracting Authority shall indemnify the Service Provider for any sum that it becomes liable to pay (including damages, legal costs, interest and any expenses) arising from any claim made against the it by the Contracting Authority's Affiliates where such claim is not brought against the Service Provider in accordance with the terms of this Clause. The Contracting Authority agrees to notify all Authority entities who receive services or information provided under this Agreement of the provisions of this Clause.

## **22. INSURANCE**

- 22.1 The Service Provider will effect and maintain professional indemnity insurance to a level that is adequate and reasonable in respect of the Services to the extent that such is available at a commercially reasonable rate or as required by its regulators."

## **23. THE AUTHORITY'S DATA**

- 23.1 The Service Provider acknowledges the Authority's ownership of Intellectual Property Rights which may subsist in the Authority's data. The Service Provider shall not delete or remove any copyright notices contained within or relating to the Authority's data.
- 23.2 The Service Provider and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Authority's data and to prevent any corruption or loss of the Authority's data.

## **24. INTELLECTUAL PROPERTY RIGHTS**

- 24.1 The Service Provider hereby assigns with full title guarantee to the Authority all Intellectual Property Rights in all documents, drawings, computer software and any other work prepared or developed specifically for the Authority by and on behalf of the Service Provider in the provision of the Services (the "**Products**") provided that such assignment shall not include items not prepared or developed for the purposes of the relevant Call-Off Contract.
- 24.2 The Service Provider retains all proprietary rights in the "**Service Provider Information**" which means (a) the general knowledge, know-how (including processes, methodologies, ideas, concepts, techniques and other tools that are of generic application to the business of the Service Provider and its Affiliates), any skill acquired or developed by the Service Provider and its Affiliates in the course of this Agreement and any and all proprietary rights in any of the foregoing and any other documents, information or materials of generic application to the Service Provider's and its Affiliates' business and derivatives thereof and any materials created prior to the performance of the Services and (b) all information and materials not created or developed specifically for the Authority but which is provided to you by or on behalf of the Service Provider; any of the Service Provider's and its Affiliates' websites (including websites or on-line portals through which the Service Provider may perform the Services), and all intellectual property rights in any of the foregoing.
- 24.3 The Service Provider shall provide the Authority with copies of all materials relied upon or referred to in the creation of the Products together with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.
- 24.3 The Service Provider shall have no right (save where expressly permitted under the Contract or with the Authority's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Authority.
- 24.4 The Authority may not create derivative works based on, modify or translate the Products or Service Provider Information (together, the



**“Information”**) and shall not otherwise transfer or otherwise grant rights to any third party in the Information.

- 24.5 The Service Provider shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with the Contract have been paid and are included within the Charges.

## **25. PRIVACY, DATA PROTECTION AND CYBER SECURITY**

- 25.1 The Service Provider shall comply with the Data Protection Schedule all of its obligations under Data Protection Legislation and, if Processing Personal Data on behalf of the Authority, shall only carry out such Processing for the purposes of providing the Services in accordance with this Agreement, any relevant Call-Off Contract and Schedule 2.
- 25.2 The Service Provider must follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre.

## **26. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 26.1 Subject to Clause 27, the Parties will keep confidential:
- 26.1.1 the terms of this Agreement and all Call-Off Contracts; and
  - 26.1.2 any and all Confidential Information that it may acquire in relation to the Parties.
- 26.2 The Service Provider will not use the Authority's Confidential Information for any purpose other than to perform its obligations under this Agreement and any Call-Off Contract (and vice versa). The Service Provider will ensure that its officers and employees comply with the provisions of Clause 26.1 (and vice versa).
- 26.3 The obligations on the Service Provider and Authority set out in Clause 26.1 will not apply to any Confidential Information which:
- 26.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 26); or
  - 26.3.2 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
  - 26.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.

26.4 The Parties shall keep secure all materials containing any information in relation to the Agreement or to any Call-Off Contract and its performance.

26.4 The Parties 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 that it is providing the Services to the Authority 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 Authority. The Authority shall have the right to approve any announcement before it is made.

26.5 Where the Authority wishes to disclose Information in the normal course of its business affairs, it may pass Information to its Affiliates or professional business advisers (other than audit and accounting advisers) for information purposes only, provided that:

26.5.2 the Information is disclosed in full and no disclaimers are removed from the Information prior to disclosure; and

26.5.3 where disclosure is to the Authority's Affiliates, the Authority agrees to procure that all such recipients accept such Information (i) on the basis the Service Provider's aggregate liability, collectively, to those recipients and the Authority is not greater than the Service Provider's aggregate liability to the Authority as set out in this Agreement and (ii) subject to an obligation not to disclose such Information to third parties, other than as required by law or court order.

For the purposes of this Clause the "**normal course of the Authority's business affairs**" means the usual day to day operation and administration of the Authority's business; it does not include disclosures to the Authority's (or any of the Authority's Affiliates') audit or accounting advisers or relating to any corporate transaction such as a sale, listing, refinancing, merger or acquisition of a company or business or any other agreement or arrangement which the Authority, the Authority's Affiliates, any other group companies or any third party may contemplate entering into.

26.6 The Authority agrees not to distribute or disclose, in whole or in part, any Information to its accounting or audit advisers or, where disclosure is outside the Normal Course of the Authority's business affairs, any other third party unless such audit or accounting adviser or other third party has entered into the Service Provider's standard non-reliance letter directly with the Service Provider. Where any such third party has entered into a non-reliance letter with the Service Provider or the Service Provider otherwise consents in writing to disclosure, the Authority undertakes to disclose the Information in full including the Service Provider's disclaimers, in all cases without variation.

26.7 The provisions of this Clause 26 will survive any termination of this Agreement or Call-Off Contract for a period of 6 years from termination.

## **27. FREEDOM OF INFORMATION AND TRANSPARENCY**

27.1 For the purposes of this Clause 27:

27.1.1 **“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;

27.1.2 **“Information”** means information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority; and

27.1.3 **“Information Access Request”** means a request for any Information under the FOI Legislation.

27.2 The Service Provider acknowledges that the Authority:

27.2.1 is subject to the FOI Legislation and agrees to assist and cooperate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and

27.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.

27.3 Without prejudice to the generality of Clause 27.2, the Service Provider shall and shall procure that its sub-contractors (if any) shall:

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

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

27.4 The Authority 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.

- 27.5 The Service Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.
- 27.6 The Service Provider acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 26.1 and Clause 27, the Service Provider hereby gives its consent for the Authority to publish the Contract Information to the general public, subject to the Service Provider's right to review the contents of any intended publication prior to its being published and require that any commercially sensitive information or information included within the reserved information template is redacted.
- 27.7 The Authority 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 Authority may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 27.8 The Authority may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 27.6. The Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

## **28. Dispute Resolution**

- 28.1 The Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement or any relevant Call-Off Contract ("**Dispute**") before resorting to litigation.
- 28.2 If the Dispute is not settled through discussion between the Procurement Manager and a representative of the Service Provider within a period of seven (7) Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 28.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, the 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 Party may give notice to the other Party ("**Notice**") to commence such process and the Notice shall identify one or more proposed mediators.
- 28.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that

mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.

- 28.5 Where a dispute is referred to mediation under Clause 28.3, the 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.
- 28.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 28.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 42.
- 28.8 For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with the Call-Off Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 28.
- 28.9 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 28 and Clause 28 shall not apply in respect of any circumstances where such remedies are sought.

## **29. Breach and Termination of Agreement**

- 29.1 Without prejudice to the any Party's rights right to terminate at common law, a party may terminate this Agreement and the Parties to a Call-Off Contract (each terminating party under the Agreement of a Call-Off Contract, the "**Terminating Party**") may terminate any current Call-Off Contract immediately upon giving notice to the other party (the "**Other Party**") if:
  - 29.1.1 in addition and without prejudice to Clauses 29.1.2 to 29.1.6 (inclusive), the Other Party has committed any material or persistent breach of this Agreement (in the case of the parties to this Agreement) or Call-Off Contract (in the case of the parties to a Call-Off Contract) and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Authority) from the date of written notice to the Other Party giving details of the breach and requiring it to be remedied; or
  - 29.1.2 the Other Party is subject to an Insolvency Event; or
  - 29.1.3 in the event that there is a change of ownership referred to in Clause 11.3 or the Other Party is in breach of Clause 11.3; or

- 29.1.4 the Terminating Party is not satisfied on the issue of any conflict of interest in accordance with Clause 12; or
- 29.1.5 the Other Party or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010; or
- 29.1.6 the Other Party commits any of the money laundering related offences listed in the Public Contracts Regulations 2015; or
- 29.1.7 the Other Party fails to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.
- 29.2 Without prejudice to any of the Contracting Authority's and/or the Authority's other rights, powers or remedies (whether under this Agreement or otherwise) if the Service Provider 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 Call-Off Contract, the Service Provider shall, if required to do so by the Contracting Authority and/or Authority, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this Clause 29.2 shall prevent the Contracting Authority and/or Authority from procuring the provision of any Services or any remedial action in respect of any Services from an alternative service provider.
- 29.3 Neither Party shall be deemed to be in breach of the relevant Call-Off Contract, or otherwise liable to the other Party 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. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the relevant Call-Off Contract (the "**Affected Party**") 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 immediately upon giving notice to the Affected Party. If the Call-Off Contract is terminated in accordance with this Clause 29.3 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.
- 29.4 Without prejudice to the Contracting Authority's right to terminate this Agreement or Contracting Authority and/or Authority to terminate the relevant Call-Off Contract under Clause 29.1 or to terminate at common law, the Authority may terminate this Agreement or the Contracting Authority and/or Authority relevant the Call-Off Contract at any time without cause subject to giving the Service Provider written notice of the period specified in Schedule 1, provided that this Clause 29.4 may be disapplied by notice to that effect in Schedule 1.

- 29.5 To the extent that the Contracting Authority has a right to terminate this Agreement or the Contracting Authority and/or Authority the relevant Call-Off Contract under this Clause 29 then, as an alternative to termination, the Authority may by giving notice to the Service Provider require the Service Provider to provide part only of the Services with effect from the date specified in the Authority's notice ("**Change Date**") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in the Contracting Authority's and/or the Authority's opinion a proportionate adjustment would not be reasonable in such manner as the Contracting Authority and/or Authority may determine.

### **30. Consequences of Termination or Expiry**

- 30.1 Notwithstanding the provisions of Clause 26, wherever the Authority chooses to put out to tender for a replacement service provider some or all of the Services, the Service Provider shall disclose to tenderers such information concerning the Services as the Authority may require for the purposes of such tender and shall also comply with all requirements as are set out at Schedule 9. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may require.
- 30.2 The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 30.3 Upon expiry or termination of this Agreement or relevant Call-Off Contract (howsoever caused):

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

30.3.1.1 take all such steps as shall be necessary to agree with the Authority a plan for the orderly handover of Services to the Authority (or its nominee), such that the Services can be carried on with the minimum of interruption and inconvenience to the Authority and to effect such handover; and

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

i) the Service Provider may retain an archival copy of such information to the extent required by applicable law, regulation, the obligations under this Agreement or internal records retention policy; and

ii) nothing herein shall require the alteration, modification, deletion or destruction of any back-up tapes or other back-up media made by the Service Provider in the ordinary course of business, provided that such back-up media remains subject to the terms of this agreement.

30.3.2 the Authority shall (subject to Clauses 20, 30.1 and 30.4 and the provisions of any security for due performance supplied by the Service Provider) pay the Service Provider any Charges remaining due in relation to any Services properly performed 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 Authority.

30.4 On termination of this Agreement and any relevant Call-Off Contract under Clause 29.1 or a cessation of any Services under Clause 29.4 (but in the case of the latter only insofar as the right to cease any Services arises as a result of a right for the Authority to terminate under Clause 29.1), the Authority may enter into any agreement with any third party or parties as the Authority thinks fit to provide any or all of the Services and the Service Provider shall be liable for all additional expenditure reasonably incurred by the Authority in having such services carried out and all other costs and damages reasonably incurred by the Authority in consequence of such termination. The Authority may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.

### **31 Declaration of Ineffectiveness and Public Procurement Termination Event**

31.1 In the event that a court makes a Declaration of Ineffectiveness, the Authority shall promptly notify the Service Provider. The Parties agree that the provisions of Clause 30 and Clauses 31.1, 31.2, 31.4 to 31.6 (inclusive) and 31.12 shall apply as from the time when the Declaration of Ineffectiveness is made. The provisions of Clause 30.4 shall apply (mutatis mutandis) as if (for this purpose and no other) the notice of Declaration of Ineffectiveness was a notice by the Authority to terminate the Call-Off Contract under Clause 30.4.

31.2 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 31.1 to 31.6 inclusive.

31.3 During any court proceedings seeking a Declaration of Ineffectiveness, the Authority may require the Service Provider to prepare a Cessation Plan in accordance with this Clause 31.3 by issuing a notice in writing. As from the date of receipt by the Service Provider of such notification from the Authority, the Parties (acting reasonably and in good faith) shall agree or,



in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:

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

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

in accordance with the provisions of Clauses 31.2 to 31.6 (inclusive) and which the Parties agree would have effect in the event that a Declaration of Ineffectiveness is made.

31.4 Where there is any conflict or discrepancy between the provisions of Clause 30 and Clauses 31.2 to 31.6 (inclusive) and 31.12 or the Cessation Plan, the provisions of these Clauses 31.2 to 31.6 (inclusive) and 31.12 and the Cessation Plan shall prevail.

31.5 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 Authority) in the event that a Declaration of Ineffectiveness is made.

31.6 The Authority shall pay the Services Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Agreement or as otherwise reasonably determined by the Authority. Provided that the Authority shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to any Declaration of Ineffectiveness.

31.7 Without prejudice to the Authority's rights of termination implied into the Contract by regulation 73(3) of the Public Contracts Regulations 2015 or regulation 89(3) of the Utilities Contracts Regulations 2016, in the event that the Authority exercises its right to terminate pursuant to this Clause 31.7 (a "**Public Procurement Termination Event**"), the Authority shall promptly notify the Service Provider and the Parties agree that:

31.7.1 the provisions of Clause 30 and these Clauses 31.7 to 31.12 (inclusive) shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event; and

31.7.2 if there is any conflict or discrepancy between the provisions of Clause 30 and these Clauses 31.7 to 31.12 (inclusive) or the Cessation Plan, the provisions of these Clauses 31.7 to 31.12 (inclusive) and the Cessation Plan shall prevail.

- 31.8 Termination on the Public Procurement Termination Grounds shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such termination on Public Procurement Termination Grounds, in respect of the period prior to such termination, save as otherwise expressly provided for in Clauses 31.7 to 31.11 inclusive.
- 31.9 As from the date of receipt by the Service Provider of the notification of the termination on Public Procurement Termination Grounds, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 31.9.1 an orderly and efficient cessation or (at the Authority's election) a transition to the Authority or such other entity as the Authority may specify of: (i) the Services; or (at Authority's election), (ii) the part of the Services which are affected by the Public Procurement Termination Grounds; and
  - 31.9.2 minimal disruption or inconvenience to the Authority or to customers of the Services or to public passenger transport services or facilities,
- in accordance with the provisions of Clauses 31.7 to 31.11 (inclusive) and to take account of the circumstances of the Public Procurement Termination Grounds.
- 31.10 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 31.11 The Authority shall pay the Service Provider's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Agreement or as otherwise reasonably determined by the Authority, provided that the Authority shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement as a result of Public Procurement Termination Grounds.
- 31.12 For the avoidance of doubt, the provisions of this Clause 31 (and applicable definitions) shall survive any termination of the Agreement following a Declaration of Ineffectiveness or termination on Public Procurement Termination Grounds.

## **32. Survival**

The provisions of Clauses 1, 5-8 (inclusive), 10, 11.2.2, 11.2.3, 12, 13.1.1, 13.1.2, 13.1.5, 13.2, 17, 19-23 (inclusive), 24.2, 25-28 (inclusive), 30-34 (inclusive), 35-45 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or

expiry of this Agreement. 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.

### **33. Rights of Third Parties**

- 33.1 Save that any member of the TfL 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**"), 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.
- 33.2 Notwithstanding Clause 33.1, the Parties are entitled to vary or rescind this Agreement or any relevant Call-Off Contract without the consent of any or all members of the TfL Group.

### **34. Contract Variation**

Save where the Authority may require an amendment to the Services and/or this Contract is amended pursuant to the Service Provider's exercise of any Supply Chain Finance Option, this Agreement or any relevant Call-Off Contract may only be varied or amended with the written agreement of both Parties. Save for any variations or amendments to reflect the Service Provider's exercise of any Supply Chain Finance Option (the mechanism for which is set out at Part B of Schedule 7) the details of any variations or amendments shall be set out in such form as the Authority may dictate and which may be substantially in the form set out in Part A of Schedule 7 and shall not be binding upon the Parties unless completed in accordance with such form of variation.

### **35. Novation**

- 35.1 The Contracting Authority may novate or otherwise transfer this Agreement and the Contracting Authority and/or Authority any relevant Call-Off Contracts (in whole or in part).
- 35.2 Within ten (10) Business Days of a written request from the Contracting Authority and/or Authority, the Service Provider shall at its expense execute such agreement as the Contracting Authority and/or 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 Authority.
- 35.3 Subject to Clause 11, this Agreement is personal to the Service Provider who shall not assign the benefit or delegate the burden of this Agreement or otherwise transfer any right or obligation under this Agreement without the prior written consent of the Contracting Authority.

**Note:** This clause does not include any assignment to affiliates of the Service Provider's organisation.

### **36. 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 to the other Party in writing in accordance with the provisions of Clause 38. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

### **37. Illegality and Severability**

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

### **38. Notices**

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 or any other address (including a facsimile number) notified to the other party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

if delivered by hand, at the time of delivery;

if delivered by post, two (2) Business Days after being posted or in the case of Airmail 14 Business days after being posted; or

if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission.

### **39. Entire Agreement**

39.1 Subject to Clause 39.2:

- 39.1.1 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 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 provision of the Services. Neither Party has been induced to enter into this Agreement by a statement which it does not contain; and
- 39.1.2 and without prejudice to the Service Provider's obligations under this Agreement, the Service Provider is responsible for and shall make no claim against the Authority in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.
- 39.2 Nothing in this Clause 39 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

#### **40. 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.

#### **41. 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.

#### **42. Governing Law**

The Agreement shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 28, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement provided that the Authority has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

**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  
the **Contracting Authority**

---

Signed by  
for and on behalf of  
the **Service Provider**

## SCHEDULE 1 - KEY AGREEMENT INFORMATION

1. **Agreement Reference Number:** TfL 94244
2. **Name of Service Provider:** Aon Hewitt Ltd
3. **Agreement Commencement Date:** 18 October 2019
4. **Term:** 2 years, with an option to extend for a further 1 year.
5. **Details of the Procurement Manager**

**Name:**

**Address:**

**Tel:**

**Email:**

6. **Service Provider's Key Personnel:**

Name & Position	Contact Details

7. **Notice period in accordance with Clause 29.4 (termination without cause):**

90 days unless an alternative is listed here

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

**For the Authority:**

1<sup>st</sup> Floor, North Wing  
55 Broadway  
London  
SW1H 0BD

For the attention of:

**For the Service Provider:**

The Aon Centre  
The Leadenhall Building  
122 Leadenhall Street  
London

EC2V 4AN

For the attention of:



## SCHEDULE 2 - SPECIAL CONDITIONS OF AGREEMENT

### A7

#### A12 Option to Extend Duration

- A12.1 The Authority has an option, exercisable at its sole discretion, to extend the duration of the Contract for a further period or periods up to a total of **one** year by notice in writing to the Service Provider provided that such notice is served at least **one month** prior to the expiry of the initial duration of the Contract or the expiry of any previous extension, if later.

## SCHEDULE 3 - SERVICES

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## 1. INTRODUCTION

### 1.1 Overall Requirement

1.1.1 TfL requires a consultancy to provide support with the annual executive remuneration benchmarking exercise covering TfL's Executive Committee and Director Population (c 60). There will also be a requirement to support with ad-hoc requests for data (across levels not restricted to Executive and Director Level or equivalent), market research and market insight throughout the Agreement.

1.1.2 As a major provider of remuneration benchmarking The Service Provider will own a number of multi industry proprietary surveys including, but not limited to, Executive and Director Level roles from which The Service Provider are able to draw robust market data from an agreed peer group of organisations. Please note this is a pre-requisite for selection and must be in place in time for Service Commencement.

## 1.2 Objectives

### 1.2.1 Executive Benchmarking

### 1.2.2 Supporting Activities

## 2. SCOPE

### 2.1 Executive Benchmarking

- 2.1.1 The Service Provider will be required to advise on an appropriate executive benchmarking methodology for the Executive Committee and Director population, e.g. recommending suitable “peer groups” of organisations that are relevant to the diverse nature, size and complexity of TfL.
- 2.1.2 Consultants will be required to make recommendations to the Remuneration Committee (Remcom) which may require attendance at Remcom meetings or the provision of papers for discussion at Remcom.
- 2.1.3 The output of the annual executive benchmarking exercise will be two separate reports covering the Executive Committee and Director populations. The reports will include market comparisons against base pay, total cash, long term incentives (LTI's), pension and benefits. Market information will be drawn from proprietary executive surveys and research from publicly available information.
- 2.1.4 **Please note:** TfL does not necessarily conduct this exercise every year and reserves the right not to conduct an executive benchmarking exercise in any given year during the life of the agreement.
- 2.1.5 TfL utilises the Hay methodology to score and level internal roles. Consultants will be required to provide a detailed match analysis for each benchmarked role that accounts for the weighting and level of the role.
- 2.1.6 The report should be presented in a clear format as agreed in advance with TfL Reward & Recognition, providing an executive summary, overview of the benchmarking results and individual benchmarks displayed as one page per role. The report should include information presented in both graphical and tabular formats. The report should provide supporting narrative highlighting external market trends and the range of current practice in both the private and public sector and any other relevant market context. The benchmarking methodology should also be clearly set out in the report and include a read across from The Service Provider's propriety system to Hay job levelling scores.
- 2.1.7 The report should be delivered in PDF format, with an accompanying Excel file including the benchmarking tables and graphs.

## 2.2 Supporting Activities

2.2.1 £100k Approval Process: TfL requires benchmarking support for roles that are processed through the £100k Approval Process, to identify a comparable market benchmark(s).

2.2.2 Ad-hoc Benchmarking: Provide ad-hoc benchmarking and advice for individual roles on request and in accordance with the SLAs set out in Section 4 of this Specification. The benchmarking could be at any level or discipline within the organisation. The table below outlines these levels:

TfL Band	Equivalent Hay score
Director	1287-1900+
Band 5	879-1286
Band 4	600-878
Band 3	392-599
Band 2	230-391
Band 1	Up to 229

- 2.2.3 Benchmarking Studies: Conduct bespoke benchmarking studies, the size and scale of which may vary throughout the contract. Timescales will be agreed at the time of call-off contract.
- 2.2.4 Market Insight: The Service Provider will provide periodic updates to the Reward & Recognition team providing market insight and intelligence on the latest trends and practices. This is likely to include facilitating sessions with the reward team. This will be at no additional cost to TfL.

### **3. SERVICE LEVEL AGREEMENTS (SLAS)**

#### **3.1 Performance Monitoring Overview**

##### **3.1.1 The Service Provider will be monitored on the following criteria:**

- 3.1.1.1 Annual Executive Committee & Director Remuneration Benchmarking: Timescales for the annual benchmarking exercise will be agreed between the supplier and TfL's Reward & Recognition Team at call-off stage. Typically, planning starts in October and the benchmark reports are finalised in January for the March Remuneration Committee.
- 3.1.1.2 Ad Hoc Remuneration Benchmarking: The Service Provider will acknowledge receipt of a request for TfL Reward & Recognition for an individual benchmark within 24 hours during the working week (Monday – Friday 9am to 5pm).

Following the acknowledgement of the work requirement, as outlined above, the Service Provider will deliver the individual benchmark results to the TfL Reward & Recognition team within 24 hours during the working week (Monday – Friday 9am to 5pm) unless agreed otherwise at call off stage.

#### **3.2 Monitoring Performance**

- 3.2.1 Contract performance review meetings will be held every 6 months between a representative of TfL and the Service Provider. The agenda of this meeting will discuss the general performance of the contract and will include, but not limited to, specific areas such as:
  - 3.2.1.1 Number of Benchmarking Reports received during the previous period
  - 3.2.1.2 Review of the Service Provider adhering to the minimum service levels
  - 3.2.1.3 Any escalation route measures taken
  - 3.2.1.4 Any other issues

### **3.3 Escalation route for poor performance**

3.3.1 If the service provider does not meet the minimum service levels required for this Service, it is important that a speedy resolution is in place to remedy and address the poor performance.

3.3.2 The escalation route in the event of poor performance is outline in figure 1 below. This is detailed in the following steps:

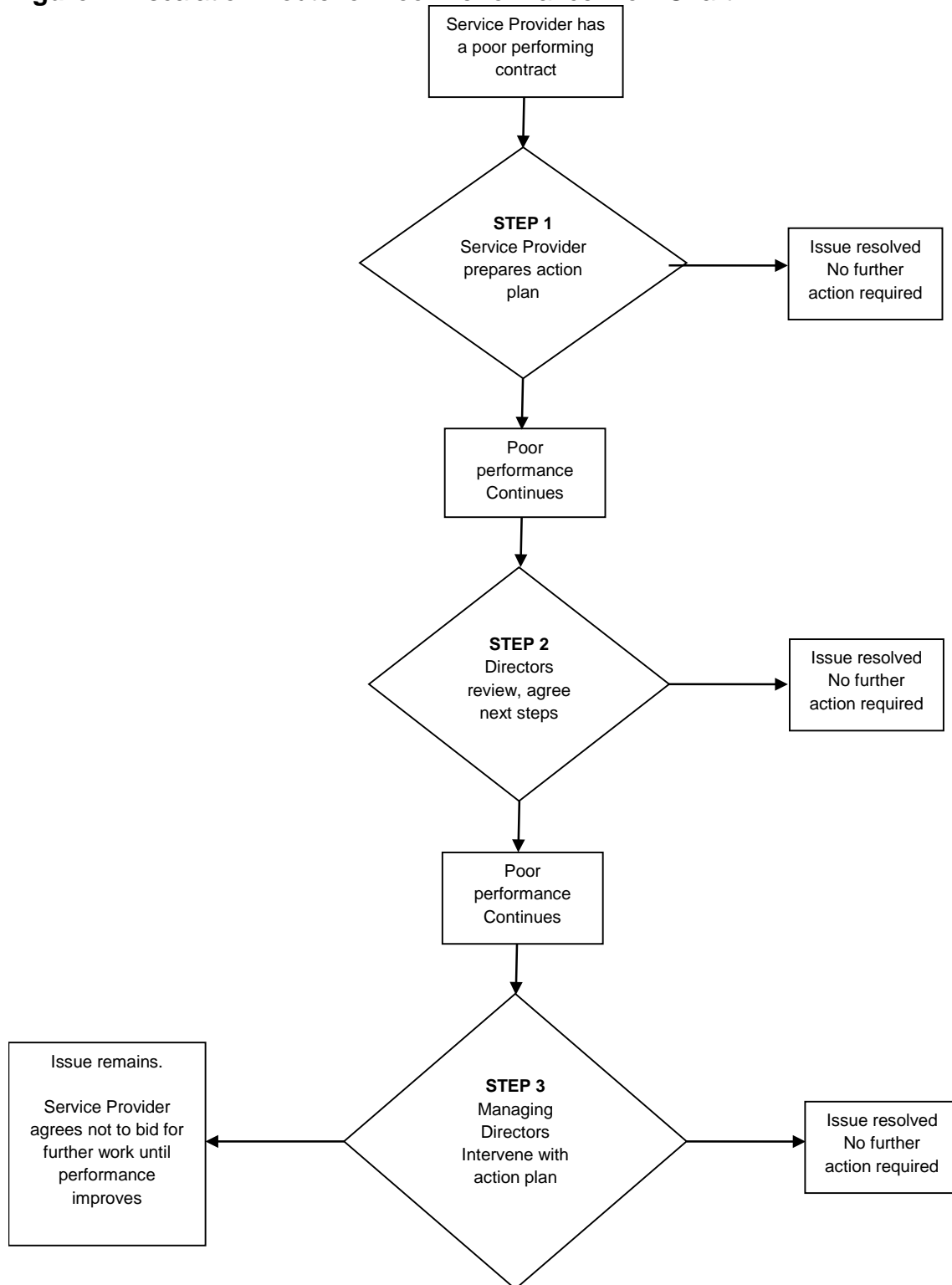
STEP 1 – The Service Provider will commit to resolving poor performance for forming an action plan in collaboration with TfL to be implemented at an agreed date between both parties

STEP 2 – If, by the next contract and performance review meeting, the Service Provider is still under performing, this will be escalated to the sponsors/directors for the Service Provider's organisation to agree next steps

STEP 3 – If the mitigation plan is unsuccessful, TfL's Managing Director and the Service Provider's business owner or most senior management will intervene to meet with the Contract Manager to discuss and agree how to resolve the poor performance.

STEP 4 – If all previous steps have failed, then TfL will terminate the Contract, in accordance with the Contract Terms and Conditions

**Figure 1: Escalation Route for Poor Performance Flow Chart**




#### SCHEDULE 4 - RATES

Benchmarking Exercises	Cost Total
Executive Committee Report (Managing Director & Commissioner)	
Director Report	
Attendance to 1x 1hr RemCom Session (attended by Lead Consultant)	
Cost to prepare for RemCom	
<b>Total Annual Cost</b>	

Ad-Hoc Benchmarking Exercises	Cost per Benchmark
Commissioner	
Managing Director	
Director	
Senior Manager (TfL Bands 5 & 4)	
Middle Manager (TfL Band 3)	
Support Manager (TfL Band 2)	



Admin, Support etc. (TfL Band 1)	
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## SCHEDULE 5

## SCHEDULE 5A - REQUEST FORM (IDENTIFIED SERVICE PROVIDER)

**Framework Number:**

Request Form Number:

**To:**

**Address:**

**From:**

**Date:**

This is a Request Form for the provision of Services 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 Authority; however such acceptance will not occur unless and until the Authority posts notice of acceptance to you.

Attachment 1 of this Request Form sets out the Services required by the Authority and other relevant information.

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

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

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. Any queries regarding the Agreement should be directed to the Procurement Manager named in the Agreement.

Signed: \_\_\_\_\_  
for and on behalf of the Authority

**Attachments:** Attachment 1: Services to be provided and other relevant information

Attachment 2: Service Provider's Proposal

Attachment 3: Special Conditions for Call-Off

Draft Call-Off Contract

**Framework Number:**  
**Call-Off Contract Number:**

**BETWEEN:**

- RECITALS:**

- THE PARTIES AGREE THAT:**

1.1 The terms and conditions of the Agreement shall be incorporated into this Call-Off Contract.

1.2 In this Call-Off Contract the words and expressions defined in the Agreement shall, except where the context requires otherwise, have the meanings given

in the Agreement. In this Call-Off Contract references to Attachments are, unless otherwise provided, references to attachments of this Call-Off Contract.

## **2. SERVICES**

- 2.1 The Services to be performed by the Service Provider pursuant to this Call-Off Contract are set out in Attachment 1.
- 2.2 The Service Provider acknowledges that it has been supplied with sufficient information about 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 Service Provider shall neither be entitled to any additional payment nor excused from any obligation or liability under this Call-Off Contract or the Agreement due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Services to be provided. The Service Provider 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.
- 2.3 The timetable for any Services to be provided by the Service Provider and the corresponding Milestones (if any) and Project Plan (if any) are set out in Attachment 1. The Service Provider must provide the Services in respect of this Call-Off Contract in accordance with such timing and the Service Provider must pay liquidated damages in accordance with the Agreement of such an amount as may be specified in Attachment 1. The Service Provider shall be liable for the ongoing costs of providing Services in order to meet a Milestone.
- 2.4 The Service Provider acknowledges and agrees that as at the commencement date of this Call-Off Contract it does not have an interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services provided to the Authority under this Call-Off Contract.

## **3. CALL-OFF TERM**

This Call-Off Contract commences on the date of this Call-Off Contract or such other date as may be specified in Attachment 1 and subject to Clause 4.2 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.

## **4. CHARGES**

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

## **5. CALL-OFF CO-ORDINATOR AND KEY PERSONNEL**

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

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

### **SIGNED**

For and on behalf of the [*Authority*]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### **SIGNED**

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

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Attachment 1**

[To be completed by the Authority]

### **1. Services to be provided**

### **2. Timetable**

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

Call-Off Term:

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

### **3. Liquidated Damages**

Amount of liquidated damages per day (if any):

### **4. Expenses**

Expenses (if any) that the Service Provider may claim:

### **5. Authority Account Details**

Relevant account code and cost centre:

### **6. Address for Invoices**

Address where invoices shall be sent:     [Authority]  
Accounts Payable  
[PO Box]  
London  
[Postcode]

Electronic format required (if any) for submission of orders by the Authority and of invoices by the Service Provider:

Date/Period for submission of Invoices: *[Insert time or period for the submission of invoices by the Service Provider in accordance with Clause 7.1 of the Agreement]*

**7. Authority Call-Off Co-ordinator**

Name:  
Address:  
Phone:  
Fax:  
Email:

**8. Availability of Key Personnel**

The Service Provider's Key Personnel shall be available at the following period of notice:

**9. Other information or conditions**

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



## **Attachment 2**

[To be completed by the Service Provider]

### **1. Charges**

Charges to be specified on a time and materials or fixed fee basis. If time and materials fee, also specify maximum price for provision of the Services.

### **2. Key Personnel**

The Service Provider's Key Personnel (include grades and areas of responsibility):

### **3. Proposed sub-contractors (if any)**

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

### **4. Proposed completion date**

**[COMPLETE ONLY IF DIFFERENT FROM DURATION/EXPIRY DATE STATED IN ATTACHMENT 1]**

### **Attachment 3**

#### **Special Conditions for Call-Off**

## SCHEDULE 7 - FORM FOR VARIATION

### PART A

Agreement Parties: *[to be inserted]*

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

Variation Number: *[to be inserted]*

Authority Contact Telephone: *[to be inserted]*

Fax: *[to be inserted]*

Date: *[to be inserted]*

### AUTHORITY FOR VARIATION TO AGREEMENT (AVC)

Pursuant to Clause 34 of this Agreement, authority is given for the variation to the Services and the Charges as detailed below. The duplicate copy of this form must be signed by or on behalf of the Service Provider and returned to the Call-Off Co-ordinator as an acceptance by the Service Provider of the variation shown below.

DETAILS OF VARIATION	AMOUNT (£)
ALLOWANCE TO THE AUTHORITY	
EXTRA COST TO THE AUTHORITY	
TOTAL	

.....  
For the Authority

<b>ACCEPTANCE BY THE SERVICE PROVIDER</b>	
<b>Date</b>	<b>Signed</b>

## **PART B – SUPPLY CHAIN FINANCE OPTION RELATED VARIATIONS**

1. The Authority is developing a scheme and system whereby the Service Provider may be permitted, at the Authority's sole discretion, to seek payment of invoices in respect of Charges under this Contract within a time period less than the 30 days of receipt set out Clause 7.4.1 in consideration for a reduction in the Charges due thereunder (the "**Supply Chain Finance Option**").
2. The Service Provider hereby agrees that where such requests are made by the Service Provider and approved by the Authority, by way of such process and/or systems put in place by the Authority acting either on its own behalf or by or via its employees, agents, contractors or otherwise such request, approval and resulting accelerated and reduced payment shall constitute the Service Provider's exercise of the Supply Chain Finance Option and the valid and legally binding:
  - 2.1 variation by the Parties of the related Charges due and payable to the Service Provider under this Contract; and
  - 2.2 waiver by the Service Provider of any right held previously by it to invoice for and be paid the amount by which the Charges are reduced pursuant to its exercise of the Supply Chain Finance Option.

**SCHEDULE 8 – CONTRACT QUALITY, ENVIRONMENTAL & SAFETY  
CONSIDERATIONS**

NOT USED.

## **SCHEDULE 9 – RE-TENDER COOPERATION**

NOT USED.

## SCHEDULE 10 – AON DATA PROTECTION SCHEDULE

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Data Protection Schedule the following terms shall have the following meanings:

**"Agreement Personal Data"** means any personal data (including any sensitive or special categories of data) that is processed under or in connection with this Agreement.

**"Business Day"** means a day except Saturdays and Sundays and public holidays in England and Wales (or where relevant Scotland).

**"DP Laws"** means any applicable data protection laws relating to the protection of individuals with regards to the processing of personal data including (i) EU Data Protection Directive 95/46/EC (**"DP Directive"**) as implemented by EU member states, (ii) the General Data Protection Regulation (EU) 2016/679 (**"GDPR"**), (iii) laws implemented by EU member states which contain derogations from, or exemptions or authorisations for the purposes of, the GDPR, or which are otherwise intended to supplement the GDPR, (iv) Directive 2002/58/EC (**"ePrivacy Directive"**) as implemented by EU member states or in the UK (as may be applicable), (v) any legislation that, replaces or converts into domestic law the GDPR and/or the ePrivacy Directive (as may be updated or replaced) or any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union; and/or (vi) any corresponding or equivalent national laws or regulations including any amendment, update, modification to or re-enactment of such laws.

**"EEA"** means the European Economic Area.

**"EU Standard Contractual Clauses"** means either: (i) the standard contractual clauses for the transfer of personal data to controllers established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C(2004)5721; or (ii) the standard contractual clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C(2010) 593, in each case as updated, amended, replaced or superseded from time to time by the European Commission.

**"Personal Data Breach"** means any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Agreement Personal Data processed under this Agreement.

**"Supervisory Authority"** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering DP Laws.



The terms "**controller**", "**data subject**", "**personal data**", "**processing**", "**processor**", "**sensitive personal data**" and "**special categories of data**" shall have the same meanings ascribed to them under either the DP Directive, or the GDPR as applicable.

1.2 Capitalised terms not defined in paragraph 1.1 shall have the meaning ascribed to them elsewhere in this Agreement.

1.3 To the extent that the terms contained in this Data Protection Schedule conflict or are inconsistent with those terms relating to the same subject matter contained elsewhere in this Agreement, the terms contained in this Data Protection Schedule shall prevail.

## **2. DATA PROTECTION OBLIGATIONS**

2.1 The Parties envisage that under the terms of this Data Protection Schedule each Party is a separate controller in respect of the Agreement Personal Data processed pursuant to the Services which Aon provides to Client under this Agreement and shall independently determine the purposes and means of such processing.

2.2 Each Party acknowledges and confirms that they will observe all applicable requirements of DP Laws and these terms in relation to its processing of the Agreement Personal Data, and will, on request, provide the other at its own expense (unless otherwise stated below) with reasonable assistance, information and cooperation to ensure compliance with the respective obligations under DP Laws in relation to the Agreement Personal Data.

2.3 Client acknowledges and understands that Aon gathers data (including personal data) from Client for: (i) the delivery of the Services; (ii) the management of Aon's relationship with Client, including the marketing of products or services to Client which may be of interest to Client, invoicing, the settlement of disputes and associated business administration; and (iii) the development of the Group's products and services (for example conducting benchmarking, market research, data analysis), for the purposes of which Aon shall process aggregated, de-identified data, and shall not publish externally or otherwise disclose any information which derives from Client-originating data which would identify an underlying data subject or Client without Client's prior consent.

2.4 Client acknowledges and understands that Aon shall act as a controller of any personal data which is processed pursuant to paragraph 2.3 and shall comply with DP Laws in respect of such processing.

2.5 In providing the Services, each Party acknowledges, confirms and represents for its own part that, as a controller of any Agreement Personal Data:

- (a) all personal data collected or sourced by it or on its behalf for processing in connection with the Services and the performance of this Agreement or which is otherwise provided or made available to the other Party shall comply with and have been collected or otherwise obtained in compliance with DP Laws; and
- (b) all instructions given in respect of this Agreement Personal Data shall be in

accordance with DP Laws.

- 2.6 The Parties will work together in good faith to ensure the information referred to in DP Laws including GDPR Articles 13 and 14 is made available to relevant data subjects in relation to the processing by either Party when acting as a controller (which may include the provision by Client to data subjects, on behalf of Aon, of information relating to Aon's processing activities), and the information is in a concise, transparent, intelligible and easily accessible form, using clear and plain language as required by DP Laws including GDPR Article 12.
- 2.7 If either Party (the "**Data Receiving Party**") receives any complaint, notice or communication from a Supervisory Authority which relates directly or indirectly to the other Party's: (i) processing of the Agreement Personal Data; or (ii) a potential failure to comply with DP Laws, the Data Receiving Party shall, to the extent permitted by law, promptly forward the complaint, notice or communication to the other Party and provide the other Party with reasonable co-operation and assistance in relation to the same.
- 2.8 If a data subject makes a written request to a Party to exercise their rights in relation to the Agreement Personal Data that concerns processing in respect of which another Party is the controller, that Party shall forward the request to the other Party promptly and in any event within five (5) Business Days from the date on which it received the request and, upon the other Party's reasonable written request, provide that other Party with reasonable co-operation and assistance in relation to that request to enable the other to respond to such request and meet applicable timescales set out under DP Laws.
- 2.9 Each Party shall implement appropriate technical and organisational security measures in relation to the processing of the Agreement Personal Data, which shall ensure a level of security appropriate to the risk including, as appropriate, (a) pseudonymisation and encryption; (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (c) the ability to restore the availability and access to the Agreement Personal Data in a timely manner in the event of a physical or technical incident; and (d) a process for regularly testing, assessing and evaluating the effectiveness of those measures.
- 2.10 If either Party becomes aware of a Personal Data Breach involving Agreement Personal Data, it shall notify the other Party without undue delay, and each Party shall co-operate with the other, to the extent reasonably requested, in relation to any notifications to Supervisory Authorities or to data subjects which either Party is required to make under DP Laws.
- 2.11 Due to the global nature of services provided by Aon, data may be transmitted, used, stored and otherwise processed outside of the country in which it was submitted. The Parties acknowledge that Aon may transfer and otherwise process or have transferred or otherwise processed Agreement Personal Data outside the United Kingdom and

EEA **provided that** such transfer is made in compliance with DP Laws, including, if applicable, EU Standard Contractual Clauses, certification under the EU-US Privacy Shield, or such other international transfer mechanism approved under DP Laws.