

Dated:

2016

- (1) Transport Trading Limited
- (2) Barclays Bank PLC trading as Barclaycard Payment Acceptance

Contract Reference Number TFL 91639

Merchant Acquisition Services Agreement

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THIS AGREEMENT is made on

2016

BETWEEN

- (1) **Transport Trading Limited** a company registered in England and Wales under number 03914810 whose registered office is at 42-50 Victoria Street, London SW1H 0TL ("**TTL**"); and
- (2) **Barclays Bank PLC trading as Barclaycard Payment Acceptance** a company registered in England and Wales under number 1026167 whose registered office is at One Churchill Place, London, E14 5HP (the "**Service Provider**").

BACKGROUND

- (A) TTL requires the provision of card payment acquisition services and, following a tender process, has agreed with the Service Provider that the Service Provider will provide such services.
- (B) TTL wishes to appoint the Service Provider to provide card payment acquisition services to:
 - (i) TTL; and
 - (ii) certain Affiliates of TTL,to facilitate Card Transactions for TTL and such Affiliates.
- (C) This Agreement sets out the terms on which the Merchant will accept Cards as a means of payment and on which Card Transactions will be presented to and authorised and settled by the Service Provider.

OPERATIVE PROVISIONS

1. **DEFINITIONS AND INTERPRETATION**

In this Agreement (including the Recitals):

- 1.1 unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Affected Party"	shall have the meaning given to it in the definition of " Force Majeure Event ";
"Affiliate"	in relation to a Party any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with that Party or a person acting on behalf of that Party or entity from time to time;
"Agreement"	this Agreement, including the Schedules, the Operational Guide and any other documents referred to herein;
"All Other Fraud"	any fraud not falling into the definitions of Lost and Stolen Cards, Not Received Fraud or Counterfeit Fraud including, without limitation, Card Not Present Transaction fraud, fraudulent applications for Cards and account takeover;
"Associated Company"	the Affiliates of TTL which are deemed to be " Associated Companies " in accordance with Clause 2.3;
"Assurance"	the process referred to in Schedule 14 (Assurance), by which the Service Provider ensures that the Merchant gains the necessary levels of confidence that the Service Provider is complying with its obligations under this Agreement and, in particular, in relation to the delivery of the Merchant Services, and " Assure " and " Assured " shall be construed accordingly;
"Assurance Event"	an event whose purpose is to Assure the Merchant as to the relevant status of activities being undertaken by the Service

	Provider pursuant to this Agreement;
"Attended Transaction"	any Card Transaction made between a Purchaser and the Merchant, with the Purchaser, the Card and the Merchant's authorised representative being physically present at the conclusion of the Card Transaction;
"Authority to Proceed"	a notice issued by the Merchant pursuant to paragraph 5.2 of Schedule 9 (Form of Variation);
"Business Day"	any day excluding Saturdays, Sundays or public or bank holidays in England;
"Card"	(a) any valid financial services card (including any debit or credit card); or (b) such other devices and tokens which a Cardholder can use to charge Card Transactions to a Card Account as may be agreed between the Service Provider and the Merchant from time to time;
"Card Account"	the account of a Cardholder with an Issuer;
"Cardholder"	an individual for whose use a Card has been issued at any time and who is authorised to use it;
"Cardholder Data"	any information that is necessary to process Card Transactions correctly including any information which is recorded on any Card including without limitation: (a) any information that is used to authenticate a Card Transaction including the Card number, expiry date, issue number, passwords, pass phrases and any other unique data supplied as part of the Card Transaction; and (b) any information that could identify individual Cardholders and their purchases. This includes name, address, purchase description, amount and other details of the Card Transaction;
"Card Not Present Transaction" or "CNP"	any Card Transaction concluded by telephone, mail order or over the internet. For the avoidance of doubt, Contactless Ticketing transactions are not Card Not Present Transactions;
"Card Present Transactions"	all Attended Transactions and Unattended Transactions (including Contactless Ticketing transactions);
"Card Refund"	any refund given in respect of a Card Transaction for credit to the Cardholder's Card Account;
"Card Refund Data"	details which must be collected and recorded for a Card Refund to be processed by the Merchant in a format set out in Schedule 5 (Operational Guide) as formally varied in accordance with Clause 29 or otherwise in a form approved by the Service Provider;
"Card Scheme Rules"	the business rules issued by the Card Schemes that govern the issue of Cards and the processing, clearing and settlement of Card Transactions;
"Card Schemes"	any or all of the card schemes listed at Schedule 13 (Card Schemes);
"Card Transaction"	a transaction under which a payment is or is to be made or obtained by the use of a Card or a Card number by the Cardholder or a Purchaser or in any manner authorised by the Cardholder for debit to the Cardholder's Card Account and credit to the Merchant's account;
"Card Transaction Data"	details of a Card Transaction in a form approved by the Service Provider;

"CE" or "Customer Experience"	TFL's Customer Experience Directorate or its equivalent from time to time;
"CE Systems Portfolio"	the group of systems, which Customer Experience controls and manages;
"CEDR"	means the Centre for Effective Dispute Resolution;
"Cessation Plan"	a plan agreed between the Parties or determined by the Merchant pursuant to Clause 53.3 in the event of a Declaration of Ineffectiveness or Clause 53.9 to give effect to a Public Procurement Termination Event;
"Change"	any piece of work that changes, affects or reconfigures any aspect of the Interfaces, the Contract System and/or the Merchant Services;
"Chargeback"	shall have the meaning given to it in Clause 13.1;
"Charges"	the charges payable by the Merchant to the Service Provider in accordance with the terms of this Agreement, as set out in Schedule 5 (Charges and Payment);
"Chip & PIN Capable"	that the Point of Sale Equipment or Merchant Equipment: <ul style="list-style-type: none"> (a) is fully installed, tested, accredited and operational; (b) complies with the EMV Approved Specification; and (c) complies and is maintained, upgraded and used in accordance with the: <ul style="list-style-type: none"> (i) Service Provider's minimum Point of Sale Equipment requirements made available to the Merchant from time to time; and (ii) recommendations and guidelines issued by EMVCo, LLC;
"Chip & PIN Enabled Card"	any Card that contains an integrated circuit which can store and process information and that contains a PIN (personal identification number) which in combination with the Card can be used to verify the identity of a Cardholder;
"Chip & PIN Programme"	the UK programme to convert each credit/debit card to a chip card (a card which contains an integrated circuit, which can store and process information) containing a PIN (personal identification number) which in combination with a chip card can be used to verify the identity of the cardholder at a point of sale or a customer activated terminal;
"Chip Card Not PIN Enabled"	any Card that contains an integrated circuit which can store and process information without PIN (personal identification number) functionality;
"Confidential Information"	all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Merchant (or any member of the Merchant Group) whether commercial, financial, technical or otherwise, and including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Merchant Group;
"Contactless Card"	a Card with Contactless Functionality;
"Contactless Functionality"	the functionality which enables a Card to be used by presenting, waving or tapping it against a suitable terminal to transmit the Cardholder's account information using induction or high-frequency transmission through a radio frequency (RF) interface for the purpose of making a payment for goods or services, without the need to establish a direct contact between the Card and the terminal;

“Contactless Ticketing”	the use of an EMV Contactless Card for travel on public transport by interacting directly with a suitable terminal on passing through the access gates or validators at a station or on boarding or leaving a vehicle, either as evidence of a pre-purchased right to make the journey or to pay the fare for the journey. For the avoidance of doubt, Contactless Ticketing excludes Oyster;
“Contactless Transactions”	any Card Transaction effected via Contactless Functionality;
“Contract Commencement Date”	the date for commencement of this Agreement specified in Schedule 1 (Key Contract Information);
“Contract Information”	(a) this Agreement in its entirety (including from time to time agreed changes to this Agreement); and (b) data extracted from the invoices submitted pursuant to Schedule 6 (Terms of Payment) which shall consist of the Service Provider’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;
“Contract Manager”	the person named as such in Schedule 1 (Key Contract Information) or such other person as notified to the Service Provider by the Merchant;
“Contract System”	the system, and each part thereof from time to time, which is used by the Service Provider to provide the Merchant Services and otherwise in connection with its performance of this Agreement;
“Contract Year”	the period of 12 months starting on the Contract Commencement Date, each successive period of 12 months during the term of this Agreement and the period (if any) starting on the day following expiry of the last such period of 12 months and ending on the Expiry Date;
“Control”	that a person possesses directly or indirectly the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting shares, by security, by contract or otherwise and “Controls” and “Controlled” will be interpreted accordingly;
“Corrective Action Notice”	a notice issued by the Merchant pursuant to Clause 22 (Corrective Action Notices);
“COTS Product”	a commercial off-the-shelf product used by the Service Provider in the performance of the Merchant Services and available for purchase by the general public including by the Merchant, any member of the Merchant Group and any Successor Operator(s);
“Counterfeit Fraud”	where the magnetic stripe, chip and PIN facility or Contactless Functionality on a Card has been counterfeited, cloned or otherwise interfered with, with the objective of defrauding banks and businesses;
“Customer Authentication”	the processing of a Card Not Present Transaction via the internet using either Verified by Visa or SecureCode secure payment technology;
“Cut-Off Time”	04:00 hours for the processing of successful Card Transactions and/or Card Refunds as T+1;
“Data”	data compiled, generated, collected, processed or stored during the performance of the Merchant Services (or any part thereof), including personal data and data supplied to a member of the Merchant Group and/or Third Parties in connection with the Merchant Services or this Agreement;

"Data Compromise"	any loss, theft or unauthorised access by any Third Party of any Cardholder Data held by the Merchant, its sub-contractors or agents (but excluding the Service Provider);
"Declaration of Ineffectiveness"	a declaration made by a court under regulation 45J which has any of the consequences described in regulation 45M of the Utilities Contracts Regulations 2006 SI 2006/6 (the " UCR ") as amended from time to time or which is made under an equivalent provision in the regulations implementing Directive 2014/25/EU in England, Wales & Northern Ireland and which has consequences which are similar to any of the consequences described in regulation 45M of the UCR;
"Directive"	Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on the regulation of payment services within the European Economic Area;
"Disaster Recovery Plan"	means the disaster recovery plan to be produced by the Service Provider pursuant to Clause 10;
"Dispute"	shall have the meaning given in Clause 48.1;
"Dispute Resolution Procedure"	the procedure detailed in Clause 48;
"Document"	operating manuals, program listings, data models, flowcharts, logic diagrams, input and output forms, instructions, technical literature (including, drawings, designs, blue prints, schematics and plans), equipment and component inventories, source codes, functional specifications, testing specifications, performance specifications, physical specifications, interface specifications, written processes and procedures, all documents required under this Agreement and all other related materials in eye-readable or electronic form and complete or partial copies of the foregoing (and " Documentation " shall be interpreted accordingly);
"Employment Costs"	means all salaries, wages, commissions, bonuses, holiday pay (including payment for accrued but untaken holiday), sick pay, national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE and all other emoluments);
"Employment Liabilities"	means all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, awards, compensation, claims, demands, proceedings and legal costs (on a full indemnity basis);
"EMV"	means the global technical standard established by EMVCo LLC for credit and debit payment cards based on chip card technology;
"EMV Approved Specification"	the latest EMVCo LLC approved specification in respect of Chip & PIN Enabled Cards;
"EMVCo LLC"	the limited liability company, incorporated in the state of Delaware, USA whose primary role in respect of the UK card issuing industry is to manage the standards for Chip & PIN Enabled Cards and whose website can be viewed at: http://www.emvco.com/ ;
"EMV Device with no PIN pad"	means a device which may accept payment with either a Chip Card Not PIN Enabled or a Magnetic Stripe Card;
"EMV Device with PIN pad"	a device which may accept payment with any Chip & PIN Enabled Card, Chip Card Not PIN Enabled or Magnetic Stripe Card;
"End Date"	the date on which the Service Provider ceases to be responsible for the provision of a particular Merchant Service pursuant to the provisions of this Agreement which shall be:

	(a)	the end of the Initial Term or, where applicable, of any Extension Year(s) added in accordance with Clause 3 (Commencement and Duration), or any earlier effective date of termination in accordance with any notice to terminate under Clause 30; or if later
	(b)	the end of the period during which any of the activities required under Schedule 11 (Handback of Merchant Services) and/or the Handback Plan are or are to be carried out in relation to that Merchant Service;
"Excessive Chargeback Merchant"		means that the Merchant exceeds any excessive Chargeback threshold set by a Card Scheme;
"Excessive Fraud Merchant"		means that the Merchant exceeds any excessive fraudulent transaction threshold set by a Card Scheme;
"Expiry Date"		the date of the final End Date under this Agreement;
"Extension Years"		shall have the meaning given in Clause 3.2;
"Final Staff List"		has the meaning set out in paragraph 1.4 of Appendix 1 to Schedule 11 (Handback of Merchant Services);
"Floor Limit"		the total value of Card Transaction purchases that the Merchant may allow a Cardholder to make on any one occasion (or as otherwise agreed in relation to Contactless Ticketing) without the Merchant being obliged to obtain the Service Provider's authorisation. The Floor Limit at the Contract Commencement Date is £0 (other than in relation to Contactless Ticketing where the floor limit at the Contract Commencement Date is £30 and thereafter as may adjusted in conjunction with the Card Schemes from time to time);
"FOI Legislation"		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 of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
"Force Majeure Event"		any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (" Affected Party ") to perform its obligations in accordance with the terms of this Agreement 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;
"Fraudulent Transaction"		any Card Transaction involving any or all of Counterfeit Fraud, Lost and Stolen Cards, Not Received Fraud and/or All Other Fraud as the context so requires, as may be updated by the Card Schemes from time to time;
"Further Transfer Date"		means the date on which the Merchant Services (or any part of them) cease to be provided by the Service Provider and start to be performed by the Merchant or any Successor Operator when the transfer of employment of the Re-Transferring Personnel from the Service Provider to the Merchant or any Successor Operator occurs;
"Handback Period"		the period from the earlier of: <ul style="list-style-type: none"> (a) the end of the Initial Term or, where applicable, of any

	Extension Year(s) added in accordance with Clause 3 (Commencement and Duration); and
	(b) the date on which any notice to terminate this Agreement pursuant to Clause 30 (Termination) takes effect, until the Expiry Date;
"Handback Plan"	the plan for the orderly handover of the Merchant Services to the Merchant, its nominee or a Successor Operator which is to be developed by the Parties pursuant to Schedule 11 (Handback of Merchant Services);
"Handback Programme"	shall have the meaning given in paragraph 2.2 of Schedule 11 (Handback of Merchant Services);
"Handback Status Report"	shall have the meaning given in paragraph 4.1.1 of Schedule 11 (Handback of Merchant Services);
"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;
"Incident"	a system or service or part thereof not fulfilling all of the requirements of this Agreement including those set out in Schedule 4 (Service Scope Specification);
"Information"	information recorded in any form held by the Merchant or by the Service Provider on behalf of the Merchant;
"Information Access Request"	a request for any Information under the FOI Legislation;
"Initial Term"	shall have the meaning given in Clause 3.1;
"Innocent Party"	shall have the meaning given in Clause 30.6;
"Insolvency Event"	any of the following: <ul style="list-style-type: none"> (a) either or both of the Service Provider or a Holding Company making any voluntary arrangement with its creditors or having an administration order or an application for an administration order made in respect of it; (b) a receiver or a provisional liquidator being appointed over any of the assets, undertaking or income of either or both of the Service Provider or a Holding Company; (c) either or both of the Service Provider or a Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency); (d) either or both of the Service Provider or a Holding Company ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts as they fall due; or (e) any similar event to those in (a) to (d) above occurring in relation to either or both of the Service Provider or a Holding Company under the law of any applicable jurisdiction for those purposes;
"Intellectual Property Rights" or "IPR"	any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, in each case whether registered or unregistered

	and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
"Interface(s)"	any interfaces, protocols, processes, procedures or methods which provide access, functionality, communications (fixed or wireless), interactions, inputs, or outputs, or which otherwise allow Data to be sent and/or received, in each case as may be required from time to time to deliver the Contract System, and the Merchant Services or systems or services interfacing, inter-operating or integrating with the Contract System;
"Interfacing Party"	any person that is not the Service Provider or a Sub-Contractor of the Service Provider, in respect of which an Interface is established or is to be established with the Contract System or the Merchant Services;
"Internet Transaction"	a Card Transaction where the Card Transaction Data is provided to the Merchant over the internet using a terminal, personal computer or other device;
"Issuer"	a party issuing a Card based on any of the Card Schemes or in accordance with the rules issued by any of the Cards Schemes;
"Key Personnel"	the Service Provider Contract Manager, the Service Provider Incident Manager and such other Service Provider Personnel who the Parties may agree to designate as Key Personnel from time to time as detailed in Schedule 1 (Key Contract Information);
"Liability Shift Table"	the table set out in Schedule 12 (Liability Shift Table) identifying which party is at risk where there is a Fraudulent Transaction;
"Losses"	all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;
"Loss of Income"	loss of income and/or revenue (including actual and anticipated income and/or revenue);
"Lost and Stolen Cards"	where a Cardholder is no longer in possession of a Card and that Card is being used unlawfully or dishonestly to make card purchases or card payments by a person other than the Cardholder;
"Maestro Cardholder"	the person entitled to use the Maestro Card;
"Maestro Card Payment"	a payment for goods or services provided by the Merchant or supply of cash by the Merchant which the Maestro Cardholder has authorised the Merchant to charge to his or her Maestro account. The Maestro Cardholder may authorise the Merchant by using a Maestro Card or Maestro Card number or in some other way;
"Maestro Electronic Commerce Payment"	a Maestro Card Payment where a Maestro Cardholder provides the Maestro Payment Details over the internet using a terminal, personal computer or other electronic device;
"Maestro Payment Details"	details of a Maestro Card Payment. These must be in a form which the Service Provider has approved;
"Magnetic Stripe Card"	any Card which is not a Chip & PIN Enabled Card or a Chip Card Not PIN Enabled;
"Magnetic Stripe Reader"	a device which may accept payment only with a Magnetic Stripe Card;

"Major Incident"	those Incidents listed in Appendix 3 to Schedule 8 (Service Management) as the same may be updated from time to time by the Parties in accordance with this Agreement;
"Major Incident Plan"	the plan to be provided, updated and implemented by the Service Provider in accordance with Schedule 8 (Service Management) and, in particular, paragraphs 9.4 and 9.5 of Schedule 8 (Service Management);
"Merchant"	TfL or each Associated Company as applicable;
"Merchant Assets"	any assets (whether tangible or intangible), materials (including consumables), resources, systems, networks, connectivity and other equipment, machinery and facilities owned by or licensed to the Merchant or any member of the Merchant Group;
"Merchant Equipment"	any equipment provided by a supplier other than the Service Provider for the purposes of facilitating Attended Transactions and/or Unattended Transactions;
"Merchant Group"	TfL or 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 Merchant Group" shall refer to TfL or any such subsidiary;
"Merchant Outlet"	any retail outlet within the United Kingdom now or in the future owned or operated by the Merchant;
"Merchant Personnel"	all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Merchant, as are engaged in activity impacted by any of the Merchant Services;
"Merchant Premises"	any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the Merchant Group;
"Merchant Services"	(a) the services to be provided by the Service Provider under and in accordance with the terms of this Agreement including the use of the Contract System and as set out in Clause 7 and Schedules 4 (Service Scope Specification), 8 (Service Management) and 11 (Handback of Merchant Services); and (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from this Agreement;
"Notice"	shall have the meaning given in Clause 48.3;
"Not Received Fraud"	where a Card is intercepted after it has been issued by the Issuer to the Cardholder and before the Cardholder receives it and such Card is subsequently used dishonestly to profit or benefit from such use including use which is detrimental to banks, businesses or any Third Party;
"Operational Guide"	the Service Provider's procedure guide provided to the Merchant by the Service Provider, a copy of which is set out in Schedule 15 (Operational Guide) and as may be amended from time to time in accordance with Clause 29 of this Agreement;
"Oyster"	a pre-paid smartcard used for travel on public transport;
"Parties"	the Merchant and the Service Provider (including their successors and permitted assignees) and "Party" shall mean either of them as the case may be;
"Payment Details"	the details which must be collected and recorded for a Card Transaction in a format set out in Schedule 15 (Operational

	Guide) as formally varied in accordance with Clause 29;
"PCI DSS"	the payment card industry data security standard as stipulated by the PCI Security Standards Council from time to time;
"PCI PA-DSS"	the payment card industry payment application data security standards which apply from time to time, which are at the date of this Agreement issued by PCI SSC, or any standards which replace those standards;
"PCI PTS"	the payment card industry PIN transaction security standards which apply from time to time, which are at the date of this Agreement issued by PCI SSC, or any standards which replace those standards;
"PCI SSC"	the Payment Card Industry Security Standards Council LLC, whose main role is to develop, manage, educate and promote awareness of the PCI data security standards within the card issuing industry, including publication of the PCI DSS, PCI PA-DSS and PCI PTS, or any successor to the council;
"Personal Data"	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
"Point of Sale Equipment" or "POS"	the hardware, firmware, equipment, software and other electronic computer and telecommunications devices and equipment which is supplied by the Service Provider and which is (i) capable of accepting Contactless Transactions and (ii) Chip & PIN Capable in respect of Attended Transactions at the time of installation supplied by the Service Provider and used by the Merchant or any employee, agent, contractor or officer of the Merchant or any other legal or natural person engaged, employed or assigned by the Merchant to process any Attended Transaction or Unattended Transaction;
"POS Priority Merchants"	means Victoria Coach Station, all TfL Visitor Information Centres, TfL's Lost Property Office and the London Transport Museum;
"Private Transport Operators"	entities providing transport services which serve London (including train operating companies) and who share TfL's smartcard infrastructure;
"Process"	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
"Procurement Regulations"	a reference to the Procurement Regulations in Clause 53 shall be interpreted in a manner which is consistent with a decision of a court that the Utilities Contracts Regulations 2006 SI 2006/6 (as amended from time to time), or the regulations implementing Directive 2014/25/EU in England, Wales & Northern Ireland (as amended from time to time), apply to this Agreement;
"Proposed Variation"	a Variation issued by the Merchant where the preparation and agreement of the Service Provider's proposal occurs prior to the implementation of the Variation;
"Proposed Variation Notice"	shall have the meaning given to it in Schedule 9 (Form of Variation);
"PSR"	the Payment Services Regulations 2009 (SI 2009/209) which implements the Directive in the United Kingdom;
"Public Procurement Termination Event"	the Merchant exercises its right to terminate this Agreement in one or more of the circumstances described in the regulations implementing Directive 2014/25/EU in England, Wales & Northern Ireland (as amended from time to time) and which has circumstances similar to any of the circumstances described in Article 90 of the Directive 2014/25/EU;

"Purchaser"	any person using a Card or the details of a Card to conclude a Card Transaction, whether or not the Cardholder;
"Qualified Security Assessor"	a Card Scheme approved qualified security assessor as described in the PCI DSS;
"Records"	shall have the meaning given in Clause 47.1.1;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Merchant Group and "Regulatory Body" shall be construed accordingly;
"Relevant Period"	means the period starting on the earlier of: <ul style="list-style-type: none"> (a) the date falling 6 calendar months before the date of expiry of this Agreement; or (b) if this Agreement is terminated by either Party, the date of the relevant termination notice, and ending on the Further Transfer Date;
"Relevant Protected Characteristic"	shall have the meaning given in Clause 50.1.4;
"Relevant Tax"	any value added tax or any other similar tax or duty;
"Required Variation"	a Variation issued by the Merchant where the Service Provider is required to proceed with the implementation of the Variation in parallel to the preparation and agreement of a Service Provider's proposal in respect of that Variation;
"Required Variation Notice"	shall have the meaning given to it in Schedule 9 (Form of Variation);
"Required Variation Settlement Notice"	a notice issued by the Merchant pursuant to paragraph 5.4.1 of Schedule 90 (Form of Variation);
"Retention Period"	shall have the meaning given in Clause 47.1.2;
"Re-Transferring Personnel"	means any Service Provider Personnel who are assigned (for the purposes of TUPE) to the relevant Merchant Services immediately before the Further Transfer Date and whose employment contract will transfer to the Merchant or the Successor Operator pursuant to TUPE with effect from the Further Transfer Date;
"Retrieval Requests"	requests which takes place when an Issuer contacts the Merchant, through the Service Provider, to obtain information about a Card Transaction charged to one of its Cardholders;
"SecureCode"	a MasterCard approved authorisation product designed to allow Maestro to authenticate individual Maestro Electronic Commerce Payments for Maestro Cards;
"Senior Personnel"	shall have the meaning given in Clause 48.2;
"Service Commencement Date"	the date for commencement of the first of the Merchant Services or first phase of the Merchant Services (as the case may be) as set out in Schedule 1 (Key Contract Information);
"Service Levels"	shall have the meaning given in Clause 8.1;
"Service Provider Contract Manager"	means the person nominated in accordance with Clause 19.3 or as otherwise notified to the Merchant by the Service Provider in accordance with Clause 20.5 (or his or her nominated representative). This role is designated as Key Personnel;
"Service Provider Incident Manager"	means the person nominated in accordance with Clause 19.5 or as otherwise notified to the Merchant by the Service Provider in

	accordance with Clause 20.5 (or his or her nominated representative). This role is designated as Key Personnel;
"Service Provider Personnel"	all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Service Provider, as are engaged in the performance of any of the Merchant Services and including the Key Personnel;
"Service Provider Response"	shall have the meaning given to it in Schedule 9 (Form of Variation);
"Service Provider's Proposal Notice"	shall have the meaning given to it in Schedule 90 (Form of Variation);
"Service Review Meeting"	has the meaning given in Schedule 8 (Service Management);
"Staffing Information"	has the meaning set out in paragraph 1 of Appendix 1 to Schedule 11 (Handback of Merchant Services);
"Staff List"	has the meaning set out in paragraph 1 of Appendix 1 to Schedule 11 (Handback of Merchant Services);
"Sub-Contractor"	means any sub-contractor to the Service Provider or a Successor Operator as the context dictates which is engaged in the provision of the Merchant Services or any part of them (or services substantially similar to the Merchant Services or part of them);
"Successor Operator(s)"	any person engaged by, or which may be engaged by, any member of the Merchant Group, in its absolute discretion, in order to provide the Merchant Services or services and/or systems which replace the Merchant Services and/or Contract System (or parts thereof), which may be the Merchant or a member of the Merchant Group where the Merchant so determines;
"Successor Plan"	shall have the meaning given in Clause 32.4.1;
"Technical Change"	means a Change, including: <ul style="list-style-type: none"> (a) software modifications and deployment; (b) hardware installation, configuration, rollout, replacement and improvement; or (c) network communications and firewall changes, BUT excludes any Change that relates solely to the Merchant Services and does not modify the Contract System;
"Terminal(s)"	the card reader terminal(s) and all ancillary equipment and accessories supplied to the Merchant by the Service Provider for submitting Card Transaction Data to the Service Provider in accordance with this Agreement, together with such consumables as are necessary to operate such terminals and including, without limitation, any Point of Sale Equipment supplied, tested and accredited in accordance with Clause 7.6;
"Term"	the period during which this Agreement continues in force as provided in Clause 3 (Commencement and Duration);
"TfL"	Transport for London, a statutory corporation established under the Greater London Authority Act 1999 (including its successors);
"TfL Equipment"	means all equipment, infrastructure, systems and consumables necessary for or used by the Merchant for accepting and processing Card Transactions, including EMV Device with no PIN pad, EMV Device with PIN pad, Magnetic Stripe Reader, Merchant Equipment, Point of Sale Equipment and Terminals with integrated bank card readers for processing Attended Transactions and unattended payment terminals (AFMs, MFMs)

and QBMs). Card Not Present Transactions and ISDN line relate to purchases on the internet and telesales, which do not form part of the **"TfL Equipment"** for the purpose of this Agreement;

"TfL Group"	TfL and its subsidiaries (as defined in section 1159 of the Companies Act 2006) or Affiliates from time to time;
"TfL Transaction(s)"	Card Transaction(s), which take place in favour of the members of the TfL Group;
"Third Party"	any person or entity which is not a Party to this Agreement, including without limitation any government body, but excluding any member of the Merchant Group;
"Transparency Commitment"	means the Merchant's commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Merchant's own published transparency commitments;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"Unattended Transaction"	any Card Transaction completed via Point of Sale Equipment or Merchant Equipment where the Purchaser and the Card, but not the authorised representative of the Merchant are physically present;
"United Kingdom"	the United Kingdom of Great Britain and Northern Ireland and includes the Channel Islands and the Isle of Man;
"Variation"	any variation to this Agreement, Contract System and/or the Merchant Services or their performance, including additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, level or line and changes in any sequence, method, manner or timing, pursuant to Schedule 9 (Form of Variation) and Varied shall be construed accordingly;
"Withdrawal Notice"	a notice issued by the Merchant pursuant to paragraph 5.4 of Schedule 9 (Form of Variation);

- 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 shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.5 headings are included in this Agreement for ease of reference only and do not affect the interpretation or construction of this Agreement;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of, and schedules to, this 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 (including the Operational Guide), the Clauses prevail, except where the conflicting part of the Schedule (including the Operational Guide) is explicitly expressed to take precedence;
- 1.8 the Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;

- 1.9 the expression "**person**" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.10 the words "**including**", "**includes**" and "**included**" will be construed without limitation unless inconsistent with the context.

2. TFL GROUP

- 2.1 The object of this Agreement is for the Service Provider to provide Merchant Services in accordance with the terms of this Agreement to each Merchant.
- 2.2 TTL acknowledges that it is entering into this Agreement to obtain the Merchant Services for its own benefit and for the benefit of the Associated Companies.
- 2.3 In the event that an Affiliate of TTL wishes to receive the Merchant Services from the Service Provider (as an Associated Company) such Affiliate must execute a letter of adherence to the terms of this Agreement in the form set out in Schedule 16 (Letter of Adherence (Associated Companies)), obtain the signature of TTL and send such letter to the Service Provider with such evidence or explanation as is reasonably required to demonstrate that such Affiliate is an Affiliate (as defined for the purposes of this Agreement). If the Service Provider has any queries as to the Affiliate's status as an Affiliate or to enable the Service Provider to undertake its standard credit risk assessment, it shall raise them promptly with TTL and the Affiliate. Subject to the Affiliate meeting the Service Provider's standard credit risk assessment, the Service Provider shall promptly after receipt of the letter (or resolution of its queries or risk assessment, as the case may be) countersign the letter, and return it to the Affiliate with a copy to TTL, to signify its acceptance of the Affiliate. Upon such acceptance of such Affiliate by the Service Provider:
- 2.3.1 that Affiliate shall become an Associated Company for the purposes of this Agreement and shall be bound by the obligations of the Merchant under this Agreement as though it had been a signatory to this Agreement; and
- 2.3.2 that Associated Company shall be entitled to the benefit of this Agreement, and the Service Provider shall perform its obligations and be bound by this Agreement in every way, in each case as if the Associated Company had been named as the Merchant in this Agreement. The Service Provider and the Associated Company will each be entitled to enforce the terms of this Agreement accordingly.
- 2.4 Subject to clause 24.1.2, TTL:
- 2.4.1 warrants to the Service Provider that it will ensure that the Associated Companies perform the obligations required to be performed by the Associated Companies under this Agreement;
- 2.4.2 acknowledges that any breach of this Agreement by an Associated Company shall constitute a breach by the Merchant of this Agreement, and TTL shall be liable to the Service Provider for any and all losses, damages, costs, expenses and/or any fees, fines or penalty properly levied by a Card Scheme as a result of the actions/inactions of any Associated Company in breach of the obligations which it is bound by under Clause 2.3,
- provided always that nothing in this Agreement shall enable the Service Provider any double recovery from an Associated Company and TTL in respect of any such losses, damages, costs, expenses, fees, fines or penalties.

3. COMMENCEMENT AND DURATION

- 3.1 This Agreement commences on the Contract Commencement Date and shall continue, subject to Clause 3.2 and to earlier termination in accordance with the terms of this Agreement, for a period of 7 years from the Contract Commencement Date (the "**Initial Term**") or (if later having regard to the duration of any Handback Period) until the Expiry Date.
- 3.2 The Merchant has an option, exercisable at its sole discretion, to extend the duration of this Agreement for a further period or periods up to a total of 3 years (the "**Extension Years**"), following which any subsequent Handback Period shall apply, such that the provisions of this

Agreement shall continue until the Expiry Date. The Merchant shall serve such notice in writing to the Service Provider at least 3 months prior to the expiry of the Initial Term of this Agreement or the expiry of any previous extension, if later.

4. **ADDITIONAL TERMS**

- 4.1 For the avoidance of doubt the Parties hereby acknowledge and agree the need for each to comply with their respective obligations contained within the additional terms set out at Schedule 17 provided always that in the event of any conflict with such additional terms and the remaining provisions of this Agreement the latter shall prevail over the former to the extent of such conflict.

5. **PROVISION OF THE MERCHANT SERVICES**

- 5.1 The Service Provider:
- 5.1.1 shall provide the Merchant Services to the Merchant on and from the Service Commencement Date in accordance with this Agreement;
 - 5.1.2 acknowledges that it has sufficient information about the Merchant and the Merchant Services and that it has made all appropriate and necessary enquiries to enable it to perform the Merchant Services in accordance with this Agreement;
 - 5.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement due to any misinterpretation or to any misunderstanding by the Service Provider of any fact relating to the Merchant Services or otherwise to this Agreement; and
 - 5.1.4 shall comply with all lawful and reasonable directions of the Merchant relating to its performance of the Merchant Services.
- 5.2 Notwithstanding anything to the contrary in this Agreement, the Merchant's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement.
- 5.3 The Service Provider shall provide the Merchant Services:
- 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 Merchant Services and with sufficient resources including project management resources;
 - 5.3.2 in a manner that will, on the termination or expiry of all or part of this Agreement (or any of the Merchant Services), facilitate an orderly handover of the provision of such Merchant Services to the Merchant and/or Successor Operator(s);
 - 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;
 - 5.3.4 so that they are properly managed and monitored and shall promptly inform the Merchant as soon as reasonably practicable if any aspect of this Agreement is not being or is unable to be performed; and
 - 5.3.5 in accordance with its obligations in accordance with Schedule 8 (Service Management).
- 5.4 Throughout the Term of this Agreement the Service Provider shall when required give to the Merchant such written or oral advice or information regarding any of the Merchant Services as the Merchant may reasonably require.

6. **WARRANTIES AND OBLIGATIONS**

- 6.1 Without prejudice to any other warranties expressed elsewhere in this Agreement or implied by law, the Service Provider warrants, represents and undertakes to the Merchant that:
- 6.1.1 the Service Provider:
 - 6.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so

require, the consent of any Holding Company) to enter into and to perform this Agreement;

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

6.1.1.3 is entering into this Agreement 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;

6.1.2 this Agreement is executed by a duly authorised representative of the Service Provider;

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

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

6.2 TTL warrants, represents and undertakes to the Service Provider that:

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

6.2.2 this Agreement is executed by a duly authorised representative of TTL.

6.3 Each warranty and obligation in this Clause 6 shall be construed as a separate warranty or obligation (as the case may be) and, subject to Clause 24, 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.

7. THE SERVICE PROVIDER'S MERCHANT SERVICES OBLIGATIONS

7.1 The Service Provider shall pay the Merchant the amount of all Card Transactions effected and presented in the relevant Card Transaction Data by crediting a bank account nominated by the Merchant within the United Kingdom.

7.2 The Service Provider shall ensure all settlements are paid into the Merchant's bank account so as to be received by the Merchant in cleared funds one Business Day following the day on which the Card Transaction took place.

7.3 The Service Provider shall, without prejudice to any other rights and remedies of the Merchant, meet any reasonable claim for Loss of Income suffered or incurred by the Merchant arising from:

7.3.1 payments not being made to the Merchant and/or payments being delayed; and/or

7.3.2 a Purchaser not being able to undertake a Card Transaction due to a fault or other problem with the Contract System.

The Merchant shall use its reasonable endeavours to mitigate any such loss.

7.4 The Service Provider shall comply with the Card Scheme Rules and shall implement Card Scheme Rule changes in line with the requirements of the Card Schemes, subject to any waivers issued by a Card Scheme.

7.5 Without limiting its obligations under Clause 29, the Service Provider shall promptly notify the Merchant of any changes to the Card Scheme Rules, PCI DSS or the EMV Approved Specification. The Service Provider shall promptly provide to the Merchant any additional information relating to any changes to the Card Scheme Rules, PCI DSS or the EMV Approved Specification as the Service Provider may reasonably have available to it (subject to any confidentiality obligations it may owe in respect of such information) in order to assist

the Merchant. These include, but are not limited to, changes to the EMV technical standard, PCI DSS, transaction processing and Chargeback rules.

- 7.6 Once any Point of Sale Equipment has been supplied, tested and accredited in accordance with this Clause 7 and the first transaction has been carried out on such Point of Sale Equipment, the Point of Sale Equipment shall be treated as a Terminal for the purposes of this Agreement. Any Terminals supplied by the Service Provider to the Merchant shall be Chip & PIN Capable in respect of Attended Transactions.
- 7.7 The Service Provider shall provide to the Merchant within a reasonable time from the date of any request such reasonable evidence of any Counterfeit Fraud, Not Received Fraud and All Other Fraud as the Merchant may request from time to time.
- 7.8 The Service Provider acknowledges and agrees that any Card Transaction concluded on any Point of Sale Equipment or Merchant Equipment which is Chip & PIN Capable or which has Contactless Functionality shall be governed by the Liability Shift Table, such table as updated from time to time to reflect the then current high level liability shift provisions of the rules issued by the relevant Card Schemes (and the Service Provider will notify the Merchant of any changes to such provisions as soon as a reasonably practicable, save that any failure by the Service Provider to notify the Merchant in accordance with this Clause 7.8 shall not affect the application to the Parties of liability shift provisions that were not so notified). Where the Liability Shift Table refers to the Issuer as the liable party, this means that the Merchant is not liable and that, as between the Service Provider and the Merchant, the Service Provider is liable.
- 7.9 The Service Provider acknowledges and agrees that the Service Provider's obligations as set out by the Directive and PSRs in relation to the dates that appear on Cardholder's statements do not affect the Service Provider's obligation to pay the Merchant in accordance with the Merchant's payment plan set out in Clause 7.2.
- 7.10 The Service Provider shall register each Merchant with the Card Schemes to the extent necessary to enable the Merchant to accept Contactless Ticketing transactions.
- 7.11 Subject to and in accordance with Clause 29 (Agreement Variation), the Service Provider shall notify the Merchant in a timely manner of any changes or proposed changes to the Operational Guide.
- 7.12 No minimum limit may be set on the amount of Card Transactions made by the Merchant under this Agreement.
- 7.13 Except for differences in price permitted by this Agreement, all purchases with Cards must be treated in at least the same way as cash purchases.

8. PERFORMANCE REGIME

- 8.1 On and from the Service Commencement Date the Service Provider will provide the Merchant Services in accordance with the required service levels set out in Schedule 8 (Service Management), each being a "**Service Level**".
- 8.2 The Service Provider will report to the Merchant in relation to its provision of the Merchant Services as required by the reporting regime specified in this Agreement (including Schedule 8 (Service Management)).
- 8.3 If the Service Provider fails to provide the Merchant Services in accordance with the Service Levels, then the Service Provider will take such action as is required pursuant to this Agreement.

9. SYSTEMS INTEGRATION

- 9.1 The Service Provider acknowledges that a Technical Change may impact different parts of the CE Systems Portfolio and the Merchant acting reasonably and at its sole discretion will determine who will act as systems integrator for the implementation of all or part of a Technical Change.

- 9.2 The Service Provider acknowledges that the role of the systems integrator for CE Systems Portfolio Interfaces will be the Merchant.
- 9.3 The Service Provider acknowledges that where the Merchant or another member of the Merchant Group or a Third Party, acting on the Merchant's behalf takes on the role of the systems integrator ("**Merchant Systems Integrator**"), the role amongst other responsibilities requires them, insofar as applicable, to:
- 9.3.1 take the lead for the Merchant Group in relation to the introduction and integration of the Contract System and Merchant Services with the systems in the CE Systems Portfolio;
 - 9.3.2 take reasonable steps to ensure compatibility between the CE Systems Portfolio, the Contract System and the Merchant Services; and
 - 9.3.3 take all actions to resolve any issues or failures in relation to the interfacing, integration and inter-operation of the CE Systems Portfolio with the Contract System and Merchant Services.
- 9.4 Subject to Clause 9.5 and solely insofar as the same are relevant to the Merchant Services or the Contract System, the Service Provider shall, for no additional consideration, co-operate (as reasonably requested) with the Merchant Group, its employees, agents and representatives and, where reasonably requested by the Merchant, any other Third Party in relation to the Merchant Services or the Contract System. Such co-operation may include:
- 9.4.1 provision of information;
 - 9.4.2 development of Documentation;
 - 9.4.3 provision of access to operational and technical staff to answer questions (including their attendance at the Merchant meetings if required);
 - 9.4.4 the opportunity to attend meetings of the Service Provider at which the Merchant Services will be discussed; and
 - 9.4.5 participation in joint testing initiatives.
- 9.5 Notwithstanding anything in this Agreement to the contrary, the Service Provider will not:
- 9.5.1 be required to disclose any information other than that relating to the Merchant Services or the Contract System; and/or
 - 9.5.2 be required to disclose to any Third Party the underlying cost of providing the Merchant Services.
- 9.6 Without limiting limb (b) of the definition of Merchant Services or any other provision of this Agreement, should the Merchant require any co-operation from the Service Provider beyond that covered under Clause 9.4, the Parties shall use the Variation procedure set out in Schedule 9 (Form of Variation) to agree the detail of such co-operation to be provided and payment therefor.

10. MAJOR INCIDENT MANAGEMENT

- 10.1 The Service Provider shall, within 10 Business Days following the Contract Commencement Date, provide to the Merchant for Assurance a draft Major Incident Plan, which will operate alongside the Disaster Recovery Plan. The draft Major Incident Plan shall include, as a minimum, those requirements in respect of it set out in Schedule 8 (Service Management).
- 10.2 The Merchant shall review and comment on the draft Major Incident Plan as soon as reasonably practicable. Following such review, the Merchant shall, acting reasonably and in good faith, Assure or reject the draft Major Incident Plan no later than 10 Business Days after the date on which the draft Major Incident Plan is delivered to the Merchant.
- 10.3 If the Merchant rejects the draft Major Incident Plan, the Merchant shall inform the Service Provider in writing of its reasons for the rejection. The Service Provider shall then revise the draft Major Incident Plan (taking account of the Merchant's reasonable comments) and shall re-submit a revised draft Major Incident Plan to the Merchant for the Merchant's Assurance within 10 Business Days of the date of the Merchant's notice of rejection. The provisions of Clause 10.2 and this Clause 10.3 shall apply again to any resubmitted draft Major Incident

Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 10.4 The Service Provider shall maintain in accordance with good industry practice and comply with the Disaster Recovery Plan and Major Incident Plan at all times and be able to implement the Disaster Recovery Plan and the Major Incident Plan (as appropriate) in accordance with its terms at any time.
- 10.5 The Service Provider may amend or replace the Disaster Recovery Plan from time to time in order to provide the Merchant with better protection in respect of business continuity. Such amendment or replacement must not be to the detriment of and will be at no cost to the Merchant and will not be subject to the Variation procedure described in Clause 29 (Agreement Variation). The Service Provider will, on request, provide a copy of such plan to the Merchant and will provide to the Merchant any other information that the Merchant may reasonably require in relation thereto.

11. THE MERCHANT'S OBLIGATIONS

11.1 The Merchant will:

- 11.1.1 comply with the Card Scheme Rules and terms of this Agreement;
- 11.1.2 submit all Card Transactions and Card Refunds in accordance with the Operational Guide;
- 11.1.3 accept all Cards issued on one of the Card Schemes except to the extent permitted otherwise by the Card Schemes in relation to Contactless Ticketing;
- 11.1.4 not submit Card Transactions for cashback, prepayments and deposits or illegal transactions. For the avoidance of doubt this does not prohibit the submission of Card Transactions in respect of the loading of funds onto Oyster;
- 11.1.5 obtain authorisation for all Card Transactions above the Floor Limit. The Merchant must not split the value of sales made to a Cardholder at any one time over more than one Card Transaction to avoid getting authorisation;
- 11.1.6 give all reasonable help to detect, prevent and investigate fraud including:
- 11.1.6.1 retaining any Card presented to the Merchant that is in the physical possession of the Merchant's employees (excluding in any Tfl Equipment), provided that it is appropriate to do so and such retention does not endanger or put at risk the health and safety of the Merchant's employees;
 - 11.1.6.2 assisting in any claim made against the Service Provider in relation to a Card Transaction; and
 - 11.1.6.3 assisting any investigations made by any authorities into a Card Transaction (provided that any such request for assistance is approved by TTL's Crime and ASB Investigations Manager (or the person within the Tfl Group holding the equivalent of such position)).

11.2 Authorisation

- 11.2.1 If authorisation is obtained in accordance with Clause 11.1.5, but the Card Transaction does not proceed immediately, the authorisation must be cancelled, except in relation to Contactless Card Transactions processed in accordance with the variable fare transit model.
- 11.2.2 Save for when the Card Transaction is for less than or equal to six pounds (£6):
- 11.2.2.1 if authorisation is not obtained in accordance with Clause 11.1.5 or if authorisation is refused, the Merchant must not complete the Card Transaction;
 - 11.2.2.2 if authorisation is refused, the Merchant must not re-submit a Card Transaction for authorisation.

If the Merchant does so and relies on any subsequent authorisation, the Merchant does so at its own risk and will be liable to the Service Provider for any Chargeback in relation to that Card Transaction.

11.3 Card Transaction Data

- 11.3.1 Only Card Transaction Data relating to Card Transactions between the Merchant and a Cardholder may be sent to the Service Provider under this Agreement.
- 11.3.2 The Merchant will take reasonable steps to ensure that all Card Transaction Data is complete and accurate.
- 11.3.3 Submission of Card Transaction Data is confirmation that the goods and/or services have been supplied to the Cardholder and that the Merchant has complied with any obligations it may owe to the Cardholder under contract or any applicable laws.
- 11.3.4 All Card Transaction Data (whether in electronic or paper form) must be kept in a secure manner which will prevent unauthorised access or disclosure to any unauthorised person.
- 11.3.5 In order to maintain Card Transaction security the Service Provider may require the Merchant not to keep certain details relating to a Card.
- 11.3.6 The Merchant will ensure that any internet site which the Merchant uses to accept Card Transaction Data for the Electronic Commerce Transactions will:
 - 11.3.6.1 comply with all requirements for strong authentication required by the Card Scheme Rules, if any; and
 - 11.3.6.2 if the Merchant accepts Electronic Commerce Transactions made with a Maestro Card, it has SecureCode fully installed, approved, tested and operational.

11.4 The Merchant must not allow any third party to use any equipment which would allow them to carry out Card Transactions under this Agreement.

11.5 Nothing in this Agreement shall prevent the Merchant from:

- 11.5.1 appointing an agent or sub-contractor (subject always to Clause 23.4); or
- 11.5.2 including within Card Transactions any Contactless Ticketing transactions related to the use by a Cardholder of the services of Private Transport Operators or from allowing Private Transport Operators to use the equipment required for that purpose.

12. PAYMENT CARD INDUSTRY DATA SECURITY STANDARD

12.1 The Merchant acknowledges that the Card Schemes require the Merchant to comply with PCI DSS and that the Service Provider needs to demonstrate to the Card Schemes that the Merchant is moving towards compliance. To achieve this, the Merchant will:

- 12.1.1 provide the Service Provider with a nominated point of contact responsible for liaising with the Service Provider regarding the Merchant's progress towards compliance with PCI DSS;
- 12.1.2 produce a project plan detailing key milestones and work to be carried out in relation to PCI DSS compliance (which may include identifying and seeking to minimise and/or mitigate any identified non-compliances) and/or as soon as reasonably practicable;
- 12.1.3 agree such works with the Service Provider and the appointed Qualified Security Assessor;
- 12.1.4 if so requested by the Service Provider, provide reasonable evidence of the high level project plan and work to be undertaken;

- 12.1.5 implement the high level project plan and provide the Service Provider, upon request, with updates on progress generally and progress against the high level project plan;
 - 12.1.6 notify the Service Provider as soon as reasonably possible should the Merchant believe that it will be unable to meet any of the obligations set out in this Clause 12.1;
 - 12.1.7 without prejudice to Clauses 12.6 and 12.7, following achievement of compliance with PCI DSS, continue to comply with the PCI DSS standards applicable on the date the Merchant achieves compliance and (subject to and without limiting Clauses 12.6 and 12.7) as updated from time.
- 12.2 Without limiting the Service Provider's liability for compliance with its obligations under Clauses 12.3 and 12.7, the Merchant shall be liable to the Service Provider for the amount of any penalties or fines directly levied on and incurred by the Service Provider by any Card Scheme arising solely and directly as a consequence of a Data Compromise where the Merchant was not compliant with PCI DSS at the time of such Data Compromise. The Service Provider agrees that this Clause 12.2 represents the Service Provider's sole and exclusive remedy for a Data Compromise arising at a time when the Merchant was not compliant with PCI DSS and the Merchant's breach of Clause 12.1 and the Merchant shall have no other liability to the Service Provider in respect thereof.
- 12.3 Without prejudice to the provisions of Clauses 12.1 and 12.2, the Service Provider acknowledges that the Merchant operates and is responsible for the provision of complex public services and that the necessary work to implement the PCI DSS will require careful programming and will need to avoid any adverse impact on the public services provided by the Merchant and consequently it may take a significant period of time to implement the PCI DSS fully. Provided the Merchant uses its reasonable endeavours to implement the PCI DSS in accordance with the high level project plan referred to in Clause 12.1 and keeps the Service Provider regularly informed of progress towards implementation, the Service Provider agrees to approach and use reasonable endeavours to negotiate with the Card Schemes and defend the Merchant and use reasonable endeavours to avoid the imposition of any penalties, fines or other charges in respect of any non-compliance of the PCI DSS and to extend any deadline for the Merchant to comply with PCI DSS.
- 12.4 The Merchant agrees and acknowledges that should it suffer a Data Compromise or suspect that it has suffered a Data Compromise that it will notify the Service Provider as soon as reasonably possible.
- 12.5 If the Merchant has notified the Service Provider of a Data Compromise in accordance with Clause 12.4 or the Service Provider, acting reasonably, suspects that the Merchant has suffered a Data Compromise the Service Provider may (if required to do so in order to comply with the requirements of the Card Schemes) require and the Merchant will, if so required, at its own cost, instruct an industry approved forensics assessor to undertake a forensic investigation at the Merchant's premises.
- 12.6 The Merchant acknowledges that the PCI DSS may be updated from time to time. In the event of such update the Merchant will require sufficient time to enable it to implement any relevant changes and the Service Provider undertakes to:
- 12.6.1 notify the Merchant promptly upon becoming aware of any such changes to the PCI DSS;
 - 12.6.2 provide details and any additional information relating to any changes to the PCI DSS as the Service Provider may reasonably have available to it in order to assist the Merchant in implementing any relevant changes.
- 12.7 Where the PCI DSS is updated as referred to in Clause 12.6, the Service Provider shall use reasonable endeavours to mitigate the effect on the Merchant of any costs, expenses or charges incurred by the Merchant as a result of any changes to the PCI DSS and will liaise with the Card Schemes as reasonably necessary in order to agree a reasonable period in which the Merchant is to implement any relevant changes.
- 12.8 If the Merchant uses Merchant Equipment which has not been provided by the Service Provider, the Merchant must make sure that all POS utilised by it comply with the PCI PTS.

The Merchant will, if reasonably requested to do so by the Service Provider, provide proof that it is complying with this Clause 12.8.

- 12.9 All third-party payment applications used by the Merchant must comply with PCI PA-DSS. It is the Merchant's responsibility to check that third-party payment applications which may apply are listed on the PCI SSC website as complying with PCI PA-DSS.
- 12.10 Chip & Pin.
- 12.10.1 Save where there is a Card Scheme waiver in respect of any Tfl Equipment, the Merchant will ensure that all Attended Transactions are Chip & PIN Capable and protected in line with Book 2 (Security and Key Management) of the EMV IC card specifications for payment systems and ISO 9564.
- 12.10.2 The Merchant will not substitute or modify the Merchant Equipment in any unauthorised way, or allow any person to tamper with the same, prior to the cryptographic keys being loaded onto that equipment.
- 12.10.3 The Merchant must have in place at all times, and put into practice, procedures to protect the integrity of all of the Merchant Equipment used or held, covering every initialisation, deployment and use of those items of Merchant Equipment.
- 12.10.4 If reasonably requested by the Service Provider, the Merchant will provide proof (including supporting documents where relevant) of its compliance with this Clause 12.10.

13. CHARGEBACK RIGHTS

- 13.1 The Service Provider may, specifying a reason and acting reasonably:
- 13.1.1 withhold payment on presentation of Card Transaction Data; or
- 13.1.2 if the Merchant has already been paid for the Card Transaction, charge-back the amount of the Card Transaction to the Merchant, notwithstanding that the Card Transaction may have been authorised,
- if any of the circumstances specified in Clause 13.2 occur, to the extent necessitated by such circumstances only (a "Chargeback").
- 13.2 The circumstances referred to in Clause 13.1 are:
- 13.2.1 the Card Transaction or the way in which it was carried out was in breach of this Agreement;
- 13.2.2 Card Transaction Data is issued or presented in breach of this Agreement (including the Operational Guide);
- 13.2.3 the Merchant fails within 14 Business Days to produce, at the Service Provider's request, evidence that the Purchaser granted the Merchant authority to debit the amount of a Card Transaction in accordance with the Operational Guide;
- 13.2.4 in respect of Contactless Transactions, Unattended Transactions, Counterfeit Fraud, Lost and Stolen Cards and Not Received Fraud, except in respect of any Card Transaction on or after the Contract Commencement Date where:
- 13.2.4.1 the Merchant is Chip & PIN Capable in all respects;
- 13.2.4.2 the Card Transaction is an Internet Transaction made subject to appropriate strong authentication procedures;
- 13.2.4.3 the Card Transaction is a Contactless Transaction (or other equivalent technology) within the Floor Limit for Contactless Transactions (or other equivalent authorisation limit for such Card Transaction);
- 13.2.5 if the Card is included in a card recover bulletin which the Merchant must check prior to processing a Card Transaction (other than any Contactless Transaction for an amount under the Floor Limit);

- 13.2.6 in Attended Transactions, if a Card Transaction is manually key-entered because a Card fails to swipe and an imprint of the Card on a verification (or sales) voucher, together with the signature of the Cardholder, is not obtained;
 - 13.2.7 if a Card Transaction was not genuine or for an illegal transaction;
 - 13.2.8 if a Card Transaction was for a Card Transaction by a Cardholder to another person or for a purchase with cash back given to a Cardholder by another person other than the Merchant;
 - 13.2.9 if the Merchant does not get authorisation in line with Clause 11.1.5;
 - 13.2.10 if the transaction does not in some other way constitute a Card Transaction;
 - 13.2.11 except in relation to Contactless Transactions, if the transaction involves using the Card by a person other than the Cardholder;
 - 13.2.12 if the Merchant is deemed to be an Excessive Chargeback Merchant or an Excessive Fraud Merchant by any Card Scheme;
 - 13.2.13 any circumstance specified in Clause 13.3 occurs, or the Service Provider reasonably considers such a circumstance is likely to occur, and the goods, services or other facilities referred to in the Card Transaction Data have not yet been supplied;
 - 13.2.14 any circumstance specified in the Operational Guide and/or Card Scheme Rules as entitling the Service Provider to make a Chargeback occurs;
 - 13.2.15 the Service Provider receives a claim connected with a Card Transaction, including (without limitation) the Cardholder claiming that they did not receive the goods or services or that the goods or services were unsatisfactory. This claim could be from the Cardholder or from any other person (including the Issuer). For the avoidance of doubt, the liability of the Merchant in respect of any such claim shall be limited to the value of the disputed transaction; or
 - 13.2.16 the Cardholder denies authorising a Card Not Present Transaction.
- 13.3 The circumstances referred to in Clause 13.2.13 are:
- 13.3.1 the Merchant making any voluntary arrangement with its creditors or becoming subject to an administration order;
 - 13.3.2 a receiver, administrative receiver or manager being appointed over all or part of the business of the Merchant;
 - 13.3.3 the Merchant 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);
 - 13.3.4 the Merchant ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986; or
 - 13.3.5 any similar event to those in Clauses 13.3.1 to 13.3.4 above occurring in relation to the Merchant under the law of any applicable jurisdiction for those purposes.
- 13.4 The amount of any Card Transaction which the Service Provider is entitled to charge-back to the Merchant under this Agreement shall be a debt immediately due from the Merchant to the Service Provider.
- 13.5 If, under this Agreement, the Service Provider validly withholds payment on any Card Transaction Data or the amount of any Card Transaction Data is validly charged-back to the Merchant under Clause 13.1, the Service Provider shall be under no responsibility to procure payment for the Card Transaction or otherwise deal with the Cardholder in respect thereof and the Merchant shall not re-present in any manner Card Transaction Data relating to such Card Transaction. For the avoidance of doubt, this does not prevent the Merchant re-presenting Card Transaction Data in respect of a declined Card in accordance with the Card Scheme Rules applying in respect of transit related transactions.
- 13.6 The Merchant will not be liable for (and as between the Service Provider and the Merchant the Service Provider will be liable for) any Card Not Present Transaction which is not

recognised by the Cardholder if the Merchant has processed the Card Not Present Transaction via the internet using Customer Authentication provided that:

- 13.6.1 the Merchant has installed Customer Authentication, whether or not the Cardholder has enrolled for Customer Authentication and the Customer Authentication procedures have been properly followed;
- 13.6.2 the Merchant has installed Customer Authentication, but the Issuer is not participating in Customer Authentication and the Customer Authentication procedures have been properly followed;
- 13.6.3 the Cardholder has concluded any Card Transaction via a MasterCard or Visa Card issued anywhere in the world except interregionally issued Visa or MasterCard Commercial cards and anonymous Visa prepaid cards; or
- 13.6.4 the Cardholder has concluded any Card Transaction via a Maestro Card and the Customer Authentication procedures have been properly followed,

subject to any changes issued by the Card Schemes. For the avoidance of doubt, the Merchant acknowledges that in the event the Merchant does not process a Card Not Present Transaction via the internet using Customer Authentication the Issuer will not accept the risk of the Card Transaction and the Service Provider may be entitled to charge-back the amount of the Card Transaction to the Merchant in accordance with Clause 13.1, subject to any changes issued by the Card Schemes.

13.7 The process to be applied in respect of the notification, verification and payment of Chargebacks is as follows:

- 13.7.1 the Service Provider will handle the treatment of Chargebacks in accordance with Card Scheme Rules. Any requests for Chargebacks not complying with such rules or the criteria contained in this Agreement will be passed back to Issuers by the Service Provider without reference to the Merchant;
- 13.7.2 the Service Provider will notify the Merchant of each Chargeback via such form of standard or bespoke electronic reporting facility as the Parties may agree;
- 13.7.3 the Service Provider will allow the Merchant not fewer than 14 days from the date of Service Provider's notification of a Chargeback to challenge the proposed Chargeback;
- 13.7.4 subject to Clause 13.7.5, Chargebacks will be debited as part of the Service Provider's monthly billing of Charges in accordance with Schedule 6 (Terms of Payment) and not individually as they are received by the Service Provider;
- 13.7.5 where the code attached to be Chargeback is one requesting further information or the relevant Card Transaction involves a non PIN preferring Card being signed and swiped, then the Service Provider will allow not less than 14 days from its notification to the Merchant, to allow the Merchant to provide a response before debiting the Chargeback (if in view of any such response by the Merchant, the Service Provider is still entitled to debit the Chargeback); and
- 13.7.6 where a Chargeback is debited by the Service Provider but a Chargeback is subsequently successfully challenged by the Merchant, the Service Provider shall be liable to refund the amount of the relevant Chargeback to the Merchant in the next monthly payment.

13.8 In the event that TTL undergoes a change of Control that results in TTL's financial credit rating being downgraded by at least 2 rating agencies to the specified grade or below, the Service Provider shall be entitled to defer the payment of any Tfl Transactions as follows:

- 13.8.1 to the extent necessary to cover the Merchant's actual liability to the Service Provider, if the Service Provider incurs any fines, levies, charges or penalties which the Card Schemes or any other financial or regulatory institution properly require the Service Provider to pay or which are otherwise directly recovered from the Service Provider by the Card Schemes or any other financial or regulatory institution and which arise directly out of or relate to any act or omission by the Merchant in connection with this Agreement; or
- 13.8.2 to the extent necessary where the Service Provider reasonably believes that a Tfl Transaction that the Merchant is responsible for under the Liability Shift Table may

be fraudulent or involves other criminal activity, until the satisfactory completion of the Service Provider's investigation or the investigation of any third party.

Where the Service Provider exercises its right to defer payment in accordance with this Clause 13.8 the Service Provider shall, except in relation to Clause 13.8.2 or insofar as prohibited by law, notify the Merchant as soon as reasonably practicable of any such deferral. The 'specified grade' for the purpose of this Clause 13.8 is C1 as defined by Standard & Poors and Moodys (or the equivalent to that grade used by any other rating agency).

14. **EXCESSIVE CHARGEBACK MERCHANT**

14.1 If the Merchant is deemed to be an Excessive Chargeback Merchant, the Service Provider may request and the Merchant will provide (within five Business Days to the extent that is required by Card Scheme Rules) detailed reasons for the number of Chargebacks being received by the Merchant and the measures it is taking to reduce the number of Chargebacks.

14.2 If the Merchant is deemed to be an Excessive Chargeback Merchant, the Service Provider may (to the extent it is required to do so pursuant to Card Scheme Rules) give the Merchant instructions on how to reduce the level of Chargebacks and the Merchant will comply with such instructions within the timescales which the Service Provider stipulates (being no more stringent than those required to be imposed by Card Scheme Rules).

14.3 Notwithstanding Clauses 14.1 and 14.2 the Service Provider shall:

14.3.1 use reasonable endeavours to mitigate the effect on the Merchant of being deemed to be an Excessive Chargeback Merchant; and

14.3.2 engage with the Card Schemes and use all reasonable endeavours to negotiate with the Card Schemes to defend the Merchant and agree a reasonable period for the Merchant to comply with its obligations under Clauses 14.1 and 14.2.

14.4 For the purposes of judging whether the Merchant is an Excessive Chargeback Merchant, if the Merchant in its sole discretion issues or has issued any credit to a Cardholder to avoid being deemed an Excessive Chargeback Merchant then the Service Provider may treat such credit as a Chargeback. This will include any circumstance in which:

14.4.1 the Merchant issues any credit in lieu of a Chargeback;

14.4.2 the Merchant issues any credit due to the Merchant's failure to control its backroom processes;

14.4.3 the number of credits issued by a Merchant exceeds the number of Chargebacks received by the Merchant; or

14.4.4 Card Refunds are issued as a means to resolve a fraud or a customer service issue.

15. **EXCESSIVE FRAUD MERCHANT**

15.1 If the Merchant is deemed to be an Excessive Fraud Merchant, the Service Provider may:

15.1.1 request and the Merchant will provide (within five Business Days to the extent that is required by Card Scheme Rules) detailed reasons for the number of Fraudulent Transactions being incurred by the Merchant and the measures it is taking to reduce the number of Fraudulent Transactions; and

15.1.2 may (to the extent it is required to do so pursuant to Card Scheme Rules) give the Merchant instructions on how to reduce the level of Fraudulent Transactions and the Merchant will comply with such instructions within the timescales which the Service Provider stipulates (being no more stringent than those required to be imposed by Card Scheme Rules).

15.2 Notwithstanding Clause 15.1 the Service Provider shall:

15.2.1 use reasonable endeavours to mitigate the effect on the Merchant of being deemed to be an Excessive Fraud Merchant; and

- 15.2.2 engage with the Card Schemes and use all reasonable endeavours to negotiate with the Card Schemes to defend the Merchant and agree a reasonable period for the Merchant to comply with its obligations under Clauses 15.1 and 15.1.2.

16. CHARGES AND PAYMENT

- 16.1 The Merchant will pay the Charges (plus Relevant Tax) specified in Schedule 5 (Charges and Payment) in consideration of the provision by the Service Provider of the Merchant Services in accordance with the terms of Schedule 6 (Terms of Payment).
- 16.2 The Merchant will authorise the Merchant's bank to pay on presentation all requests for payment of a direct debit initiated by the Service Provider in respect of amounts due to the Service Provider under this Agreement such payment to be made on a monthly basis.
- 16.3 The Service Provider may charge interest at the rate of 2% per annum over the Bank of England base rate on a daily basis whether before or after judgement on any sum which the Merchant fails to pay. Interest accrued shall be payable at the end of each month.
- 16.4 The Merchant may charge interest at the rate of 2% per annum over the Bank of England base rate on a daily basis whether before or after judgement on any sum which the Service Provider fails to pay and on any Loss of Income suffered or incurred by the Merchant. Interest accrued shall be payable at the end of each month or on demand in relation to any Loss of Income.
- 16.5 The rates quoted in the pricing schedules take account of the current published levels of interchange and other fees ("**scheme fees**") set by the Card Schemes. The Service Provider reserves the right to, and in the case of any reductions undertakes to, pass on any changes in such fees to the Merchant by adjusting the Charges by the same amount provided that:
- 16.5.1 to the extent that as at the date of this Agreement the scheme fees referred to in Schedule 5 (Charges and Payment) are a lower proportion of the full scheme fees imposed by the Card Schemes, then any adjustment under this Clause shall be such as to ensure that the scheme fees payable under this Agreement will continue to be the same or a lower proportion of the scheme fees imposed by the Card Schemes; and
- 16.5.2 when notifying the Merchant of any adjustment to the Charges the Service Provider shall certify that the adjustment is consistent with the requirements of this Clause 16.5.

Without limiting the Service Provider's liability for compliance with this Clause 16.5, in the event of any delay in passing on reductions, the Merchant shall have the right to deduct past reductions in respect of the preceding 12 month period from future payments of the Charges.

- 16.6 In addition to Clause 16.5, it is acknowledged that Schedule 5 (Charges and Payment) sets out the basis on which certain aspects of the Charges are variable to take account of volumes of Card Transactions.
- 16.7 The Service Provider will inform the Merchant of any changes in writing at least 30 days before the Charges are changed.

17. PROMOTION OF THE CARDS

The Merchant shall adequately display at each premises where it accepts Card Transactions any reasonable promotional sign(s) or other material provided by the Service Provider and may use names or designs approved by the Service Provider solely to indicate that Cards are accepted for payment. The Merchant shall not use any other material referring to the Service Provider without the Service Provider's approval.

18. SERVICE PROVIDER PROPERTY

- 18.1 The Service Provider shall promptly deliver Terminals to such premises and at such times as requested by the Merchant (such requests to be reasonable) and repair or (at the option of

the Service Provider) replace faulty Terminals promptly. All costs associated with the provision, repair and replacement of Terminals are included in the Charges.

- 18.2 The Merchant will:
- 18.2.1 comply with (and procure that individuals acting for the Merchant comply with) any installation procedures and/or any operating guide for the Terminals provided by the Service Provider to the Merchant prior to the date of this Agreement;
 - 18.2.2 use its reasonable endeavours to reduce the risk of any damage to or loss of any Terminal; and
 - 18.2.3 ensure that staff who use Terminals have received suitable training.
- 18.3 Terminals lent to the Merchant in connection with this Agreement shall remain the property of the Service Provider and shall not be disposed of by the Merchant.
- 18.4 The Merchant shall be responsible for all loss of or damage to Terminals once installed (except in respect of fair wear and tear, any fault, default or defect or where such loss or damage is caused by the Service Provider and/or its agents or any subcontractors), and liable for all loss or damage on an all risks basis at no more than their full replacement value (on a 'like-for-like' replacement basis) as notified in any operating guide provided by the Service Provider to the Merchant prior to the date of this Agreement and advised from time to time.
- 18.5 The Merchant will promptly notify the Service Provider of any fault that occurs and allow access at reasonable times to any person acting for the Service Provider to assess and rectify any fault with the Terminals.

19. OPERATIONAL MANAGEMENT

- 19.1 The Merchant authorises the Contract Manager to act as the Merchant's representative for this Agreement.
- 19.2 The Service Provider shall deal with the Contract Manager (or his or her nominated representative) in respect of all matters arising under this Agreement.
- 19.3 The Service Provider shall appoint a service performance manager (the "**Service Provider Contract Manager**"). The Service Provider shall notify the Merchant of the identity of the Service Provider Contract Manager on or before the date of this Agreement.
- 19.4 Subject to Clause 19.5, the Service Provider shall ensure that the Service Provider Contract Manager shall:
- 19.4.1 act as the principal point of contact between the Parties on all matters relating to the performance of the Merchant Services;
 - 19.4.2 be the interface with the Merchant and act as the interface for the relationship with the systems integrators in relation to Merchant Service performance;
 - 19.4.3 pro-actively pursue continuous service performance improvements to ensure that the Service Levels are met;
 - 19.4.4 attend Service Review Meetings as set out in Schedule 8 (Service Management) and other meetings as otherwise requested by the Merchant (acting reasonably); and
 - 19.4.5 ensure delivery to the Merchant of the reports required to be delivered to the Merchant under this Agreement, and, at the Merchant's request, provide to the Merchant at no additional cost to the Merchant, such additional reports on the provision of the Merchant Services as the Merchant may reasonably request.
- 19.5 The Service Provider shall appoint an incident manager (the "**Service Provider Incident Manager**"). The Service Provider shall notify the Merchant of the identity of the Service Provider Incident Manager on or before the date of this Agreement. The Service Provider Incident Manager may (but need not) be the same person as the Service Provider Contract Manager.

19.6 The Service Provider shall ensure that the Service Provider Incident Manager shall act as the principal point of contact between the Parties in connection with the management of Incidents arising in respect of the Merchant Services and/or the Contract System.

20. **SERVICE PROVIDER PERSONNEL**

20.1 The Parties confirm that the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended will not apply on the Contract Commencement Date or the Services Commencement Date. Appendix 1 of Schedule 11 (Handback of Merchant Services) shall apply in respect of the termination or expiry of this Agreement.

20.2 Nothing in this Agreement will render the Service Provider Personnel, an employee, agent or partner of the Merchant or Merchant Group by virtue of the provision of the Merchant Services by the Service Provider under this Agreement, 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 Personnel.

20.3 The Service Provider shall provide the Service Provider Personnel as necessary for the proper and timely performance and management of the Merchant Services in accordance with this Agreement. All personnel deployed on work relating to this Agreement shall have the appropriate qualifications and competence and be properly managed and supervised.

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

20.5 The Service Provider shall take reasonable steps to avoid changes to any of its staff designated in this Agreement as Key Personnel. The Service Provider shall give the Merchant reasonable notice of any proposals to change Key Personnel and Clause 20.3 shall apply to the proposed replacement personnel.

20.6 Notwithstanding Clause 20.1, the Service Provider shall indemnify, keep indemnified and hold harmless the Merchant from and against all Losses which the Merchant or other member of the Merchant Group does or will incur or suffer in relation to the Service Provider Personnel or any person who may allege to be the same (whenever such Losses may arise) or any failure by the Service Provider to comply with Clause 20.4.

20.7 The Service Provider shall provide or procure the provision of appropriate training for Merchant Personnel and Service Provider's Personnel in respect of all aspects of its performance of this Agreement.

21. **KEY PERSONNEL**

21.1 The Service Provider shall provide the Key Personnel and shall procure that Key Personnel shall:

21.1.1 diligently supervise the performance of the Merchant Services;

21.1.2 attend all relevant Agreement meetings with the Merchant (including the Service Review Meetings) the location of which shall be at the Merchant's offices, except as otherwise agreed by the Merchant from time to time; and

21.1.3 be reasonably available to the Merchant to resolve any issues arising in connection with this Agreement.

22. **CORRECTIVE ACTION NOTICES**

- 22.1 Where the Service Provider fails to comply with any part of this Agreement (including any failure to achieve a Service Level) the Contract Manager may issue to the Service Provider a Corrective Action Notice and the provisions of Schedule 14 (Assurance) shall apply.
- 22.2 The Parties acknowledge and agree that:
- 22.2.1 a Corrective Action Notice does not constitute a notice given by the Merchant pursuant to Clause 30 but that a Corrective Action Notice shall not restrict or prevent the Merchant from terminating this Agreement in accordance with that Clause; and
- 22.2.2 a Corrective Action Notice shall not restrict or prevent the Merchant from issuing a subsequent or other Corrective Action Notice (whether by reference to a default or remedial action specified or referred to in any other Corrective Action Notice).

23. **SUB-CONTRACTING AND CHANGE OF OWNERSHIP**

- 23.1 The Service Provider shall not assign or sub-contract all or any part of the Merchant Services without the prior written consent of the Merchant which may be refused or granted consent subject to such conditions as the Merchant sees fit, provided that:
- 23.1.1 subject to Clause 23.1.2, the Service Provider shall be able to assign this Agreement to one of its Affiliates registered in the United Kingdom without the prior consent of the Merchant; and
- 23.1.2 notwithstanding Clause 23.1.1, the Merchant shall be entitled to object to such an assignment if it is to an Affiliate whose financial standing and risk profile is not, in the Merchant's reasonable opinion, materially equivalent to that of the Service Provider, and in such circumstances the Merchant shall be entitled (without liability to the Service Provider) to terminate this Agreement by notice to the Service Provider, such termination to take effect on the date stated in such notice of termination.
- 23.2 Where the Service Provider sub-contracts all or any part of the Merchant Services to any person, the Service Provider shall:
- 23.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under this Agreement insofar as they relate to the Merchant Services or part of them (as the case may be) which that Sub-Contractor is required to provide;
- 23.2.2 be responsible for payments to that person;
- 23.2.3 remain solely responsible and liable to the Merchant for any breach of this Agreement or any performance, non-performance, part-performance or delay in performance of any of the Merchant 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;
- 23.2.4 on or before the Contract Commencement Date or the Service Commencement Date (whichever is the earlier), notify the Merchant in writing of the name, contact details of the legal representatives of any key Sub-Contractor (of any tier, including any Sub-Contractor to whom a material part of, or material aspects of, the Services are sub-contracted to) ("**Key Sub-Contractor**"), to the extent that such information has not already been provided by the Service Provider to the Merchant under this Agreement;
- 23.2.5 promptly notify the Merchant in writing of any change to the information notified under Clause 23.2.4 and provide in writing the name, contact details and details of the legal representatives of each Key Sub-Contractor who is engaged after the Contract Commencement Date or the Service Commencement Date (whichever is the earlier); and
- 23.2.6 without prejudice to the provisions of Clause 50, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such Sub-Contractor.

- 23.3 The Service Provider shall give notice to the Merchant within 10 Business Days where:
- 23.3.1 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
 - 23.3.2 there is any change in the ownership of a Holding Company where such change relates to 50% or more of the issued share capital of a Holding Company, and
 - 23.3.3 (in the case of an unincorporated Service Provider) give notice to the Merchant 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 Merchant, 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 23.3.1 to 23.3.3 above, the Merchant shall have the right to terminate this Agreement unless such change in ownership is to an Affiliate of the Service Provider.

- 23.4 The Merchant shall notify the Service Provider if the Merchant appoints any agent or sub-contractor where the nature of the role of that agent or sub-contractor requires it to be accredited for the purposes of and in order to comply with Card Scheme Rules. The Merchant:
- 23.4.1 shall, if it appoints such agent or sub-contractor before any required accreditation is completed, bear the risk of the agent or sub-contractor failing in the accreditation process;
 - 23.4.2 shall be responsible for ensuring that such agent or sub-contractor observes the relevant terms of this Agreement; and
 - 23.4.3 if required by Card Scheme Rules, shall ensure that such agent or sub-contractor enters into a direct agreement with the Service Provider on terms to be provided by the Service Provider.

24. LIABILITY AND INSURANCE

24.1 The Merchant

- 24.1.1 Subject to Clause 24.1.2, the Merchant shall indemnify the Service Provider against:
- 24.1.1.1 all losses, costs, penalties, payments or liabilities whatsoever including any fines payable by the Service Provider to any Card Scheme arising out of any breach of this Agreement by the Merchant or any fraud on the part of the Merchant which are agreed or determined in accordance with Clauses 48 and/or 39 of this Agreement; and
 - 24.1.1.2 any fines payable by the Service Provider to any Card Scheme arising out of the Merchant being an Excessive Chargeback Merchant.
- 24.1.2 The aggregate liability of all Merchants collectively (irrespective of the number of parties who adhere to this Agreement as Associated Companies) (excluding liability for death or personal injury or fraud or those liabilities on the Merchant's part set out in Clause 24.4) arising out of or in connection with this Agreement shall be limited to £5 million in the aggregate per Contract Year.

24.2 The Service Provider

- 24.2.1 Subject to Clauses 24.2.2 the Service Provider shall indemnify the Merchant against all losses, costs, penalties, payments or liabilities whatsoever and howsoever incurred arising out of any breach of this Agreement, (including breaches of any procedures and instructions or any fraud or negligence on the part of the Service Provider, its employees, agents or sub-contractors) which are agreed or determined in accordance with Clauses 48 and/or 39 of this Agreement.
- 24.2.2 The Service Provider's aggregate liability to all Merchants collectively (irrespective of the number of parties who adhere to this Agreement as Associated Companies) (excluding liability for death or injury, fraud or in relation to those liabilities on the

Service Provider's part set out in Clause 24.4 or the indemnity given under Clause 36.5.2) arising out of or in connection with this Agreement shall be limited to the higher of:

24.2.2.1 £10 million; or

24.2.2.2 115% of the Charges paid and payable in respect of the previous Contract Year,

in the aggregate per Contract Year. For the avoidance of doubt, Clause 24.2.2.2 shall not apply when determining the Service Provider's aggregate liability cap in respect of the first Contract Year.

24.3 The Merchant acknowledges that the Service Provider has no responsibility under this Agreement to reimburse the Merchant for the cost of goods and/or services supplied against presentation of Cards accepted by the Merchant under any agreement other than this Agreement.

24.4 No provisions of this Clause 24 will limit:

24.4.1 the Service Provider's right to recover any Chargeback in accordance with this Agreement; or

24.4.2 either Party's liability for their own:

24.4.2.1 breach of Clause 27; or

24.4.2.2 breach of the Data Protection Act 1998; or

24.4.3 the Service Provider's liability to make payment to the Merchant of amounts due and payable pursuant to Clause 7.1; or

24.4.4 the Merchant's liability to the Service Provider under Clause 12.2 and otherwise under this Agreement in relation to any fines, fees or penalties properly levied on the Service Provider by the Card Schemes and paid in full by the Service Provider arising solely and directly from a breach by the Merchant of the applicable Card Scheme Rules, provided that without limiting any other right or remedy of the Merchant, the Merchant shall not be liable to the Service Provider to the extent that such liability arises as a direct result of:

24.4.4.1 the Merchant acting in accordance with the Service Provider's instructions; or

24.4.4.2 a failure by the Service Provider to use its reasonable endeavours to negotiate with the Card Schemes to avoid the imposition of any fines, fees or penalties in respect of the breach and to extend any deadline for compliance; or

24.4.4.3 a failure by the Service Provider to provide the Merchant with all guidance and assistance reasonably required by the Merchant relating to compliance with the Card Scheme Rules and which could reasonably be expected to be provided by a provider of the merchant acquisition services in accordance with good industry practice.

24.5 The Service Provider will at its sole cost maintain employer's liability insurance cover as required by law to cover the Merchant Services ("**Insurance Policy**").

24.6 The Service Provider will produce evidence to the Merchant on reasonable request of the Insurance Policy set out in Clause 24.5 and payment of all premiums due on each policy.

24.7 The Service Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the Insurance Policy set out in Clause 24.5 being or becoming void, voidable or unenforceable.

24.8 The Service Provider shall bear the cost of all exclusions and limitations under the Insurance Policy and shall pay for any excess.

24.9 The Parties agree that in relation to any claim under the indemnities under Clauses 24.1.1 or 24.2.1, the Party with the benefit of the indemnity will be under an obligation to:

- 24.9.1 mitigate its losses in respect of that indemnity; and
- 24.9.2 provide evidence to the other Party of its losses (including any costs, penalties, payments or liabilities) suffered or incurred.

25. **CARDHOLDER DISPUTES AND FRAUD PREVENTION**

- 25.1 The Merchant will take all reasonable steps to assist the Service Provider in handling any claims by Cardholders or their issuing banks against the Service Provider in connection with this Agreement. The Service Provider shall have complete discretion whether or not to defend any such claim or to negotiate any settlement with the Cardholder. The Service Provider will, however, make all efforts to discuss and agree with the Merchant how a claim should be handled before any settlement is made.
- 25.2 The Service Provider will take all reasonable steps to assist the Merchant in handling any claims by Cardholders against the Merchant. The Merchant shall have complete discretion whether or not to defend any such claim or to negotiate any settlement with the Cardholder. The Merchant will, however, make all efforts to discuss and agree with the Service Provider on how a claim should be handled before any settlement is made.
- 25.3 The Merchant will provide the Service Provider with reasonable assistance requested from time to time for the prevention and detection of fraud and will inform the Service Provider of any material change in the nature or size of its business which, if not notified to the Service Provider, might suggest fraudulent activity by the Merchant.

26. **SET-OFF**

- 26.1 Subject to Clauses 26.2, 26.3 and 26.4, either Party (the "**Withholding Party**") may set-off the amount of any liability incurred by the other Party to the Withholding Party under this Agreement against any sum which would otherwise be due from the Withholding Party to the first Party under this Agreement.
- 26.2 Without limiting Clauses 26.3 and 26.4, the Service Provider shall only be entitled to exercise rights of set-off in respect of amounts due to it from a Merchant in respect of Chargebacks, Charges, and/or any fine, fees or penalties properly levied by a Card Scheme.
- 26.3 Where any of the events specified in Clause 13.3 occur to a Party (for the avoidance of doubt to either the Merchant or the Service Provider), the other Party shall be entitled to set off in accordance with this Clause 26 without prior notice, but shall give notice promptly thereafter.
- 26.4 Subject to Clause 26.3, the Withholding Party shall not be entitled to set off in accordance with this Clause 26:
 - 26.4.1 without limiting Clause 26.4.2, without first giving not less than five Business Days' notice; and
 - 26.4.2 if and for so long as there is a genuine dispute about the entitlement of the Withholding Party to the sum which it claims to be entitled to set off, which the other Party is disputing in accordance with Clause 48 of this Agreement.

27. **CONFIDENTIALITY**

- 27.1 Each Party shall not:
 - 27.1.1 compile or use any lists of Cardholders or Card numbers or any other information relating to the other Party's business except for the purposes of this Agreement; nor
 - 27.1.2 disclose any such information to any Third Party apart from a professional adviser or agent or sub-contractor or Affiliate or where required by law.
- 27.2 Clause 27.1.1 shall not operate to prevent the compilation and maintenance of any such lists for the purpose of the management and operation of Contactless Ticketing (including, without limitation, any TFL deny lists).

- 27.3 Each Party agrees that the other Party may use any Cardholder or Card Transaction Data for any legitimate purposes (including the investigation of customer queries or any internal or external investigations) subject to compliance with Clauses 40 and 27.4 and provided that the other Party shall not (unless required or permitted to do so by law or for fraud prevention purposes) disclose any confidential information in respect of such Cardholder or Card Transaction Data.
- 27.4 Subject to Clause 28, the Service Provider will keep confidential:
- 27.4.1 the terms of this Agreement; and
- 27.4.2 any and all Confidential Information that it may acquire in relation to the Merchant.
- 27.5 The Service Provider shall keep confidential the Merchant's Confidential Information which is disclosed to or obtained by the Service Provider pursuant to or as a result of this Agreement and/or the provision of the Merchant Services, and will not divulge the same to any third party (save as is necessary for the performance of the Merchant Services to its professional advisers or any sub contractor or agent or Affiliate and then only under a duty of confidentiality that is no less onerous than the duties on the Service Provider under this Clause 27). The Service Provider will ensure that its officers, employees, professional advisers, sub-contractors, agents and Affiliates comply with the provisions of Clause 27.4.
- 27.6 The obligations on the Service Provider set out in Clause 27.4 will not apply to any Confidential Information:
- 27.6.1 which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 27);
- 27.6.2 which a Party is required to disclose by order of a court of competent jurisdiction or in compliance with any statutory or regulatory provisions or Card Scheme Rule, but then only to the extent of such required disclosure; or
- 27.6.3 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.
- 27.7 The Service Provider shall keep secure all materials containing any information in relation to this Agreement and its performance.
- 27.8 The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of this Agreement or that it is providing the Merchant Services to the Merchant or in relation to any matter under or arising from this Agreement unless specifically granted permission to do so in writing by the Merchant. The Merchant shall have the right to approve any announcement before it is made.
- 27.9 The Service Provider shall:
- 27.9.1 subject to the exception set out in Clause 27.10, at the Merchant's request and in any event upon the termination or expiry of this Agreement, promptly deliver to the Merchant or destroy as the Merchant may direct all documents and other materials in the possession, custody or control of the Service Provider (or the relevant parts of such materials) that bear or incorporate the whole or any part of the Confidential Information and if instructed by the Merchant in writing, remove all electronically held Confidential Information, including the purging of all disk-based Confidential Information and the reformatting of all disks; and
- 27.9.2 not, except where provided in this Clause 27 or with the prior written consent of the Merchant, disclose to any person the nature or content of any discussions or negotiations between the Parties relating to the Confidential Information.
- 27.10 The Service Provider may retain any of the Merchant's Confidential Information which it has to keep to comply with any applicable law or Card Scheme Rules. The Service Provider will confirm to the Merchant what, if any, Confidential Information of the Merchant the Service

Provider is retaining pursuant to this Clause 27.10. Clause 27 will continue to apply to such retained Confidential Information, which may only be used for such purposes.

- 27.11 The Service Provider acknowledges that damages would not be an adequate remedy for any breach by it of this Clause 27 and that (without prejudice to all other rights, powers and remedies which the Merchant may be entitled to as a matter of law) the Merchant shall be entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause 27 and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause 27.
- 27.12 Notwithstanding Clause 28, the Merchant shall have the same rights and obligations as those imposed on the Service Provider under Clauses 27.4 to 27.11 (inclusive) in respect of those categories of confidential information set out in Schedule 10 ("**Service Provider Confidential Information**"), except that the Merchant may:
- 27.12.1 disclose the Service Provider Confidential Information where the Merchant considers that it is obliged to do so under any of the legislation or requirements referred to in Clause 28;
 - 27.12.2 use the Service Provider Confidential Information to the extent necessary to obtain the benefit of the Service Provider's performance under this Agreement;
 - 27.12.3 disclose the Service Provider Confidential Information to any member of the Merchant Group;
 - 27.12.4 disclose such Service Provider Confidential Information as may be required to be published in the Official Journal of the European Union and any associated tender documentation; and
 - 27.12.5 disclose such Service Provider Confidential Information as may be required to transition the Merchant Services to a Successor Operator.
- 27.13 The provisions of this Clause 27 will survive any termination of this Agreement for a period of 6 years from termination.

28. **FREEDOM OF INFORMATION AND TRANSPARENCY**

- 28.1 The Service Provider acknowledges that the Merchant:
- 28.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Merchant to enable the Merchant to comply with its obligations under the FOI Legislation; and
 - 28.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.
- 28.2 Without prejudice to the generality of Clause 28.1, the Service Provider shall and shall procure that its sub-contractors (if any) shall:
- 28.2.1 transfer to the Contract Manager (or such other person as may be notified by the Merchant to the Service Provider) each Information Access Request relevant to this Agreement, the Merchant Services or any member of the Merchant Group that it or they (as the case may be) receive as soon as practicable and in any event within 2 Business Days of receiving such Information Access Request; and
 - 28.2.2 in relation to Information held by the Service Provider on behalf of the Merchant, provide the Merchant with details about and copies of all such Information that the Merchant requests and such details and copies shall be provided within 5 Business Days of a request from the Merchant (or such other period as the Merchant may reasonably specify), and in such forms as the Merchant may reasonably specify.
- 28.3 The Merchant shall be responsible for determining whether Information is exempt from disclosure 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.
- 28.4 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 Merchant.

- 28.5 The Service Provider acknowledges that the Merchant is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 27.12 and this Clause 28, the Service Provider hereby gives its consent for the Merchant to publish the Contract Information to the general public.
- 28.6 The Merchant 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 Merchant may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 28.7 The Merchant may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 28.6. The Merchant shall make the final decision regarding both publication and redaction of the Contract Information.

29. AGREEMENT VARIATION

- 29.1 Save:
- 29.1.1 where the Merchant may require an amendment to the Merchant Services in accordance with paragraph 2.1 of Schedule 9 (Form of Variation); and
- 29.1.2 as set out in Clause 29.2,
- this Agreement may only be varied or amended with the written agreement of both Parties. The details of any Variations or amendments shall be set out in such form as the Merchant may dictate and which may be substantially in the form set out in Schedule 9 (Form of Variation) and shall not be binding upon the Parties unless completed in accordance with such form of variation.
- 29.2 The Service Provider may change the terms of this Agreement (including the Operational Guide) if and to the extent only that such change is required by an amendment or addition, to the Card Scheme Rules, or to ensure compliance with any Card Scheme Rule or the Chip & PIN Programme or the EMV Approved Specification but the Service Provider shall:
- 29.2.1 notify the Merchant promptly as soon as it becomes aware of the potential for such changes and also as soon as it becomes aware of the date required by the Card Scheme or other relevant person for the implementation of the change;
- 29.2.2 provide such details and additional information relating to the change as the Service Provider may reasonably have available to it in order to assist the Merchant to understand the proposed changes, and the impact of them;
- 29.2.3 use reasonable endeavours to mitigate the effect on the Merchant of any costs, expenses or charges incurred by the Merchant as a result of any changes; and
- 29.2.4 engage with the Card Schemes and any other relevant person and use reasonable endeavours to negotiate with the Card Schemes or such person in order to:
- 29.2.4.1 agree a reasonable period for the Merchant to implement such change; and
- 29.2.4.2 defend the Merchant and to avoid the imposition of any penalties, fines or other charges in respect of any delay in complying with such changes and/or to extend the deadline for such compliance.
- 29.3 The Merchant reserves the right to terminate this Agreement by giving three months written notice in the event that the Merchant is materially adversely affected by a variation pursuant to Clause 29.2.

30. TERMINATION

- 30.1 In addition to any other termination rights set out in this Agreement and without prejudice to Clauses 30.2.1 to 30.2.7 (inclusive), the Service Provider and the Merchant shall have the right at any time by giving notice in writing to the other to terminate this Agreement forthwith in the event that the other Party:
- 30.1.1 commits any material breach or persistent breaches of any of the terms of this Agreement which, in the case of a material breach capable of rectification, has not

been rectified within 30 days after receiving notice from the other Party of such breach; or

30.1.2 is subject to an Insolvency Event.

For the avoidance of doubt, any failure by the Service Provider to comply with the provisions of paragraphs 2.1 or 2.6 of Schedule 4 (Service Scope Specification) shall be a material breach of this Agreement entitling the Merchant to terminate this Agreement pursuant to Clause 30.2.5.

30.2 The Merchant shall have the right at any time by giving notice in writing to the Service Provider to terminate this Agreement immediately (or so as to be effective at such future time as the Merchant may specify) upon giving notice to the Service Provider if:

30.2.1 there is a change in ownership of the Service Provider in accordance with Clause 23.3;

30.2.2 the Merchant is not satisfied on the issue of any conflict of interest in accordance with Clause 57;

30.2.3 the Service Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010;

30.2.4 the Service Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015; or

30.2.5 if the Service Provider is in breach of paragraphs 2.1 or 2.6 of Schedule 4 (Service Scope Specification), provided that the Merchant shall, in its discretion, be entitled to permit the Service Provider a period in which to remedy such breach. If the Service Provider fails to remedy such breach within the timescales permitted by the Merchant, then the Merchant shall be entitled to terminate this Agreement with immediate effect;

30.2.6 the Service Provider is in breach of Clause 27 or Clause 40 or there is any loss, theft or unauthorised disclosure of any Personal Data or Cardholder Data that is in the control of the Service Provider (including its employees, agents and contractors) and which materially affects the Merchant; or

30.2.7 the Service Provider fails to implement in accordance with its terms a Corrective Action Notice which was issued as a result of any failure by the Service Provider to meet any of Service Levels 1 or 2.1 to 2.5.

30.3 The Service Provider shall have the right at any time by giving notice in writing to the Merchant to terminate this Agreement forthwith in the event that:

30.3.1 the Service Provider has been required in writing to do so by any Card Scheme or governmental or regulatory authority acting within the scope of their respective authority; or

30.3.2 the Merchant incurs, in the reasonable opinion of the Service Provider, an excessive amount of Chargebacks and/or fines or penalties levied by Card Schemes,

provided that the Service Provider has prior to exercising its rights to terminate under Clause 30.3:

30.3.3 provided the Merchant with prior written notice of any circumstances that may lead to termination under Clauses 30.3.1 or 30.3.2; and

30.3.4 challenged, on the Merchant's behalf, any instruction to terminate this Agreement under Clauses 30.3.1 and has verified the Card Scheme's or the applicable authority's authority to require such termination; and

30.3.5 permitted the Merchant a period of 30 days (or such other period as permitted by the Card Schemes or other regulatory authority) to submit a corrective action plan in relation to any circumstances that may lead to termination under Clauses 30.3.1 or 30.3.2 detailing what steps the Merchant will undertake to remedy the particular circumstance and how long this will take; and

30.3.6 permitted the Merchant the opportunity to remedy any circumstance which could give rise to termination under Clauses 30.3.1 or 30.3.2 in accordance with the corrective action plan submitted by the Merchant to the Service Provider in

accordance with Clause 30.3.4 or otherwise as required by the Card Schemes or other regulatory authority; and

30.3.7 provided the Merchant with all reasonable assistance required by the Merchant to remedy any circumstance which could give rise to termination under Clauses 30.3.1 or 30.3.2.

30.4 The Service Provider shall have the right to terminate this Agreement:

30.4.1 immediately on written notice to the Merchant if the Merchant undergoes a change of Control to a competitor of the Service Provider; or

30.4.2 on nine (9) months written notice to the Merchant if the Merchant undergoes a change of Control, which results in the Merchant's financial credit rating being downgraded to the grade specified in Clause 13.8, provided that the Service Provider serves such notice on the Merchant within thirty (30) days of the change of Control occurring.

30.5 Without prejudice to any of the Merchant's other rights, powers or remedies (whether under this Agreement or otherwise) if the Service Provider is in breach of any of its warranties, or obligations either under Clause 6 or any other provision of this Agreement, the Service Provider shall, if required to do so by the Merchant, promptly remedy and/or re-perform the Merchant Services or part of them at its own expense to ensure compliance with such warranties and obligations. Nothing in this Clause 30.5 shall prevent the Merchant from procuring the provision of any Merchant Services or any remedial action in respect of any Merchant Services from an alternative contractor and, where the Merchant so procures any Merchant Services or any remedial action, the Merchant shall be entitled to recover from the Service Provider all additional cost, loss and expense incurred by the Merchant and attributable to the Merchant procuring such Merchant Services or remedial action from such alternative contractor.

30.6 Subject to Clauses 30.7 and 30.9, neither Party shall be deemed to be in breach of this Agreement, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is due to a Force Majeure Event and, provided that, where that Party is the Service Provider, the impact of that Force Majeure Event could not have reasonably been avoided or prevented by the Service Provider and the Service Provider has complied with Clause 30.7. If a Force Majeure Event has continued for more than 30 days 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 this Agreement (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 (the "**Innocent Party**") may terminate this Agreement immediately upon giving notice to the Affected Party. If this Agreement is terminated in accordance with this Clause 30.6 then without prejudice to any rights and liabilities which accrued prior to termination (and, in the case of the Service Provider, to it having complied with Clause 30.7), the Affected Party shall not be liable to the Innocent Party by reason of such termination.

30.7 If a Force Majeure Event occurs which affects the Service Provider, the Service Provider will:

30.7.1 promptly upon becoming aware of the Force Majeure Event give notice to the Merchant setting out details of the nature, extent and anticipated duration of the Force Majeure Event, the expected impact of the Force Majeure Event on its ability to perform its obligations and the steps it is taking and/or proposes to take to comply with Clause 30.7.2;

30.7.2 use its reasonable endeavours to mitigate the effects of the Force Majeure Event, to continue to perform the affected obligations notwithstanding the occurrence of the Force Majeure Event and to ensure that the Force Majeure Event comes to an end, including taking such steps as may be reasonably required by the Merchant;

30.7.3 keep the Merchant informed of all developments relating to the Force Majeure Event and the steps being taken to comply with Clause 30.7.2, including by providing regular written updates in respect of all the matters covered by the notice given under Clause 30.7.1 and by attending such meetings and supplying such information as may reasonably be required by the Merchant from time to time;

- 30.7.4 continue to perform all of its obligations under this Agreement, the performance of which is not affected by the Force Majeure Event; and
- 30.7.5 to the extent it is able to do so notwithstanding the occurrence of the Force Majeure Event, provide all such assistance to the Merchant and/or such other persons as the Merchant may request in connection with the Merchant securing an alternative supply of those Merchant Services which the Service Provider is delayed in or prevented from supplying due to the Force Majeure Event (including by providing and permitting the use by the Merchant or its nominee of assets, equipment and personnel).
- 30.8 A Party will not be in breach of this Agreement or otherwise liable to the other Party for any failure to perform or delay in performing its obligations under this Agreement to the extent that this is due to a Force Majeure Event affecting the other Party. In particular, if the Service Provider is the Party affected by the Force Majeure Event the Merchant will have no liability to pay Charges to the Service Provider in respect of any Merchant Services which the Service Provider does not supply due to the Force Majeure Event.
- 30.9 Nothing in Clause 30.6 will relieve the Service Provider from its obligations under this Agreement to create, implement and operate the Major Incident Plan. Accordingly, if a Force Majeure Event affecting the Service Provider occurs which is an event or circumstance that is within the scope of the Major Incident Plan, or would have been had the Service Provider and/or Major Incident Plan complied with Clause 10 (Major Incident Management) and Schedule 8 (Service Management), then Clause 30.6 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure would have arisen even if the Major Incident Plan had complied with, and had been fully and properly implemented and operated in accordance with, Clause 10, Schedule 8 (Service Management) and the terms of the Major Incident Plan in respect of that Force Majeure Event.
- 30.10 For the avoidance of doubt, nothing in Clause 30.6 shall relieve the Service Provider of its obligation under Clause 7.3 to meet any claim for Loss of Income suffered or incurred by the Merchant arising from payments not being made to the Merchant and/or payments being delayed.
- 30.11 Without prejudice to the Merchant's right to terminate this Agreement under Clauses 30.1, 30.2 or 30.6 or to terminate at common law, the Merchant may terminate this Agreement with effect from any time on or after the third anniversary of the Contract Commencement Date without cause subject to giving the Service Provider written notice of not less than the period specified in Schedule 1 (Key Contract Information).
- 30.12 Without prejudice to the Merchant's right to terminate this Agreement under Clauses 30.1, 30.2 or 30.6 or at common law, the Merchant may terminate this Agreement at any time following a Declaration of Ineffectiveness in accordance with the provisions of Clause 53.
- 30.13 To the extent that the Merchant has a right to terminate this Agreement under this Clause 30 then, as an alternative to termination, the Merchant may by giving notice to the Service Provider require the Service Provider to provide part only of the Merchant Services with effect from the date specified in the Merchant's notice ("**Change Date**") whereupon the provision of the remainder of the Merchant Services will cease and the definition of "the Merchant Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted in accordance with Clause 29.
- 30.14 In so far as:
- 30.14.1 the terms of this Agreement give the Service Provider the right to terminate arising out of an act or omission by, or the occurrence of any event or circumstance in respect of a Merchant; and
- 30.14.2 that Merchant is an Associated Company,
- then the references in this Agreement to termination of this Agreement shall be deemed to be references to termination of this Agreement as between the Service Provider and that Merchant only, and this Agreement shall be interpreted accordingly.

31. CONSEQUENCES OF TERMINATION OR EXPIRY

- 31.1 Notwithstanding termination of this Agreement pursuant to Clause 30 (Termination) or expiry in accordance with Clause 3, any applicable Handback Period shall apply pursuant to Schedule 11 (Handback of Merchant Services) and the provisions of this Agreement shall continue until the Expiry Date.
- 31.2 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.
- 31.3 Upon expiry or termination of this Agreement (howsoever caused):
- 31.3.1 the Service Provider shall, at no further cost to the Merchant:
- 31.3.1.1 in accordance with Schedule 11 (Handback of Merchant Services) take all such steps as shall be necessary for the orderly handover of Merchant Services to the Merchant (or its nominee), such that the Merchant Services can be carried on with the minimum of interruption and inconvenience to the Merchant and to effect such handover; and
- 31.3.1.2 on receipt of the Merchant'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;
- 31.3.2 the Merchant shall (subject to Clauses 26, 31.1 and 31.4 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 Merchant Services properly performed in accordance with this Agreement up to the date of termination or expiry calculated so far as is possible in accordance with Schedule 5 (Charges and Payments) or otherwise reasonably determined by the Merchant.
- 31.4 On termination of all or any part of this Agreement, the Merchant may enter into any agreement with any Third Party or parties as the Merchant thinks fit to provide any or all of the Merchant Services and (save where terminated by the Service Provider under Clauses 30.1 or 30.3 or by Merchant under Clause 30.11) the Service Provider shall be liable for all additional expenditure reasonably incurred by the Merchant in having such services carried out and all other costs and damages reasonably incurred by the Merchant in consequence of such termination. The Merchant may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.
- 31.5 Upon termination or expiry of this Agreement, the Service Provider will as soon as is reasonably practicable remove the Terminals and Point of Sale Equipment at its own cost (unless termination occurs due to the Merchant's breach, in which case the Merchant shall bear the costs) and the Service Provider shall promptly remedy any damage caused in the removal that is directly attributable to the Service Provider's negligence (or the negligence of the Service Provider's subcontractors or agents) at its cost and to the reasonable satisfaction of the Merchant.
- 31.6 The provisions of Clauses 1, 7.1-7.3 (inclusive), 20.6, 24.1, 24.2, 24.4, 24.9, 26-28 (inclusive), 31, 32, 34, 0(a), 36.2, 36.3, 36.5.2, 39-43 (inclusive), 47 and 48 and Schedule 11 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 shall do so.
- 31.7 Immediately upon the occurrence of termination of this Agreement on account of any of the events referred to in Clause 30.1, Card Transaction Data and Card Refund Data shall be presented to the Service Provider within three Business Days of the Card Transaction or Card Refund effected or given.

32. HANDBACK OF MERCHANT SERVICES

- 32.1 The Service Provider will comply with the Service Provider's obligations under Schedule 11 (Handback of Merchant Services) in order to ensure, amongst other things, service

continuity and minimisation of disruption to customers at the end of this Agreement and during the Handback Period.

32.2 Cooperation in Relation to Handback of Merchant Services

Without limiting the Service Provider's TUPE obligations and Clause 47 (Records, Audit and Inspection) and Appendix 1 of Schedule 11 (Handback of Merchant Services), the Service Provider shall pro-actively co-operate and work with the Merchant and/or any Successor Operator(s):

32.2.1 from the earliest of:

32.2.1.1 two years following the Contract Commencement Date; or

32.2.1.2 the date on which any notice to terminate this Agreement is issued by the Merchant or the Service Provider,

until the Expiry Date;

32.2.2 by providing such services, advice, assistance, support, information, documentation, data, access and taking such steps as are reasonably requested by the Merchant including:

32.2.2.1 as described in the Handback Plan and/or the Handback Programme;

32.2.2.2 in respect of the provision of the Merchant Services (or services which are substantially similar to the Merchant Services);

32.2.2.3 in respect of the Contract System and/or the Service Levels;

32.2.2.4 in relation to any Intellectual Property Rights within the scope of Clause 36 and subject always to Clause 27;

32.2.2.5 to enable the Merchant (and/or another member of the Merchant Group and/or any Successor Operator(s)) to understand how to replace proprietary tools and how to transfer Data from proprietary tools to replacement tools; and

32.2.2.6 providing such information as reasonably requested by the Merchant for the purpose of any re-tendering or re-letting of the Merchant Services (or services substantially similar to the Merchant Services), whether or not the Service Provider or a member of the Service Provider Group is a recipient of or invited by the Merchant Group to be involved in such process; and

32.2.3 in order to:

32.2.3.1 facilitate the re-tender of the Merchant Services (or services substantially similar to the Merchant Services) and appointment of a Successor Operator(s);

32.2.3.2 prepare for an orderly and smooth transfer to any member of the Merchant Group and/or any Successor Operator(s) of the provision of the Merchant Services (or services substantially similar to the Merchant Services);

32.2.3.3 minimise disruption, inconvenience or any risk to the Merchant Services (or services substantially similar to the Merchant Services) and any interfacing systems and Merchant Services.

32.3 Handback Plan and Merchant Services End Dates

32.3.1 The Merchant anticipates that the transfer of the Merchant Services to a Successor Operator may take place on the basis of a transition on a single "**End Date**" (which in those circumstances would also be the Expiry Date) or alternatively, on a phased step down of Merchant Services with completion of each phase or service being an "**End Date**" (and the last of such dates being the Expiry Date).

32.3.2 The Merchant may, in its absolute discretion and by giving written notice in the form of a Variation to the Service Provider:

- 32.3.2.1 specify an End Date in relation to the termination of any particular Merchant Service having regard for the proper management and transitioning of the relevant Merchant Service and any phasing of various individual End Dates; and/or
- 32.3.2.2 revise or delay the relevant End Date for any reason including where the Merchant Group and/or any Successor Operator is not ready to take over responsibility for the Merchant Service (or any replacing service),

provided that the Merchant shall not specify or require as an End Date any date which is a) prior to the effective date of any notice to terminate this Agreement or any part thereof taking effect in relation to any termination of that Merchant Service pursuant to Clause 30 (Termination) or b) otherwise (where no such notice to terminate has been given) prior to the end of the Initial Term (or, where extended in accordance with Clause 3, the end of the relevant Extension Year). The Service Provider shall continue to provide the relevant Merchant Service and/or part of the Contract System and any other required activities pursuant to this Agreement until the relevant End Date.

32.4 **Handback Procedure**

32.4.1 The Merchant shall provide to the Service Provider as much information as is reasonably practicable regarding the Merchant's proposed arrangements for the performance of the Merchant Services (or services similar to the Merchant Services) by the Successor Operator(s) and/or any member of the Merchant Group (as the case may be) (the "**Successor Plan**"). If there are changes to the Successor Plan, the Merchant shall update such information and shall provide such updated information to the Service Provider.

32.4.2 The Service Provider shall prepare and provide the following in accordance with of Schedule 11 (Handback of Merchant Services):

- 32.4.2.1 the Handback Plan and any updates thereto;
- 32.4.2.2 the Handback Programme and any updates thereto; and
- 32.4.2.3 the Handback Status Reports and any updates thereto.

32.5 No additional charges will be payable to the Service Provider for the services provided pursuant to this Clause 32. However, carrying out the Handback Plan shall be chargeable activity which is not included in the Charges and shall be determined pursuant to the Variation procedure set out in Schedule 90 (Form of Variation).

33. **NON WAIVER OF RIGHTS**

No waiver of any of the provisions of this Agreement 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 34. 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.

34. **NOTICES**

34.1 Any notice, demand or communication in connection with this Agreement (including a Notice) will be in writing and may be delivered by hand, prepaid recorded delivery first class post or e-mail addressed to the recipient at its registered office or the address stated in Schedule 1 (Key Contract Information) or any other address notified to the other Party in writing in accordance with this Clause 34 as an address to which notices, invoices and other documents may be sent, provided that any notice (or Notice) to be served pursuant to Clause 48 (Dispute Resolution) or Clause 30 (Breach and Termination of Contract) shall not be capable of being served by e-mail. The notice, demand or communication will be deemed to have been duly served:

- 34.1.1 if delivered by hand, at the time of delivery;

- 34.1.2 if delivered by post, 2 Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or
- 34.1.3 if e-mail is permitted for such notice, if sent by e-mail to that Party's e-mail address, at the time of sending (or, if sending is not on a Business Day or is after 5pm (at the location of the recipient) on a Business Day, at 9am on the next following Business Day), provided that a confirming copy is delivered by hand or sent by first class post to the other Party within 24 hours after sending the e-mail.

35. **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 Merchant's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Merchant and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

36. **INTELLECTUAL PROPERTY RIGHTS**

- 36.1 All intellectual property rights in the Terminals, Point of Sale Equipment and other items, materials or information supplied by or on behalf of the Service Provider pursuant to this Agreement shall remain vested in the Service Provider.

The Service Provider grants to the Merchant an irrevocable, non-exclusive, worldwide, royalty free licence (a) to use, copy and amend any reports provided to the Merchant pursuant to this Agreement in perpetuity; and (b) for the duration of the Term to use all Intellectual Property Rights in any TFL Equipment supplied by or on behalf of the Service Provider or other materials provided to the Merchant by or on behalf of the Service Provider in the course of providing the Merchant Services (or otherwise in accordance with the terms of this Agreement) for any reasonable purpose associated with the proper enjoyment by the Merchant of the Merchant Services and the exercise by the Merchant of its rights under this Agreement. Such rights will include the right for the Merchant to grant sub licences to any member of the Merchant Group from time to time on terms no wider than the terms granted to the Merchant from time to time under this provision provided that the Merchant shall have no right (save where expressly permitted under this Agreement or with the Service Provider's prior written consent) to use any trade marks, trade names, logos or other similar Intellectual Property Rights of the Service Provider.

- 36.2 To the extent that the Service Provider has utilised a COTS Product in the performance of the Merchant Services, without limiting any other obligation of the Service Provider under Clause 32 (Handback of Merchant Services) or Schedule 11 (Handback of Merchant Services) the Service Provider:

- 36.2.1 shall as and when requested by the Merchant from time to time provide to the Merchant a copy of that COTS Product as configured by the Service Provider for the purposes of this Agreement (including of all Data held within the COTS Product for the purpose of the performance of the Merchant Services or the Service Provider's other obligations under this Agreement); and

- 36.2.2 hereby grants to the Merchant a perpetual, irrevocable, royalty-free and transferable licence free of charge to use that configuration (it being acknowledged that the Merchant will be responsible for obtaining any required licence(s) of the underlying COTS Product required for the Merchant's continued use of the same after the end of the Term).

- 36.3 The Service Provider shall have no right (save where expressly permitted under this Agreement or with the Merchant's prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the TFL Group.

- 36.4 The Service Provider shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with this Agreement have been paid.

- 36.5 The Service Provider shall:
- 36.5.1 promptly notify the Merchant upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property Right which affects or may affect the provision or receipt of the Merchant Services or if any claim or demand is made or action brought for infringement or alleged infringement of any Intellectual Property Right; and
 - 36.5.2 indemnify, keep indemnified and hold harmless the Merchant from and against all actions, claims, demands, costs, charges or expenses (including legal costs on a full indemnity basis) that arise from or are or will be incurred by the Merchant by reason of any infringement or alleged infringement of any Intellectual Property Rights of any person arising out of the use by the Merchant of the reports and/or TfL Equipment supplied by or on behalf of the Service Provider or anything arising from the provision of the Merchant Services and from and against all costs and damages of any kind which the Merchant may incur in or in connection with any actual or threatened proceedings before any court or arbitrator.
- 36.6 The Merchant shall, at the request of the Service Provider, give the Service Provider all reasonable assistance for the purpose of the Service Provider contesting any such claim, demand, or action referred to in Clause 36.5.1 and the Service Provider shall:
- 36.6.1 reimburse the Merchant for all costs and expenses (including legal costs) incurred in doing so;
 - 36.6.2 conduct at its own expense all litigation and/or negotiations (if any) arising from such claim, demand or action; and
 - 36.6.3 consult with the Merchant in respect of the conduct of any claim, demand or action and keep the Merchant regularly and fully informed as to the progress of such claim, demand or action.
- 36.7 If a claim or demand is made or action brought to which Clause 36.5 applies or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may (without prejudice to Clause 36.5), after consultation with the Merchant, at its own expense and within a reasonable time and subject to all other applicable provisions of this Agreement (including those relating to Change), modify or substitute any or all of the Tfl Equipment supplied by or on behalf of the Service Provider and/or the Merchant Services so as to avoid the infringement or the alleged infringement, provided that the terms of this Agreement shall apply mutatis mutandis to such modified or substituted Tfl Equipment and/or the Merchant Services and such Tfl Equipment and/or the Merchant Services are accepted by the Merchant.

37. **NOVATION/TRANSFER**

- 37.1 Within 14 days of any written request of the Merchant to the Service Provider, the Service Provider shall execute one or more agreements substantially in the form specified in Schedule 7 (Novation Agreement) by which the Merchant shall transfer all or such part as may be specified by the Merchant of its rights and obligations under this Agreement, subject to the prior written consent of the Service Provider, to a Third Party or parties to be nominated by the Merchant (such consent not to unreasonably withheld or delayed).
- 37.2 For the purposes of Clause 37.1, the Service Provider may withhold consent to such transfer if it is reasonably satisfied that the financial standing and risk profile of the transferee is materially worse than that of the Merchant (but the Service Provider shall not apply any unreasonable criteria in determining the financial standing and risk profile of the transferee) or if such transfer would be prohibited by any Card Scheme rule or other regulation (provided that the Service Provider shall use its reasonable endeavours to work with the Merchant and to negotiate on its behalf with the Card Schemes or any other applicable body in order to secure any consent or permission required for such transfer).

38. **MEMBERSHIP OF THE TFL GROUP**

TTL is a member of the Tfl Group. The Service Provider acknowledges that any member of the Tfl Group may act as agent for any of the others in respect of this Agreement. Furthermore, the Service Provider hereby gives its consent for the contents of this

Agreement to be disclosed to other TFL Group members. This consent shall supersede, to the extent that it is inconsistent with, any obligations of confidentiality set out elsewhere in this Agreement.

39. JURISDICTION AND GOVERNING LAW

The Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 48, 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 Merchant 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.

40. PROTECTION OF PERSONAL DATA

40.1 The Service Provider shall comply with all of its obligations under the Data Protection Act 1998 and, if Processing Merchant Personal Data, shall only carry out such Processing for the purposes of providing the Merchant Services in accordance with this Agreement and shall only disclose such data to the following recipients (to the extent that such disclosure is permitted by applicable laws and/or necessary for the purpose of providing the Merchant Services or the prevention or detection of crime):

- 40.1.1 the Service Provider's personnel;
- 40.1.2 sub-contractors or agents of the Service Provider with whom there is a written contract in place which requires such sub-contractors or agents to comply with the same data protection requirements that the Service Provider is required to comply with under this Agreement;
- 40.1.3 relevant Issuers and Card Schemes; or
- 40.1.4 such other recipients with the Merchant's prior written consent, provided that such consent will not be required to the extent that such disclosure is necessary for the prevention or detection of crime and, so far as it is permitted to do so by applicable laws, the Service Provider has given the Merchant prior written notice of such disclosure.

40.2 For the purposes of this Clause 40, unless the context indicates otherwise, the following expressions shall have the following meanings:

"Data Controller"	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
"Data Processor"	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
"Data Protection Legislation"	the Data Protection Act 1998 (as interpreted in accordance with Directive 95/46/EC) including all regulations made under it and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any amendment or re-enactment of any of them; any other legislation relating to privacy and/or the processing of Personal Data (as amended from time to time); and any guidance or statutory codes of practice issued by the Information Commissioner in relation to such legislation;
"Data Subject"	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
"Merchant Personal Data"	Personal Data and/or Sensitive Personal Data Processed by the Service Provider on behalf of the Merchant (including Personal Data about Cardholders);
"Personal Data"	has the meaning given to it by section 1(1) of the Data Protection Act 1998;
"Privacy Impact"	a process used to identify and mitigate the privacy and data

“Assessment”	protection risks associated with an activity involving the Processing of Merchant Personal Data;
“Processing”	has the meaning given to it by section 1(1) of the Data Protection Act 1998 and “Process” and “Processed” will be construed accordingly;
“Restricted Countries”	any country outside the European Economic Area with the exception of those countries which are specifically recognised by the EU as providing an adequate level of protection for Personal Data;
“Sensitive Personal Data”	has the meaning given to it by section 2 of the DPA; and
“Subject Access Request”	a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted pursuant to Data Protection Legislation.

40.3 With respect to the Parties’ rights and obligations under this Agreement, the Parties acknowledge that the Merchant is a Data Controller and that the Service Provider is a Data Processor in respect of the Merchant Personal Data that the Service Provider processes on behalf of the Merchant in the course of providing the Merchant Services.

40.4 Details of the Merchant Personal Data to be Processed by the Service Provider and the purposes of such Processing are as follows.

40.4.1 Categories of Data Subject

The Merchant Personal Data to be Processed by the Service Provider (if any) concerns the following categories of Data Subjects:

Customers and members of the public.

40.4.2 Categories of Merchant Personal Data

The Merchant Personal Data to be Processed concerns the following categories of Personal Data and/or Sensitive Personal Data:

Customer contact details.

40.4.3 Purpose(s) of the Processing

The Merchant Personal Data is to be Processed for the following purpose(s):

provision of the Merchant Services in accordance with this Agreement.

40.5 Without prejudice to the generality of Clause 40.1, the Service Provider shall:

40.5.1 process the Merchant Personal Data only in accordance with instructions from the Merchant to perform its obligations under this Agreement, however, the Merchant’s transmission of Card Transaction Data to the Service Provider shall constitute instruction to process the Personal Data contained with such Card Transaction Data;

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

40.5.3 maintain, and make available to the Merchant on its request, documentation, a central register or an inventory which describes the processing operations for which it is responsible and specifies: the purposes for which Merchant Personal Data are processed including the legitimate interests pursued by the Merchant or any Merchant Group member where processing is based on this lawful basis; the

categories of Merchant Personal Data and Data Subjects involved; the source of the Merchant Personal Data; the recipients of the Personal Data; and the location(s) of any overseas Processing of those Merchant Personal Data;

- 40.5.4 take appropriate technical and organisational security measures in accordance with Data Protection Legislation from time to time, against unauthorised or unlawful Processing of Merchant Personal Data and against accidental loss, destruction of, or damage to such Merchant Personal Data;
- 40.5.5 without prejudice to Clause 40.5.4, wherever the Service Provider uses any mobile or portable device for the transmission or storage of Merchant Personal Data, ensure that each such device encrypts Merchant Personal Data;
- 40.5.6 provide the Merchant with such information as the Merchant may from time to time reasonably require to satisfy itself of compliance by the Service Provider (and/or any authorised sub-contractor) with Clause 40.5.4 and 40.5.5, including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this shall include a report recording the results of any privacy or security audit carried out at the request of the Service Provider itself or the Merchant;
- 40.5.7 where requested to do so by the Merchant or where Processing Merchant Personal Data presents a specific risk to privacy, carry out a Privacy Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant statutory requirements) and make the results of such an assessment available to the Merchant;
- 40.5.8 notify the Merchant within two (2) Business Days if it, or any sub-contractor, receives, in respect of the Merchant Personal Data:
 - 40.5.8.1 from a Data Subject (or Third Party on their behalf):
 - (a) a Subject Access Request (or purported Subject Access Request);
 - (b) a request to rectify, block or erase any Merchant Personal Data; or
 - (c) any other request, complaint or communication relating to the Merchant's obligations under Data Protection Legislation;
 - 40.5.8.2 any communication from the Information Commissioner or any other regulatory authority in connection with Merchant Personal Data; or
 - 40.5.8.3 a request from any Third Party for disclosure of Merchant Personal Data where compliance with such request is required or purported to be required by law;
- 40.5.9 provide the Merchant with full cooperation and assistance (within the timescales reasonably required by the Merchant) in relation to any complaint, communication or request made as referred to in Clause 40.5.8, including by promptly providing:
 - 40.5.9.1 the Merchant with full details and copies of the complaint, communication or request; and
 - 40.5.9.2 where applicable, such assistance as is reasonably requested by the Merchant to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation;
- 40.5.10 when notified in writing by the Merchant, supply a copy of, or information about, any relevant Merchant Personal Data. The Service Provider shall supply such information or data to the Merchant within such time and in such form as specified in the request (such time to be reasonable) or if no period of time is specified in the request, then within five (5) Business Days from the date of the request; and
- 40.5.11 when notified in writing by the Merchant, comply with any agreement between the Merchant and any Data Subject in relation to any Processing which causes or is likely to cause substantial and unwarranted damage or distress to such Data Subject, or any court order requiring the rectification, blocking, erasure or destruction of any Merchant Personal Data.

40.6 Subject to the Card Scheme Rules, the Merchant remains solely responsible for determining the purposes for and manner in which Merchant Personal Data is to be Processed. Subject to

Clause 40.1, the Service Provider shall not share any Merchant Personal Data with any sub-contractor or Third Party unless there is a written contract in place with the sub-contractor which requires the sub-contractor or Third Party to:

- 40.6.1 only Process Merchant Personal Data in accordance with the Merchant's instructions to the Service Provider; and
- 40.6.2 comply with the same obligations with which the Service Provider is required to comply with under this Clause 40 (and in particular Clauses 24.2, 27, 40.1, 47.1, 47.2 and 50.1).

40.7 The Service Provider agrees that, and shall procure that any sub-contractor shall agree that, Merchant Personal Data:

- 40.7.1 must only be Processed in accordance with the Merchant's obligations to comply with Data Protection Legislation and by such of their personnel as need to view or otherwise access Merchant Personal Data;
- 40.7.2 must only be used as instructed by the Merchant and as reasonably necessary to perform this Agreement in accordance with its terms;
- 40.7.3 must not be used for any other purposes (in whole or part) by any of them (and specifically but without limitation must not be copied or referred to in whole or part through training materials, training courses, discussions or negotiations or contractual arrangements with third parties or in relation to proposals or tenders with the Merchant (or otherwise), whether on renewal of this Contract or otherwise, without the prior written consent of the Merchant); and
- 40.7.4 must not be used so as to place the Merchant in breach of Data Protection Legislation and/or to expose it to risk of actual or potential liability to the Information Commissioner, Data Subjects and/or reputational damage and/or to any order being made against the Merchant preventing, suspending or limiting the Processing of Merchant Personal Data.

40.8 The Service Provider shall, and shall procure that any sub-contractor shall:

- 40.8.1 subject to Clause 40.1, not disclose or transfer Merchant Personal Data to any Third Party or their own personnel unless necessary for the provision of the Merchant Services and, for any disclosure or transfer of Merchant Personal Data to any Third Party, obtain the prior written consent of the Merchant (save where such disclosure or transfer is specifically authorised under this Agreement);
- 40.8.2 notify the Merchant within 24 hours by written notice with all relevant details reasonably available of any actual or suspected breach of security and/or of this Agreement and/or Clause 40.1 in relation to Merchant Personal Data including unauthorised or unlawful access or Processing of, or accidental loss, destruction or damage of any Merchant Personal Data;
- 40.8.3 keep the Merchant properly and regularly informed consequently;
- 40.8.4 fully cooperate with the reasonable instructions of the Merchant in relation to the Processing and security of Merchant Personal Data in accordance with this Agreement and in compliance with Data Protection Legislation (including procuring access to sub-contractor premises);
- 40.8.5 cooperate as the Merchant requires with any investigation or audit in relation to Merchant Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to this Agreement, in relation to Data Protection Legislation or in relation to any actual or suspected breach), whether any relevant regulatory body, including the Information Commissioner, the police, any other statutory law enforcement agency or otherwise and shall do so both during this Agreement and after its termination or expiry (for so long as the Party concerned retains and/or Processes Merchant Personal Data);
- 40.8.6 take all reasonable steps to ensure the reliability and integrity of all Service Provider's Personnel who can/or do access Merchant Personal Data;

- 40.8.7 ensure all Service Provider's Personnel who can/ do access Merchant Personal Data are informed of its confidential nature and do not publish, disclose or divulge any of the Merchant Personal Data to any Third Party without the prior consent of the Merchant;
 - 40.8.8 ensure all Service Provider's Personnel who can/ do access Merchant Personal Data have undergone adequate training in relation to the use, care, protection and handling of Personal Data in accordance with Data Protection Legislation and this Agreement, understand such obligations and comply with them and ensure that such training is updated at reasonable intervals; and
 - 40.8.9 comply during the course of this Agreement with any written retention and/or deletion policy or schedule provided to it by the Merchant from time to time.
- 40.9 The Service Provider shall not, and shall procure that any sub-contractor shall not, Process or otherwise transfer any Merchant Personal Data in or to any Restricted Countries without prior written consent from the Merchant (which consent may be subject to additional conditions imposed by the Merchant).
- 40.10 If, after the Contract Commencement Date, the Service Provider or any sub-contractor wishes to Process and/or transfer any Merchant Personal Data in or to any Restricted Countries, the following provisions shall apply:
- 40.10.1 the Service Provider shall submit a written request to the Merchant setting out details of the following:
 - 40.10.1.1 the Merchant Personal Data which will be transferred to and/or Processed in any Restricted Countries;
 - 40.10.1.2 the Restricted Countries which the Merchant Personal Data will be transferred to and/or Processed in;
 - 40.10.1.3 any sub-contractors or other third parties who will be Processing and/or receiving Merchant Personal Data in Restricted Countries;
 - 40.10.1.4 how the Service Provider shall ensure an adequate level of protection and adequate safeguards in respect of the Merchant Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Merchant's compliance with Data Protection Legislation;
 - 40.10.2 in preparing and evaluating such a request, the Parties shall refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner, in connection with, the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries;
 - 40.10.3 the Service Provider shall comply with any instructions and shall carry out such actions as the Merchant may notify in writing when providing its consent to such Processing or transfers, including:
 - 40.10.3.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into this Agreement or a separate data processing agreement between the Parties; and
 - 40.10.3.2 procuring that any sub-contractor or other Third Party who will be Processing and/or receiving or accessing the Merchant Personal Data in any Restricted Countries enters into a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Merchant and the Service Provider in connection with, the Processing of Merchant Personal Data in (and/or transfer of Merchant Personal Data to) any Restricted Countries, and which may include the incorporation of the clauses referred to in Clause 40.10.3.1.
- 40.11 The Service Provider and any sub-contractor (if any), acknowledge:
- 40.11.1 the importance to Data Subjects and the Merchant of safeguarding Merchant Personal Data and Processing it only in accordance with this Agreement;

- 40.11.2 the loss and damage the Merchant is likely to suffer in the event of a breach of this Agreement or negligence in relation to Merchant Personal Data;
- 40.11.3 any breach of any obligation in relation to Merchant Personal Data and/or negligence in relation to performance or non-performance of such obligation shall be deemed a material breach of Agreement;
- 40.11.4 notwithstanding Clause 30.1.1, if the Service Provider has committed a material breach under Clause 40.11.3 on two or more separate occasions, the Merchant may at its option:
 - 40.11.4.1 withdraw authorisation for Processing by a specific sub-contractor by immediate written notice; or
 - 40.11.4.2 terminate this Agreement in whole or part with immediate written notice to the Service Provider.
- 40.12 The Service Provider shall ensure that it is and that its internal processes and procedures, information technology systems and any equipment that it provides or is provided on its behalf pursuant to this Agreement are compliant with PCI DSS. In addition the Service Provider shall:
 - 40.12.1 at least once every 12 months appoint a PCI DSS Qualified Security Assessor (“QSA”) to validate that the Service Provider is compliant with (including as set out above) PCI DSS when providing the Services;
 - 40.12.2 without prejudice to any other audit and inspection rights that the Merchant has under this Agreement, provide the Merchant with copies of any reports and other documents provided by or to the QSA in respect of each such validation; and
 - 40.12.3 where the QSA recommends that certain steps should be taken by the Service Provider, promptly take those steps and demonstrate to the Merchant that those steps have been taken without charge to the Merchant.
- 40.13 Compliance by the Service Provider with this Clause 40 (Protection of Personal Data) shall be without additional charge to the Merchant.
- 40.14 Following termination or expiry of this Agreement, howsoever arising, (or the applicable End Date, if later) the Service Provider:
 - 40.14.1 may Process the Merchant Personal Data only for so long as to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with Clause 40.14.2);
 - 40.14.2 subject to Clause 40.14.1, shall:
 - 40.14.2.1 on written instructions from the Merchant either securely destroy or securely and promptly return to the Merchant or a recipient nominated by the Merchant (in such usable format as and to the extent the Merchant may reasonably require) the Merchant Personal Data and relevant records and documentation accordingly; or
 - 40.14.2.2 in the absence of instructions from the Merchant after 12 months from the expiry or termination of this Agreement securely destroy the Merchant Personal Data and relevant records and documentation accordingly.

Merchant Personal Data may not be Processed following termination or expiry of this Agreement (or the applicable End Date, if later) save as permitted by this Clause 40.14. Notwithstanding the foregoing, each Party may retain Merchant Personal Data that is (i) stored on archival files and (ii) required for compliance with Applicable Law, Payment Network Rules or its obligations pursuant to this Agreement, provided that such Party continues to maintain confidentiality of such Merchant Personal Data pursuant to the terms of this Agreement.

- 40.15 For the avoidance of doubt, and without prejudice to Clause 40.14 the obligations in this Clause 40 shall apply following termination or expiry of this Agreement to the extent the Party concerned retains or Processes Merchant Personal Data.

- 40.16 The indemnity in Clause 24 shall apply to any breach of Clause 40 and shall survive termination or expiry of this Agreement.
- 40.17 The Merchant and Service Provider both recognise that this Clause 40 may be materially affected by developments in data protection legislation, and that consequently these clauses may require revision once updated legislation comes into force.

41. **PAYMENTS**

- 41.1 Any payments made by the Merchant hereunder including final payment under this Agreement shall not prevent the Merchant from recovering any amount overpaid or wrongfully paid however such payments may have arisen including but not limited to those paid to the Service Provider by mistake of law or fact.
- 41.2 The Service Provider shall promptly notify the Merchant of any overpayments or wrong payments and such amounts shall be payments immediately due and payable by the Service Provider to the Merchant. In any event, and without prejudice to the foregoing, the Service Provider shall ensure that it has credited the account nominated by the Merchant:
- 41.2.1 for amounts of less than £1,000 in total, within 20 Business Days;
- 41.2.2 for amounts of £1,000 or more, but less than £10,000 in total, within seven Business Days; or
- 41.2.3 for amounts of £10,000 or more in total, on the same Business Day;
- of any overpayment or wrong payment being made by the Merchant (by direct debit or otherwise) or received by the Service Provider.

42. **ENTIRE AGREEMENT**

- 42.1 Subject to Clause 42.2:
- 42.1.1 this Agreement and all documents referred to in this Agreement, contains all of the terms which the Parties have agreed relating to the subject matter of this Agreement and such documents and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Merchant Services;
- 42.1.2 each Party acknowledges that in entering into this Agreement it is not relying upon any representation, warranty, promise or assurance made or given by any other Party or any other person, whether or not in writing, at any time prior to the execution of this Agreement which is not expressly set out herein. Neither Party has been induced to enter into this Agreement by a statement which this Agreement does not contain; and
- 42.1.3 without prejudice to the Service Provider's obligations under this Agreement, the Service Provider is responsible for and shall make no claim against the Merchant 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.
- 42.2 Nothing in this Clause 42 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.
- 42.3 The Parties agree to disapply or apply differently, to the fullest extent possible, provisions of the Directive and of corresponding national law pursuant to Article 30(1) and 51(1) of the Directive and corresponding provisions of national law, including all regulations in Part 5, and all regulations referred to in regulation 51(3)(a) and (b) of the PSR.

43. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

- 43.1 The Parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Third Party Act by any person not a Party to except that a Successor Operator may enforce its rights under Appendix 1 of Schedule 11 (Handback of Merchant Services).

43.2 Notwithstanding Clause 43.1, the Parties are entitled to vary or rescind this Agreement without the consent of any Successor Operator or any or all members of the Tfl Group save for the Merchant.

44. **WORKPLACE HARASSMENT**

The Merchant's workplace harassment policy requires the Merchant's own staff and those of its contractors to fully comply with this policy to eradicate harassment in the workplace. The Service Provider shall ensure that its staff, and those of its subcontractors working on the Merchant's premises are fully conversant with the requirements of this policy. The Service Provider shall fully investigate any allegations of workplace harassment in accordance with the Service Provider's workplace harassment policy as updated from time to time.

45. **LANGUAGE**

English will be the language of this Agreement and all documentation or information required or produced in the course or in connection with the Service Provider's performance will be in English.

46. **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 any member of the Merchant Group nor favour any employee, officer or agent of any member of the Merchant Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of any member of the Merchant Group other than as a representative of the Merchant, without the Merchant's prior written approval. Breach of this Clause 46 shall constitute a material breach of this Agreement and shall entitle the Merchant to terminate with immediate effect this Agreement and any other contracts between the Service Provider and the Merchant.

47. **RECORDS, AUDIT AND INSPECTION**

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

47.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Merchant Services and the Service Provider's obligations under this Agreement and all transactions entered into by the Service Provider for the purposes of this Agreement (including time-sheets for the Service Provider Personnel where such records are material to the calculation of the Charges) ("**Records**"); and

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

47.2 The Service Provider shall, at the Merchant's request, and without limiting any other obligation it has under this Agreement provide promptly to the Merchant at no additional cost such reports or other Documentation in respect of the provision of the Merchant Services as the Merchant may reasonably request.

47.3 The Merchant and any person nominated by the Merchant has the right to audit any and all Records at any time during the Retention Period on giving to the Service Provider what the Merchant 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 Merchant Services, including without limitation:

47.3.1 accuracy of the Charges and invoices;

47.3.2 audits and examinations by Regulatory Bodies;

47.3.3 performance of the terms of this Agreement;

47.3.4 efficiency of the Service Provider in performing the Merchant Services under this Agreement,

and the Service Provider shall give all reasonable assistance to the Merchant or its nominee in conducting such inspection, including making available documents and staff for interview.

48. **DISPUTE RESOLUTION**

- 48.1 The Merchant 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 ("**Dispute**") before resorting to litigation.
- 48.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Service Provider within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to the Director of Customer Experience (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 48.3 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.
- 48.4 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.
- 48.5 Where a dispute is referred to mediation under Clause 48.3, 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.
- 48.6 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.
- 48.7 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 39.
- 48.8 For the avoidance of doubt, the Service Provider shall continue to provide the Merchant Services in accordance with this Agreement and without delay or disruption while the Dispute is being resolved pursuant to this Clause 48.
- 48.9 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 48 which shall not apply in respect of any circumstances where such remedies are sought.

49. **ACCESS TO PREMISES AND ASSETS**

- 49.1 Subject to Clause 20.4 any access to either or both of any Merchant Premises or Merchant Assets made available to the Service Provider in connection with the proper performance of this Agreement shall be free of charge and shall be used by the Service Provider solely for the purpose of performing the Merchant Services during the Term in accordance with this Agreement provided, for the avoidance of doubt, that the Service Provider shall be responsible for its own costs or travel including either or both of any congestion charging or low emission zone charging. The Service Provider shall:
- 49.1.1 have the use of such Merchant 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 Merchant Premises;
- 49.1.2 vacate such Merchant Premises upon the termination or expiry of this Agreement or at such earlier date as the Merchant may determine;

- 49.1.3 not exercise or purport to exercise any rights in respect of any Merchant Premises in excess of those granted under this Clause 49;
 - 49.1.4 ensure that the Service Provider Personnel carry any identity passes issued to them by the Merchant at all relevant times and comply with the Merchant's security procedures as may be notified by the Merchant from time to time;
 - 49.1.5 not damage the Merchant Premises or any assets on Merchant Premises; and
 - 49.1.6 return immediately to the Merchant in good working order and satisfactory condition (in the reasonable opinion of the Merchant) all Merchant Assets used by the Service Provider or the Service Provider Personnel in the performance of the Merchant Services.
- 49.2 Nothing in this Clause 49 shall create or be deemed to create the relationship of landlord and tenant in respect of any Merchant Premises between the Service Provider and any member of the Merchant Group.
- 49.3 The Merchant shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Service Provider.

50. **COMPLIANCE WITH LAWS AND POLICIES**

- 50.1 The Service Provider, at no additional cost to the Merchant:
- 50.1.1 undertakes to procure that all the Service Provider Personnel comply with all of the Merchant's policies and standards that are relevant to the performance of the Merchant Services, (including Tfl's workplace harassment policy as updated from time to time (copies of which are available on request from Tfl) and with Tfl's Code of Conduct (which is available on Tfl's website, www.tfl.gov.uk)) including those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Merchant for personnel working at Merchant Premises or accessing the Merchant's computer systems. The Merchant shall provide the Service Provider with copies of such policies and standards on request. In the event that the Merchant Services are being provided to both the GLA and Tfl, then the policies and standards of each of the GLA and Tfl shall apply as appropriate;
 - 50.1.2 shall provide the Merchant Services in compliance with, and ensure that the Service Provider Personnel comply with in the performance of the Merchant Services, 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 of both of the Service Provider's or the Merchant's business, from time to time in force which are or may become applicable to the Merchant Services. The Service Provider shall promptly notify the Merchant if the Service Provider is required to make any change to the Merchant Services for the purposes of complying with its obligations under this Clause 50.1.2 and:
 - 50.1.2.1 the provisions of Clause 29 and all other provisions of this Agreement which deal with changes shall apply, except that for the avoidance of doubt any additional costs associated with such change or compliance by the Service Provider shall be borne by the Service Provider; and
 - 50.1.2.2 such circumstances shall not constitute a Force Majeure Event;
 - 50.1.3 without limiting the generality of Clause 50.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
 - 50.1.4 acknowledges that the Merchant 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 Merchant Services,

the Service Provider shall assist and cooperate with Merchant where possible in satisfying this duty;

50.1.5 acknowledges that where the Merchant is TfL or TTL, TfL is under a duty by virtue of a direction under section 155 of the Greater London Authority Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:

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

50.1.5.2 eliminate unlawful discrimination; and

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

and in providing the Merchant Services, the Service Provider shall assist and cooperate with the Merchant where possible to enable the Merchant to satisfy its duty;

50.1.6 shall inform the Merchant forthwith in writing should it become aware of any proceedings brought against it in connection with this Agreement by any person for breach of the Equality Act 2010;

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

50.1.8 without limiting the generality of Clause 50.1.2, shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it.

In all cases, the costs of compliance with this Clause 50.1 shall be borne by the Service Provider.

50.2 In providing the Merchant 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:

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

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

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

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

50.3 In the event that any of the Service Provider's employees, agents or sub-contractors fails to comply with any of the obligations of this Clause 50 the Service Provider shall remove such employee, agent or sub-contractor and provide suitable replacement personnel.

51. **BEST VALUE**

51.1 The Service Provider acknowledges that the Merchant is a best value authority for the purposes of the Local Government Act 1999 and as such the Merchant 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 Merchant, participate in any relevant best value review.

51.2 The Merchant shall have the rights and the Service Provider shall comply with its obligations as set out in Schedule 9 (Form of Variation) in order to deliver Value for Money ("**VfM**") to the Merchant in the performance of this Agreement. The Service Provider agrees to negotiate in good faith (acting reasonably) any changes to this Agreement in order for the Merchant to achieve best value.

52. **EMU CONTINUITY OF CONTRACT**

- 52.1 The Parties confirm that the occurrence or non-occurrence of an event associated with economic and monetary union in the European Union will not have the effect of altering any term of, or discharging or excusing performance under this Agreement or any transaction, or give either Party the right unilaterally to alter or terminate this Agreement or any transaction. Any such variation to this Agreement shall be in accordance with Clause 29.1.
- 52.2 The words "an event associated with economic and monetary union in the European Union" will include each and any combination of the following:
- 52.2.1 the introduction of, changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise);
 - 52.2.2 the fixing of conversion rates between a member state's currency and the new currency or between the currencies of member states;
 - 52.2.3 the introduction of that new currency as lawful currency in a member state;
 - 52.2.4 the withdrawal from legal tender of any currency which, before the introduction of the new currency, was lawful currency in one of the member states;
 - 52.2.5 the disappearance or replacement of a relevant rate option or other price source for the national currency of any member state, or the failure of the agreed sponsor (or successor sponsor) to publish or display a relevant rate, index, price, page or screen; or
 - 52.2.6 the withdrawal of any member state from a single or unified European currency.

53. **DECLARATION OF INEFFECTIVENESS**

- 53.1 In the event that a court makes a Declaration of Ineffectiveness, the Merchant shall promptly notify the Service Provider. The Parties agree that the provisions of Clause 31 and Clauses 53.1 to 53.6 shall apply as from the time when the Declaration of Ineffectiveness is made.
- 53.2 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.
- 53.3 During any court proceedings seeking a Declaration of Ineffectiveness, the Merchant may require the Service Provider to prepare a Cessation Plan in accordance with this Clause 53 by issuing a notice in writing. As from the date of receipt by the Service Provider of such notification from the Merchant, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Merchant shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 53.3.1 an orderly and efficient cessation of the Merchant Services or (at the Merchant's request) a transition of the Merchant Services to the Merchant or such other entity as the Merchant may specify; and
 - 53.3.2 minimal disruption or inconvenience to the Merchant or to public passenger transport services or facilities,
- in accordance with the provisions of Clauses 53.1 to 53.6 and which the Parties agree would have effect in the event that a Declaration of Ineffectiveness is made.
- 53.4 Where there is any conflict or discrepancy between the provisions of Clause 31 and Clauses 53.1 to 53.6 or the Cessation Plan, the provisions of these Clauses 53.1 to 53.6 and the Cessation Plan will prevail.
- 53.5 The Parties shall 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 Merchant) in the event that a Declaration of Ineffectiveness is made.
- 53.6 The Merchant shall pay the Service Provider's reasonable costs in assisting the Merchant 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 Merchant. Provided that the Merchant shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity (whether direct, indirect or consequential loss) as a result of the early termination of this Agreement pursuant to any Declaration of Ineffectiveness.

- 53.7 Consistent with the Merchant's rights of termination implied into this Agreement by the Procurement Regulations, in the event of a Public Procurement Termination Event, the Merchant shall promptly notify the Service Provider that the provisions of Clause 31 and Clauses 53.7 to 53.11 shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of Clause 31 and Clauses 53.7 to 53.11 or the Cessation Plan, the provisions of these Clauses 53.7 to 53.11 and the Cessation Plan shall prevail.
- 53.8 The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event in respect of the period prior to the Public Procurement Termination Event.
- 53.9 As from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Merchant shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 53.9.1 an orderly and efficient cessation or (at the Merchant's election) a transition to the Merchant or such other entity as the Merchant may specify of: (i) the Merchant Services; or (at Merchant's election), (ii) the part of the Merchant Services which are affected by the Public Procurement Termination Event; and
- 53.9.2 minimal disruption or inconvenience to the Merchant or to public passenger transport services or facilities.
- in accordance with the provisions of Clauses 53.7 to 53.11 and to give effect to the terms of the Public Procurement Termination Event.
- 53.10 Upon agreement, or determination by the Merchant, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 53.11 The Merchant shall pay the Service Provider's reasonable costs in assisting the Merchant 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 Merchant, provided that the Merchant shall not be liable to the Service Provider for any loss of profit, revenue, goodwill or loss of opportunity (whether direct, indirect or consequential loss) as a result of the early termination of this Agreement as a result of a Public Procurement Termination Event.
- 53.12 For the avoidance of doubt, the provisions of this Clause 53 (and applicable definitions) shall survive any termination of this Agreement following a Declaration of Ineffectiveness or a Public Procurement Termination Event.

54. **COUNTERPARTS**

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

55. **FURTHER ASSURANCE**

- 55.1 The Service Provider shall provide Assurance to the Merchant in accordance with the requirements of Schedule 14 (Assurance) in order to provide clarity and visibility to the Merchant in relation to the Service Provider's compliance with its obligations under this Agreement.
- 55.2 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.

56. **RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement, 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.

57. **CONFLICT OF INTEREST**

57.1 The Service Provider warrants that it does not and will not have at the Contract Commencement Date or Service Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Merchant Services or any member of the Merchant Group, save to the extent fully disclosed to and approved by the Merchant.

57.2 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 Merchant in writing immediately upon becoming aware of any actual or potential conflict of interest with the Merchant Services or any member of the Merchant Group and shall work with the Merchant to do whatever is necessary (including the separation of staff working on, and data relating to, the Merchant Services from the matter in question) to manage such conflict to the Merchant's satisfaction, provided that, where the Merchant is not so satisfied, it may terminate the Contract in accordance with Clause 30.2.2.

THIS AGREEMENT has been signed by the duly authorised representatives of the Parties on the day and year first above written.

For and on behalf of **TRANSPORT TRADING LIMITED**

Signature

Name

Position

For and on behalf of **BARCLAYS BANK PLC trading as Barclaycard Payment Acceptance**

Signature

Name

Position

SCHEDULE 1

Key Contract Information

1. **Contract Reference Number:** Tfl91639

2. **Commencement:**

(a) **Contract Commencement Date:** 01 January 2017

(b) **Service Commencement Date:** 01 January 2017

3. **Initial Term:**

The duration of the Contract shall be an initial period of seven (7) years on and from the Contract Commencement Date.

4. **[NOT USED]**

5. **[NOT USED]**

6. **Details of the Merchant's Contract Manager**

Name: [REDACTED]
Address: 3rd Floor, Windsor House
50 Victoria Street
London SW1H 0TL
Tel: [REDACTED]
Email : [REDACTED]

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

Name & Position	Contact Details	Area of Responsibility
[REDACTED]	[REDACTED]	Service Provider Contract Manager
[REDACTED]	[REDACTED]	Service Provider Incident Manager
[REDACTED]	[REDACTED]	Service Provider Executive Sponsor
[REDACTED]	[REDACTED]	Service Provider Implementation Support

8. **Notice period in accordance with Clause 30.11 (termination without cause):**

The notice period for termination for convenience is 180 days

9. **Address for service of notices in accordance with Clause 34:**

For the Merchant:

Transport for London, Windsor House, 42-52 Victoria Street, LONDON, SW1H 0TL

[REDACTED]

[REDACTED]

For the Service Provider:

Barclays Bank Plc trading as Barclaycard Payment Acceptance, 1234 Pavilion Drive,
NORTHAMPTON, NN4 7SG

[REDACTED]

[REDACTED]

SCHEDULE 2

Overview

1. Introduction

1.1 Scope and Purpose

- 1.1.1 This Schedule provides an introduction to and an overview of this Agreement documentation and the concepts behind both its structure and the approach and language adopted within this Agreement and the Schedules.
- 1.1.2 This overview is intended to introduce and expand on the information provided elsewhere within this Agreement to ensure that the concepts and approach underlying the main provisions are easily and properly understood. It is not intended to contain specific obligations on either Party.
- 1.1.3 The overviews within this Schedule are intended to provide a high level picture only and should not be interpreted as being complete or comprehensive. In the event of any inconsistency or conflict between the contents of this Schedule and any other part of this Agreement, that other part of this Agreement shall take precedence.

1.2 Service Continuity

- 1.2.1 The Merchant has developed a reputation for delivering a high quality, reliable and consistent service to its customers through a portfolio of contracts and systems managed by the Customer Experience Directorate. It is essential that this continues and this overview seeks to explain how the Service Provider will operate as part of this portfolio to deliver excellent and potentially more integrated services.
- 1.2.2 Specific requirements covering 'fix first and deal with responsibility later' obligations, Required Variations (whereby the Merchant can instruct Variations to proceed, with the cost and other impacts to be determined afterwards), enhanced co-operation obligations, Service management and flexible handback obligations (including the potential for the Merchant to instruct phased handback and/or handback continuing over a period beyond the initial or extended contractual period) have been included to re-enforce and support the need for service continuity.

1.3 Assurance

- 1.3.1 The Merchant has engaged the Service Provider on the basis of the Service Provider's experience, expertise and proposed solution to the delivery of the Merchant Services and other obligations under this Agreement. The Merchant wishes to give the Service Provider latitude to manage its operations effectively; however, the operation of the CE Systems Portfolio is critical to the Merchant's business operations and consequently the Service Provider needs to demonstrate to the Merchant that it is complying with the principles and specific requirements and obligations set out in this Agreement. This process is called Assurance and is principally set out in Schedule 14 (Assurance).
- 1.3.2 Assurance is an activity performed by the Service Provider to demonstrate compliance to the Merchant and includes, but is not limited to, the submission of documents, responding to questions and comments, and witness testing. Assurance is frequently an incremental process that provides confidence to both Parties of successful delivery. It should not, however, be confused with approval from the Merchant and does not relieve the Service Provider of its responsibilities or liability under this Agreement.

2. Document Architecture

2.1 Basic Agreement Structure

2.1.1 The Agreement is constructed from three mutually supporting elements:

- 2.1.1.1 **Main Terms & Conditions** – this contains the main rights and obligations of the Parties expressed in Clauses;
- 2.1.1.2 **Schedules** – these contain further obligations, the Service Scope Specification, Service Levels and contract processes expressed in paragraphs or in the case of the Specification and the standard forms, sections; and
- 2.1.1.3 **Supporting Documents** – these are documents (if any) which are incorporated into this Agreement by reference.

3. [NOT USED]

4. The Services

4.1 Overview

4.1.1 The services to be delivered by the Service Provider are set out in Clause 7 (The Service Provider's Merchant Services Obligations) and further defined along with the Service Levels in Schedule 4 (Service Scope Specification) and Schedule 8 (Service Management).

4.1.2 The Service Levels and requirements set out in Schedule 4 (Service Scope Specification) and Schedule 8 (Service Management) have been developed from the following key metrics which underpin the Merchant's approach to service management:

- 4.1.2.1 **Event Management** - where possible all parts of the Contract System, Merchant Services, service metrics and deliverables will be proactively monitored. This could be by the Merchant's CE operational support system or by the Service Provider's equivalent monitoring system to provide a central command and control function across all service suppliers in the CE Systems Portfolio;
- 4.1.2.2 **High Availability** - the Contract System, particularly the customer touch-points must be fully functional and available for use during relevant operating hours. This should be enabled through high, but achievable performance regimes combining reliability, resilience, proactive fault identification and resolution;
- 4.1.2.3 **Data Completeness** - it is essential to revenue security and a quality customer experience that no Data is lost. Accordingly all Data is to be properly captured and transmitted using robust and resilient processes and protocols; and
- 4.1.2.4 **Low Latency** - delayed Data transmission adversely affects the customer experience and could lead to revenue loss and Data must be transmitted with the minimum of delay both to and from the customer touch-points.

4.2 Service Management

4.2.1 In order to standardise its approach, the Merchant has chosen to adopt elements of the Information Technology Infrastructure Library (ITIL) into its operations and this is reflected in this Agreement.

4.2.2 Specific requirements on service management, service design, service operations, incident management and change management are described in Schedule 4 (Service Scope Specification) and Schedule 8 (Service Management).

SCHEDULE 3

[NOT USED]

SCHEDULE 4

Service Scope Specification

1. Introduction

- 1.1 This Schedule outlines the Service Scope Specification of this Agreement.
- 1.2 The scope of work includes, but is not limited to, payment authorisation and processing, provision and management of Terminals and Point of Sale Equipment, notifications, reporting and general management.

2. Payment Processing and Settlements

- 2.1 The Service Provider shall provide fully functional and fully operational merchant acquiring services (including the Contract System and all necessary Third Party interfaces and commitments) throughout the duration of this Agreement which meet the requirements of this Agreement, achieve the Service Levels and enable the Merchant's customers to undertake Card Transactions. The Merchant Services shall integrate with TfL's existing interfaces and support both the transit and retail transaction models.
- 2.2 The Service Provider shall be able to accept payments from all major payment Card Schemes. As a minimum this shall include the Card Schemes listed at Schedule 13 with potential to add more schemes as agreed from time to time.
- 2.3 The Service Provider shall support payments across a range of currencies to support the Merchant's future development. As a minimum, the Service Provider shall support payments made in sterling, US dollars & Euros.
- 2.4 The Service Provider shall allocate each Merchant Outlet (including any station, shop and structure where Card Transactions are accepted by the Merchant) with a merchant account number and shall maintain the Merchant's merchant account number structure in place as at the Service Commencement Date.
- 2.5 The Service Provider shall make available to the Merchant an acknowledgement file which confirms the validity of the Card Transaction Data contained in the settlement file promptly after receipt of the settlement file. Without prejudice to any other rights and remedies of the Merchant, the Service Provider will immediately notify the Merchant if the Service Provider is unable to comply with this paragraph 2.5.
- 2.6 The Service Provider shall process all Card Transactions for which it has made an acknowledgement file available to the Merchant and submit the resulting payments to the Merchant.
- 2.7 The Service Provider shall make available to the Merchant a feedback file promptly after the settlement file has been processed. The feedback file shall provide the processing status of each Card Transaction contained within the settlement file.
- 2.8 The Service Provider shall support the electronic exchange of updated account information from participating Issuers, for example Visa's Account Updater or MasterCard's Automatic Billing Updater.
- 2.9 The Service Provider shall retain, and make available to the Merchant, Card Transaction Data for a period of 13 months following the end of this Agreement.

3. Point of Sale Equipment and Terminals

- 3.1 The Service Provider shall promptly supply (to such locations and at such times as the Merchant may request) the number of Terminals and Point of Sale Equipment requested by the Merchant from time to time. The Service Provider shall:

- 3.1.1 comply with any reasonable installation procedures advised by the Merchant to the Service Provider; and
 - 3.1.2 continue to provide Terminals and Point of Sale Equipment to all locations for which the Service Provider has, as at the Service Commencement Date, provided Terminals and Point of Sale Equipment.
- 3.2 The Service Provider shall supply the number of Terminals and Point of Sale Equipment requested by the Merchant as soon as reasonably practicable and in any event within 10 Business Days of the Merchant's request.
 - 3.3 The Service Provider shall provide spare Point of Sale Equipment to Merchant locations as the Merchant may reasonably request. As a minimum, the Service Provider shall supply one (1) spare Point of Sale Equipment to POS Priority Merchants.
 - 3.4 The Service Provider shall provide Terminals and Point of Sale Equipment which are capable of capturing a numerical ID input by Merchant Personnel with each payment card transaction. This function will be used, for example, by Victoria Coach Station who input a Coach Operator's ID with each payment card transaction. The Terminals shall produce a summary report which provides that day's totals, grouped by each ID.
 - 3.5 The Terminals and Point of Sale Equipment supplied by the Service Provider shall support batch processing, where the Terminal makes a call to the Service Provider and uploads its Card Transaction Data in a single batch.
 - 3.6 The Service Provider shall provide and maintain the Point of Sale Equipment as Chip & PIN Capable and with Contactless Functionality.
 - 3.7 The Point of Sale Equipment supplied by the Service Provider shall be capable of accepting and processing all major payment card schemes. As a minimum this shall include Visa, MasterCard, Maestro, JCB, American Express and Diners with potential to add more schemes as necessary.
 - 3.8 The Point of Sale Equipment supplied by the Service Provider shall support payments made in multiple currencies including, but not limited to, sterling, US dollars & Euros. The Point of Sale Equipment supplied shall also support Dynamic Currency Conversion.
 - 3.9 The Service Provider shall provide Point of Sale Equipment to allow the Merchant to take payments on the internet via a system hosted by the Service Provider.
 - 3.10 The Service Provider shall test and accredit the TfL Equipment (including the Point of Sale Equipment) prior to the Service Commencement Date or prior to any operation of such TfL Equipment if supplied after the Service Commencement Date.
 - 3.11 The Service Provider shall provide to the Merchant manuals for the operation of any Terminals and Point of Sale Equipment supplied and shall:
 - 3.11.1 ensure that any manuals and or related materials provided by the Service Provider to the Merchant are and are kept up to date, and
 - 3.11.2 provide the Merchant with sufficient copies of manuals and updated materials taking into account the number of items of TfL Equipment (including the Point of Sale Equipment and Merchant Equipment) when new and/or additional Terminals and Point of Sale Equipment are provided.
 - 3.12 The Service Provider shall ensure that the merchant copy of receipts produced by Point of Sale Equipment and Terminals supplied by the Service Provider under this Agreement are truncated; all but the last 4 digits of the Primary Account Number (PAN) shall be replaced by non-numeric characters.
- 4. General Management**
- 4.1 The Service Provider shall provide reasonable notice of any changes to the scheme fees (as defined in Clause 16.5).

- 4.2 The Service Provider agrees to approach and use reasonable endeavours to negotiate with the Card Schemes and defend the Merchant and use reasonable endeavours to avoid the imposition of any penalties, fines or other charges in respect of any non-compliance of the Card Scheme Rules or PCI DSS and to extend any deadline for the Merchant to comply with these rules.
- 4.3 To support the Merchant in the day to day running and future improvement of Contactless Ticketing the Service Provider shall:
- 4.3.1 represent, in cooperation with the Merchant, the Merchant's interests in discussions about Contactless Ticketing with the Card Schemes and Issuers as reasonably necessary;
- 4.3.2 notify the Merchant promptly of any technological or Card Scheme rule changes that impact on the Merchant's Contactless Ticketing plans; and
- 4.3.3 assist the Merchant in achieving the necessary accreditation to allow the day to day running and future improvement of Contactless Ticketing.
- 4.4 The Service Provider shall notify the Merchant of any changes to the Liability Shift Table as soon as reasonably possible.

5. **Chargebacks**

- 5.1 The Service Provider shall provide the Merchant with the option to receive notification of retrievals and Chargebacks in electronic format and shall accept the Merchant's responses to Chargebacks and retrievals in electronic format.
- 5.2 The Service Provider shall use reasonable endeavours to automatically respond to Chargebacks where the Liability Shift Table states that the Merchant is not responsible.
- 5.3 The Service Provider shall provide a dedicated point of contact which the Merchant can contact (via email and telephone) to enquire about the Merchant's Chargebacks.

6. **Management Reporting**

- 6.1 The Service Provider shall provide the Merchant with secure electronic access to such reports on the provision of the Merchant Services as the Merchant may reasonably request. As a minimum, unless otherwise agreed, all reports shall be available to view or download in at least one of the following formats, as applicable: CSV, XML, Excel and PDF.
- 6.2 The Service Provider shall ensure that all reports contain a management summary section which highlights and summarises key information from the report (e.g. by using charts and summary tables).
- 6.3 The Service Provider shall provide, with the first delivery of each new report, an explanation of all columns, fields, codes and abbreviations used on all reports. The Service Provider shall ensure this information is kept up to date and provide the Merchant with an updated version as changes are made.
- 6.4 The reports to be provided by the Service Provider shall include but shall not be limited to the following:

6.4.1 Retrieval Requests

The Service Provider shall provide a report which details the Merchant's Retrieval Requests. This report shall, as a minimum, show the following information:

- Case ID (this ID must be used to reference the Retrieval Request if a chargeback is raised against the same transaction)
- Amount of the transaction
- Reason for Retrieval Request
- Date of request
- Account number (truncated PAN)
- Merchant reference

- Customer reference
- Outlet number
- Chain number
- Group number

This report shall be provided daily. A weekly report which aggregates all of the Retrieval Requests from the previous week shall also be provided.

6.4.2 Chargebacks Received Report

The Service Provider shall provide a report which details Chargebacks_raised against TFL. This report shall, as a minimum, show the following information:

- Case ID
- Retrieval Case ID (mandatory. Sometimes referred to as "Merchant Reference Number")
- Reason for Chargeback
- Reason group (e.g. fraud / non-receipt of goods)
- Account number (truncated PAN)
- Amount of transaction
- Outlet number
- Chain number
- Group number

This report shall be provided daily. A weekly and monthly report which aggregates all of the Retrieval Requests from the previous week and month shall also be provided.

6.4.3 Daily Income Report

The Service Provider shall provide a daily income report which is subtotaled by business unit (chain). This report shall, as a minimum, show the following information:

- Source (Outlet number)
- Acquirer ID
- Currency
- Transaction type (debit or credit)
- Transactions count
- Transactions amount
- Device type (e.g. POM or TOM)

6.4.4 Monthly Management Information Report

The Service Provider shall provide a monthly Management Information report. This report shall, as a minimum, show the following information:

- Year on Year Comparison
- Rolling 12 Months by Card Type
- Transaction Profile by transaction type (e.g. e-commerce, authorisations, foreign issued cards)
- Chargeback value vs. POS values
- Full chargeback data for the previous month

6.4.5 Monthly Reconciliation Report

Unless otherwise fulfilled by alternative reports, statements and e-invoicing, the Service Provider shall provide a monthly reconciliation report. This report shall list out all of the charges and refunds applied to the Merchant's account. This information shall be grouped by business unit (chain). The report shall, as a minimum, show the following information:

- Charge description

- Charge (excluding VAT)
- Indication of whether the transaction is a credit or debit
- Number of transactions to which the charge relates to
- Number of refunds included in the charge
- Value of refunds included in the charge
- Per item interchange rate (and where appropriate, the Ad Valorem percentage rate and charge)

6.4.6 Daily Transaction Report

The Service Provider shall provide a daily transaction report. This report shall summarise the value and volume of all the Merchant's transactions, grouped by business unit (chain), outlet and day. This report shall cover the previous three days of transactions. This report shall, as a minimum, show the following information:

- Group Number
- Chain Number
- Outlet Number
- Transaction Date
- Total Transaction Value
- Total Transaction Count

6.4.7 Statements of Accounts

The Service Provider shall issue monthly statement of accounts for each business unit (chain). These statements shall show, as a minimum, the following information:

- Invoice total
- Balance brought forward from previous statement
- VAT charged
- Payments received
- Line item description of each debit/credit
- Sort code and account number details

6.4.8 Daily Fraud Report

The Service Provider shall provide a daily fraud report which lists each reported case of fraud raised against the Merchant. This report, as a minimum, shall include the following information:

- Outlet Number
- Chain Number
- Group Number
- Outlet Name
- Outlet City
- Outlet Post Code
- Cancelled PAN (in full)
- Transaction Date
- Transaction Processing Date
- Fraud Reported Date
- Transaction Amount
- Transaction Currency
- Fraud Type Description (Lost, stolen, Account takeover, counterfeit, mail/telephone etc...)
- POS Entry Mode (e.g. Chip & PIN, Mag Stripe)
- Card BIN
- Card Issuer Name
- Card Issuer Country
- Card Issuer Region
- Scheme

This report shall be delivered each day including Saturday and Sunday.

6.4.9 Monthly Fraud Headline Report

The Service Provider shall provide a monthly report which gives an overview of the Merchant's fraud activities. This report shall, as a minimum, show the following information:

- Fraud totals and volumes by Chain
- Fraud totals and volumes by Scheme
- Fraud totals and volumes by Outlet
- Fraud totals and volumes by fraud type
- All fraud transactions from the previous month
- Monthly fraud breakdown by type (covering the previous 12 months)
- Monthly fraud to sales ratio (covering the previous 12 months)
- Fraud headline report (monthly)

6.4.10 Weekly Fraud Headline Report

The Service Provider shall provide a weekly report which gives an overview of the Merchant's fraud activities. This report shall, as a minimum, show the following information:

- Fraud totals and volumes by Chain
- Fraud totals and volumes by Scheme
- Fraud totals and volumes by Outlet
- Fraud totals and volumes by fraud type
- All fraud transactions from the previous week
- Monthly fraud breakdown by type (covering the previous 12 months)
- Monthly fraud to sales ratio (covering the previous 12 months)

6.4.11 Outlet Report

The Service Provider shall provide a monthly report detailing each of the Authorities Outlets. This report shall, as a minimum, show the following information:

- Business unit (chain)
- Group Number
- Outlet Number
- Customer Reference Number
- Outlet Trade Name
- Outlet Street Name
- Outlet Post Town
- Outlet Postcode
- Outlet Telephone
- Contract Submission Description
- Merchant Equipment Description
- Equipment Count
- Point of Sale Actual Submission Method
- 12 Months Total Transaction Value
- 12 Months Average Transaction Value
- Outlet Last Transaction Date
- Number of Transactions

6.4.12 Merchant Account Number Report

The Service Provider shall send the Merchant a statement within ten (10) days following the last day of each month for each Merchant outlet allocated a Merchant account number by the Service Provider showing for the statement period:

- the value of Card Transactions processed by the Service Provider; and

- the amount of the Charges plus any Relevant Tax and any other sums due to the Service Provider under this Agreement.

6.4.13 Settlement File Summary Report

The Service Provider shall provide a daily Settlement File Summary Report. This report shall summarise the value and volume of all the Merchant's successful and rejected payment card transactions.

6.4.14 Weekly Chargebacks Charged Back Report

The Service Provider shall provide a weekly report which details Tfl's chargebacks which have been successfully charged back to Tfl. This report shall, as a minimum, show the following information:

- Case ID
- Chargeback value
- Credit or debit
- Resolution
- Explanation
- Original transaction date
- PAN (first four and last six digits only)
- Retrieval reference number
- Authorisation code
- Outlet number
- Chain number
- Group number
- Issuer
- Explanation of customer's reason
- ID of previous linked case
- Transaction category (e.g. Chip & PIN or Contactless)

6.4.15 No Response to Retrievals Report

The Service Provider shall provide a weekly report which details all retrieval requests where Tfl have not responded. This report shall, as a minimum, show the following information:

- Case ID
- Resolution
- Chargeback code
- Chargeback reason
- Original transaction date
- PAN (first six and last four digits only)
- Merchant reference
- Authorisation code
- Outlet number
- Chain number
- Group number
- Issuer
- Reply by date
- Reference to previous linked case

6.4.16 Chargeback Profile Report

The Service Provider shall provide a weekly chargeback profile report which provides a summary of chargeback activity by chain. This report shall, as a minimum, show the following information:

- Chargebacks Received by Category
- Chargebacks Received by Top 5 Issuers
- Chargebacks Received by Resolution
- Chargebacks Received by Top 5 Card Numbers

- Chargebacks Received by Card Scheme
- Chargebacks Received by Reason
- Chargebacks Entered by Month
- Cases by Transaction Date Month
- Chargebacks Entered by Week
- List of charged back chargeback

7. **Additional Requirements**

- 7.1 The Service Provider shall support the Merchant, at no additional cost, in the event it decides to upgrade all existing X.25 connections to TCP/IP.

SCHEDULE 5

Charges and Payments

Interchange Plus Plus Pricing

The Interchange Plus Plus pricing structure is viewed as the most transparent method of pricing.

Traditional Interchange Plus pricing combines the Interchange and Scheme Fee costs and applies this as one amount with the Processing Fees charged separately. Interchange Plus Plus pricing allows all three pricing elements to be applied individually thus affording you true cost transparency.

We apply our Processing Fees as a 'ppt' (pence per transaction) charge, rather than an ad valorem charge. This means that you are able to accurately forecast such processing fees as these are not affected by value, merely by volume. An increase in the price of a standard card service, for example, would not therefore automatically attract an increase in Processing Fees as would be the case where an acquirer offers these as a percentage of the transaction value.

Interchange Plus Plus pricing is made up of the following elements:

Interchange Fees

Interchange fees include the cost paid to the Card Schemes for the settlement of the issuing side of the transaction. The schemes administer this fee on behalf of its members. The Interchange applied by the Card Schemes is based not only on card type, but also on how the transaction is captured and the country in which the card was issued. Please refer to Appendix A for full details.

Scheme Fees

Scheme Fees are the costs paid to the Card Schemes for the settlement of the acquiring side of the transaction, and include the cost of administering the payment to the Card Issuer. Full details of your scheme fees are detailed below.

A large rectangular area of the document is completely redacted with black ink, obscuring several lines of text and likely a table or list of data.

Scheme Fee- Issuer Region	Ad Valorem	£PT
MasterCard Domestic (UK)	██████	██████
MasterCard Intra (Non UK Europe)	██████	██████
MasterCard Inter (non-Europe)	██████	██████
Maestro/Switch (UK only)	██████	██████
Maestro Intra (Non UK Europe)	██████	██████
Maestro Inter (non-Europe)	██████	██████
VISA Credit Domestic (UK)	██████	██████

VISA Credit Intra (Non-UK Europe)	██████	██████
VISA Credit Inter (Non-Europe)	██████	██████
VISA Debit Domestic (UK)	██████	██████
VISA Debit Intra (Non-UK Europe)	██████	██████
VISA Debit Inter (Non-Europe)	██████	██████

Processing Fees

This element of the pricing includes the margin from which we recover staff costs, overheads, processing and authorisation costs, and retained profit.



TRANSACTION VOLUME PRICING BAND:	Processing Fee / Cost per transaction
1-100,000,000	██████
100,000,001-200,000,000	██████
200,000,001-300,000,000	██████
300,000,001-400,000,000	██████
400,000,001-500,000,000	██████
500,000,001-600,000,000	██████
600,000,001-700,000,000	██████
700,000,001-800,000,000	██████
800,000,001-900,000,000	██████
900,000,001-1,000,000,000	██████
1,000,000,001-1,100,000,000	██████
1,100,000,001-1,200,000,000	██████
1,200,000,001-1,300,000,000	██████
1,300,000,001-1,400,000,000	██████
1,400,000,001-1,500,000,000	██████

1,500,000,001-1,600,000,000	██████
1,600,000,001-1,700,000,000	██████
1,700,000,001-1,800,000,000	██████
1,800,000,001-1,900,000,000	██████
1,900,000,001-2,000,000,000	██████
2,000,000,001-2,100,000,000	██████
2,100,000,001-2,200,000,000	██████
2,200,000,001-2,300,000,000	██████
2,300,000,001-2,400,000,000	██████
2,400,000,001-2,500,000,000	██████
2,500,000,001-2,600,000,000	██████
2,600,000,001-2,700,000,000	██████
2,700,000,001-2,800,000,000	██████
2,800,000,001-2,900,000,000	██████
2,900,000,001-3,000,000,000	██████
3,000,000,001-3,100,000,000	██████
3,100,000,001+	██████

Activity Based Charges

	Fees
Refunds	██████
Paper transactions	██████
Voice Authorisations	██████
Voice Referrals	██████
Chargebacks	██████
Retrievals	██████
Set up of new Merchant ID's	██████

Monthly Charges

	Fees
Standard PDQ Terminal	■
Mobile (GPRS/Wi-Fi/Bluetooth) PDQ Terminal	■
Portable PDQ Terminal & Base unit	■
ePDQ Web/Internet POS	■
Fraud Reporter	■

Additional transaction charges

	Fees
ePDQ gateway transaction fee	■

Ad hoc charges

Imprinters, plates and welcome packs will be free of charge on the first request per merchant number (if not received upon account set-up). Any additional requests will be subject to the charges below:

	Fees
Additional Welcome Pack	■
Additional Imprinter Charge	■
Additional Plate Charge	■
Copy Statement	■
Copy Agreement	■
Breakdown of Trading	■
Copy of Chargeback Letter	■
Ad-Hoc Management information	■

Settlement

You will receive settlement for your transactions as detailed below. Please note that this settlement option uses a single daily payment to your nominated bank account rather than outlet level settlement.

Transmission type	Settlement via AFTS + 1
Direct transmission	Receipt/processing of file by Barclaycard +0 working days (providing receipt the of file is by 0500 hours)
PDQ Online	Transaction day + 1 working day (providing reconciliation is performed by 2100 hours)

Appendix A - Interchange Fees

The diagram consists of a large black rectangular redaction box on the left side of the page. A thin purple line extends horizontally from the right edge of this box. At the end of this line, it turns diagonally upwards and to the right, connecting to a smaller black rectangular redaction box located in the upper right quadrant of the page.

SCHEDULE 6

Terms of Payment

Direct Debit:

1. The Service Provider will to send the Merchant an application for payment in relation to the Charges properly due and payable for the previous month within five Business Days of the month end. The application for payment shall be sent to the address (electronic or otherwise) notified by the Merchant and shall contain all information agreed with the Merchant including the Contract Reference Number, the Service Provider's name and address and a brief description of the Merchant Services.
2. Subject to paragraph 3 below and provided that the Service Provider has submitted an application for payment in accordance with paragraph 1 above, the Merchant shall pay the Service Provider the amount set out in the application for payment on or around the 10th day of each month by direct debit.
3. If the Merchant, acting reasonably, disputes the amount of set out in the application for payment (in whole or part) or the amount of the direct debit payment is incorrect, the Service Provider shall deduct the disputed amount and/or reconcile the incorrect amount, as applicable, against the direct debit payment, or the subsequent direct debit payment if payment has already been made. The Parties shall work together in good faith to resolve any dispute before resorting to the formal dispute resolution procedure in Clause 48. If any amounts that are disputed by the Merchant are subsequently found to be properly due and payable to the Service Provider, such amounts shall be added to the next direct debit payment due.
4. No payment made by the Merchant (including any final payment) or act or omission or approval by the Merchant or its Contract Manager or Procurement Manager (whether related to payment or otherwise) shall:
 - 4.1 indicate or be taken to indicate the Merchant's acceptance or approval of the Merchant 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 Merchant may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under or by virtue of this Agreement; or
 - 4.2 prevent the Merchant from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. The Merchant shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Merchant may recover such amount as a debt.
5. The Service Provider shall be entitled to take from the bank account nominated by the Merchant payment by direct debit for any Chargebacks verified by the Service Provider in accordance with Clause 13.7, this to be done as part of and at the same time as the monthly billing of Charges in accordance with paragraphs 1 to 4 above.

SCHEDULE 7

Novation Agreement

THIS AGREEMENT is made _____ day of _____ 20[]

BETWEEN:

- (1) [] ("**Merchant**"); and
- (2) [] a company registered in England and Wales under number [] and having its registered office at [] ("**Service Provider**"); and
- (3) [] a company registered in England and Wales under company number [] and having its registered office at [] ("**New Merchant**").

WHEREAS:

- (A) Merchant has an agreement dated [] and referenced [insert contract number] with the Service Provider for the provision of merchant acquiring services as more particularly described in the agreement (the "**Contract**").
- (B) Merchant wishes to transfer its benefit and burden under the Contract to the New Merchant.
- (C) The Service Provider and the New Merchant have agreed to such transfer upon the terms and conditions of this Agreement.

IT IS AGREED AS FOLLOWS:

1. In this Agreement "Transfer Date" means [].
2. In consideration of the payment of £5 by the Merchant to the Service Provider (receipt of which is hereby acknowledged), the parties to this Agreement, with effect from the Transfer Date, agree as follows:
 - 2.1 the New Merchant undertakes to perform the obligations of the Merchant under the Contract and be bound by its terms in every way as if the New Merchant is and had been named at all times as a party to the Contract in lieu of the Merchant;
 - 2.2 the Service Provider releases and discharges the Merchant from all demands and claims whatsoever in respect of the Contract and accepts the liability of the New Merchant in relation to the Contract in lieu of the liability of the Merchant and agrees to be bound by the terms of the Contract in every way as if the New Merchant were and had been a party to the Contract at all times in lieu of the Merchant;
 - 2.3 the Merchant transfers its rights and obligations under the Contract to the New Merchant; and
 - 2.4 for the avoidance of doubt, it is hereby expressly agreed that:
 - 2.4.1 any and all rights, claims, counter-claims, demands and other remedies of the Service Provider against the Merchant accrued under or in connection with the Contract prior to the date hereof shall be exercisable and enforceable by the Service Provider against the New Merchant; and
 - 2.4.2 any and all rights, claims, counter-claims, demands and other remedies of the Merchant against the Service Provider accrued under or in connection with the Contract prior to the date hereof shall be exercisable by the New Merchant against the Service Provider.

3. In the event of a dispute arising out of this Agreement, the parties to this Agreement shall resolve it in accordance with any dispute resolution provisions contained in the Contract, subject and without prejudice to paragraph 4 below.
4. The construction, performance and validity of this Agreement (and any non-contractual obligations arising out of or in connection with it) will be governed by English law. The parties to this Agreement submit to the exclusive jurisdiction of the Courts of England and Wales provided that the Merchant has the right in its absolute discretion to enforce a judgement and/or take proceedings in any other jurisdiction in which the New Merchant is incorporated or in which any assets of the New Merchant may be situated.
5. The parties to this Agreement agree that notwithstanding any other provisions of this Agreement, this Agreement shall not confer or purport to confer on any Third Party any benefit or any right to enforce any provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

This Agreement has been executed by the parties to this Agreement on the above date.

Signed for and on behalf of)
[Merchant])

Signature:

Name:

Position:

Signed for and on behalf of)
[The Service Provider])

Signature:

Name:

Position:

Signed for and on behalf of)
[The New Merchant])

Signature:

Name:

Position:

SCHEDULE 8

Service Management

1. Overview

1.1 Definitions and Interpretation

1.1.1 The following definitions and acronyms appear throughout this Schedule and are related to the Merchant Services requested within this Agreement.

"Availability"	a calculated measure whereby the performance of one or more devices, components, modules and parts of the Merchant Services shall be measured on the basis of their availability during the relevant Support Service Day. The proportion of the Support Service Day during which the device, module, component or element of the Merchant Services delivers its functionality, as defined in Schedule 4 (Service Scope Specification) and otherwise in accordance with this Agreement, represents its "Availability";
"Change Management"	has the meaning set out in paragraph 7.2.1 of Schedule 8 (Service Management);
"Change Manager"	shall have the meaning given in paragraph 7.2.3 of Schedule 8 (Service Management);
"Major Incident Categories"	the categories of Major Incidents which are detailed in Appendix 3 (Major Incident Categories) of Schedule 8 (Service Management);
"Major Incident List"	shall have the meaning given in paragraph 9.3.1 of Schedule 8 (Service Management);
"Major Incident Report"	Shall have the meaning given in paragraph 9.7.1 of Schedule 8 (Service Management);
"Merchant Service Operations Team"	the team of Merchant Personnel whom manage the suppliers in line with contractual Service Levels;
"Planned Maintenance Schedule"	shall have mean given in paragraph 2.2.1 of Schedule 8 (Service Management);
"Planned Maintenance Window"	a pre-planned period of time, agreed in advance with the Merchant in accordance with the process set out in paragraph 2.2 (Planned Maintenance Window), when the Service Provider may conduct planned maintenance on the Contract System;
"Priority 1 Major Incident"	shall have the meaning given in Appendix 3 (Major Incident Categories) of Schedule 8 (Service Management);
"Resolver Group"	the technical group assigned to resolve an Incident or event;
"Service Desk"	the technical help desk to be provided by the Service Provider in accordance with paragraph 3 of Schedule 8 (Service Management);
"Service Management"	shall have the meaning given in paragraph 1.3.1 of Schedule 8 (Service Management);
"Service Performance Report"	shall have the meaning given in paragraph 13.1.2 of Schedule 8 (Service Management);

"Service Review Meeting"	the meeting to be held by the Parties in accordance with paragraph 14;
"Support Service Day"	shall be twenty-four (24) hours per day, seven (7) days per week including all Bank Holidays and Christmas Day, unless otherwise agreed with the Merchant.

1.2 Scope and Purpose

- 1.2.1 This Schedule sets out the scope and requirements in respect of the management, performance monitoring and reporting for the delivery of the Merchant Services.
- 1.2.2 The management of the Merchant Services comprises of:
- 1.2.2.1 provision of all Service Management and other activities set out in this Schedule;
 - 1.2.2.2 maintaining, modifying, operating, monitoring and reporting of the Merchant Services as set out in Schedule 4 (Service Scope Specification) and otherwise in accordance with this Agreement;
 - 1.2.2.3 monitoring, reporting on and ensuring the continued integrity of the Contract System and the operation of its interfaces;
 - 1.2.2.4 managing and delivering Changes;
 - 1.2.2.5 providing management information as set out in Schedule 4 (Service Scope Specification) and service reporting as set out in Appendix 2 (Service Performance Reports); and
 - 1.2.2.6 identifying and providing the agreed Merchant Services required to perform this Agreement.
- 1.2.3 Where this Schedule sets out the requirements for the Service Provider to deliver the Merchant Services, these Merchant Services shall be provided by the Service Provider to the Merchant with effect from the Service Commencement Date.

1.3 Service Management

- 1.3.1 The Service Provider's responsibilities for the management of the Contract System and the Merchant Services ("**Service Management**") shall include but are not limited to:
- 1.3.1.1 meeting the Service Levels as specified in Appendix 1 (Service Levels);
 - 1.3.1.2 providing a Service Desk in accordance with paragraph 3 (Service Desk);
 - 1.3.1.3 proactively monitoring the Merchant Services to prevent, identify and resolve Incidents with little or no impact to end-users and Merchant Personnel;
 - 1.3.1.4 ensure that the Contract System operates in accordance with the requirements set out in Schedule 4 (Service Scope Specification) and otherwise in accordance with this Agreement;
 - 1.3.1.5 identify scenarios, plan, and test processes and procedures for Major Incidents and respond quickly and effectively in order to minimise or prevent impact to end-users and Merchant Personnel;
 - 1.3.1.6 [NOT USED];
 - 1.3.1.7 monitoring and the reporting of the Merchant Services performance and conformance to the Service Levels; and
 - 1.3.1.8 providing detailed reports and attending regular meetings on the performance of the Merchant Services against agreed performance targets and implementing corrective action and service improvement

plans where necessary as set out in paragraphs 7 (Change Management) and 9 (Major Incidents and Service Recovery).

2. **General Requirements**

2.1 Performance Measurement

- 2.1.1 Where an Incident on a device, module or part of the Contract System and Merchant Services prevents the relevant device, module or part of the Contract System and Merchant Services from delivering its functionality, as defined in Schedule 4 (Service Scope Specification) and otherwise in accordance with this Agreement, this shall be deemed to be an Incident which affects the Availability of the relevant device, component, module or part of the Contract System and Merchant Services.
- 2.1.2 Where a Service Level is specified in Appendix 1 (Service Levels), the Service Provider's failure to meet such Service Level may result in the application of Corrective Action Notices.
- 2.1.3 For the purposes of calculating Availability, an Incident shall be deemed to have commenced from when the Service Provider first became aware of the Incident or would have become aware of that Incident but for a failure of the Service Provider to comply with its obligations under this Agreement.

2.2 Planned Maintenance Windows

- 2.2.1 The Service Provider shall prepare and maintain a schedule, which shall provide visibility of planned maintenance works for (at a minimum) the following 30 days (the "**Planned Maintenance Schedule**"), which may or will affect the Merchant Services.
- 2.2.2 The Service Provider shall submit the Planned Maintenance Schedule to the Merchant on or before the 15th day of each month.
- 2.2.3 Where the Service Provider is unable or no longer needs to conduct maintenance works during an agreed Planned Maintenance Window it shall notify the Merchant as soon as reasonably practicable.
- 2.2.4 For the avoidance of doubt, the Planned Maintenance Schedule shall not limit Service Level 1 (Availability of the Merchant Services); the Merchant Services will not be considered as Available during any Planned Maintenance Window.

2.3 Reporting Time Format

- 2.3.1 All times reported by the Service Provider (e.g. on Incident reporting) shall be Greenwich Mean Time (GMT) or British Summer Time (BST) as appropriate.

3. **Service Desk**

3.1 Overview

- 3.1.1 The Service Provider shall provide a Service Desk which shall work with the Merchant and where applicable a Third Party to develop processes and utilities to increase the effectiveness of the Service Desk such that more Incidents are able to be detected, triaged and resolved without escalation to the Merchant or Third Party.
- 3.1.2 The Service Desk will have a close working relationship with the Merchant Service Operations Team.
- 3.1.3 The Service Desk will be the single point of contact for the Merchant Personnel for all Incidents.

3.2 Requirements

3.2.1 The Service Desk shall:

- 3.2.1.1 make use of tools and troubleshooting methodologies to diagnose and resolve Incidents;
- 3.2.1.2 provide suitably qualified personnel to monitor and proactively maintain the Merchant Services so as to reasonably prevent unplanned service outages from occurring;
- 3.2.1.3 provide expertise and capability to research and develop solutions to new or unknown Incidents and develop tools and processes to prevent, or to enable the Service Provider to resolve such Incidents in the event of reoccurrence;
- 3.2.1.4 provide qualified technical personnel that are capable of responding to queries, escalating Incidents to the appropriate Resolver Group and ensuring updates on call progress and closure are reported to the Merchant where necessary; and
- 3.2.1.5 have a close working relationship with the Merchant Service Operations Team; and
- 3.2.1.6 in conjunction with the Merchant develop the processes for appropriate escalations to Resolver Groups, Service Desk personnel and Contract Manager.

3.2.2 Where any Incident or Major Incident occurs, the Service Desk shall inform the Merchant Service Desk within the Service Levels stated in Appendix 1.

3.2.3 The Service Desk shall be able to receive and respond to queries primarily via telephone, but may otherwise where more appropriate resolve and respond to queries by:

- 3.2.3.1 email; and
- 3.2.3.2 automatically generated alerts from the monitoring tools.

3.2.4 The Service Desk shall operate throughout the Support Service Day.

4. [NOT USED]

5. Monitoring of the Merchant Services

5.1 Overview

5.1.1 The Service Provider shall be responsible for monitoring the Merchant Services. The Service Provider shall utilise monitoring tools in conjunction with the other monitoring capabilities to deliver the requirements set out below for the monitoring of the Merchant Services.

5.1.2 This section sets out the requirements of the Service Provider for the delivery and management of monitoring capabilities.

5.2 Requirements

5.2.1 The Service Provider shall identify, develop and implement tools, thresholds and reports, and Assure the Merchant that it is able to proactively monitor the Merchant Services to identify and respond to Incidents, insofar as is possible, prior to such Incident adversely affecting the end-user and without requiring reporting from, or intervention by, the Merchant. The Service Provider shall be responsible for maintaining and updating such tools, thresholds and reports for the Term of this Agreement.

- 5.2.2 all monitoring tools shall include event definition, event management processes and Incident management capability to enable efficient automatic threshold exception event monitoring and Incident resolution.
- 5.2.3 The Service Provider shall be responsible for the operation and configuration of the monitoring tools. The Service Provider shall review the configuration of the monitoring tools, reconfigure it and Assure the Merchant in response to all emerging issues and risks and to identify opportunities to improve the monitoring of the Merchant Services. All agreed configuration Changes shall be implemented in accordance with paragraph 7 (Change Management).
- 5.2.4 The Service Provider shall update the monitoring tools and configuration in response to Changes according to paragraph 7 (Change Management).
- 5.2.5 The Service Provider shall:
 - 5.2.5.1 ensure that the Merchant Services are continuously monitored during the Support Service Day;
 - 5.2.5.2 proactively monitor the Merchant Services to ensure that all issues are identified and resolved quickly and efficiently;
 - 5.2.5.3 develop and configure remote monitoring and intervention capabilities for the hardware, network, software, interface, application, configuration items, environment or other elements that comprise the Merchant Services;
 - 5.2.5.4 capture and record all Incidents;
 - 5.2.5.5 ensure that all Merchant Services are monitored at the point of any handover to a Third Party so that responsibility for all Incidents can be identified and any alert or Incident is assigned to the correct Third Party.

6. **[NOT USED]**

7. **Change Management**

7.1 Overview

- 7.1.1 Change Management is required to ensure that any Changes made to the Contract System or Merchant Services have been appropriately communicated, assessed, tested and follows a standard process for delivery.
- 7.1.2 This section sets out the requirements of the Service Provider for the management of Changes.

7.2 Requirements

- 7.2.1 From the Service Commencement Date, the Service Provider shall implement and operate robust processes to facilitate, manage and successfully implement (as appropriate) Change ("**Change Management**").
- 7.2.2 The Service Provider shall notify the Merchant of Change which will or may have a significant impact on the Merchant Services. Details of such Change and the possible impact of the Change on the Merchant Services shall be provided to the Merchant as soon as reasonable possible and shall be provided no later than 10 Business Days before the implementation of such Change, unless otherwise agreed between the Parties.
- 7.2.3 The Service Provider shall nominate an appropriate individual to be responsible for such Change Management (the "**Change Manager**").
- 7.2.4 The Service Provider acknowledges that the Merchant has operational and/or business requirements, including in relation to special events, which may influence the timing of Changes introduced into the live environment. The Merchant shall use

reasonable endeavours to supply the Service Provider with a forward look ahead of events that may affect the Contract System or Merchant Services. The Service Provider shall use reasonable endeavours to accommodate the Merchant's requirements in relation to the timing of Changes.

8. **[NOT USED]**

9. **Major Incident Management**

9.1 Overview

9.1.1 The objectives of Major Incident management are to ensure:

9.1.1.1 the Merchant is Assured that a failure of any part of the Contract System and Merchant Services will be recovered and all non-available parts of the Contract System will be brought back into service with the minimum disruption to end users;

9.1.1.2 the integrity of the Contract System and Merchant Services as far as possible during any Major Incident; and

9.1.1.3 that where practical, the Service Levels will be maintained during any Major Incident.

9.1.2 This section sets out the requirements for the Service Provider to develop and maintain plans for the management of Major Incidents and recovery of the Merchant Services after such Major Incidents.

9.1.3 The Service Provider acknowledges and agrees that Major Incident management in respect of the Merchant Services is fully dependent upon the Major Incident Plan and that it is necessary for the Service Provider to ensure the continuity and the provision of the Merchant Services pursuant to the terms of this Agreement in all circumstances, events and scenarios, including in respect of and following a Major Incident.

9.1.4 The Service Provider shall submit a Disaster Recovery Plan to the Merchant within 10 business days following the Contract Commencement Date. The Disaster Recovery Plan shall be included as part of the Major Incident Plan produced in accordance with paragraph 9.4.

9.2 Requirements

9.2.1 The Service Provider shall prepare, submit and maintain the following documents in accordance with the provisions of this Schedule:

9.2.1.1 the Major Incident List;

9.2.1.2 the Major Incident Plan; and

9.2.1.3 the Major Incident Reports.

9.3 Major Incident List

9.3.1 An initial list of Major Incidents (the "**Major Incident List**") appears in Appendix 3 (Major Incident Categories). The Parties shall agree an updated Major Incident List prior to the Service Commencement Date.

9.3.2 The Parties shall jointly agree the suitable categorisation of Major Incidents according to their impact on the provisions of the Contract System and Merchant Services and these will appear in Appendix 3 (Major Incident Categories).

9.3.3 The Parties shall meet at the request of either Party on ten (10) Business Days' prior written notice to review the Major Incident List and agree any necessary amendments. As a minimum, the Major Incident List shall be reviewed annually on the anniversary of the Service Commencement Date.

- 9.3.4 The Service Provider shall be responsible for reviewing and updating the Major Incident List following each Change and each Major Incident in accordance with this Schedule 8 and if the Service Provider fails to do so then a Corrective Action Notice may be issued to the Service Provider by the Merchant.

9.4 Major Incident Plan

- 9.4.1 The Service Provider shall:

- 9.4.1.1 ensure that a draft Major Incident Plan is prepared and submitted to the Merchant for Assurance; and
- 9.4.1.2 update the Major Incident Plan each month and after any Major Incident. If the Service Provider fails to update the Major Incident Plan accordingly then a Corrective Action Notice may be issued to the Service Provider by the Merchant.

- 9.4.2 The Major Incident Plan shall, as a minimum, include:

- 9.4.2.1 an introduction describing the purpose and structure of the Major Incident Plan and how to use the Major Incident Plan;
- 9.4.2.2 a master plan describing the overall strategy for ensuring business and service continuity (and for responding to a Major Incident) in respect of the Merchant Services and the Contract System;
- 9.4.2.3 a risk and issues assessment in relation to all elements of the Contract System and Merchant Services, including:
- (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the Contract System and Merchant Services and associated risk management processes;
 - (c) identification of risks arising from the interfaces of the Contract System and Merchant Services with the those provided by a Third Party; and
 - (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 9.4.2.4 a description of all methods, processes and procedures and other actions and sequences to be followed in managing and responding to Major Incidents, such as:
- (a) identifying the start and finish of Major Incidents;
 - (b) notifying and liaising with the Merchant, end users, and Third Parties;
 - (c) agreeing with the Merchant who should lead the management of a Major Incident and ensuring clarity of responsibility;
 - (d) the assignment of Service Provider Personnel and tasks;
 - (e) using or recalling backups or storage;
 - (f) recovering, re-entering or correcting Data; and
 - (g) deploying additional Service Provider Personnel, processes or procedures;
- 9.4.2.5 management and review activities including:
- (a) the escalation process for each Major Incident as set out in Appendix 3 (Major Incident Categories);
 - (b) a communications plan (including declaration of the Major Incident and verification of recovery and restoration of the Contract System and/or Merchant Services); and

- (c) the arrangements for preparing and training Service Provider Personnel to deal with Major Incidents;
 - 9.4.2.6 details of contingency plans, including extending the Major Incident Plan for a Major Incident;
 - 9.4.2.7 the Major Incident List; and
 - 9.4.2.8 how the Service Provider shall manage Major Incidents involving Third Parties.
- 9.4.3 The Service Provider acknowledges that Priority 1 Major Incidents would have a greater impact upon end users and/or the operation of the Contract System and/or the Merchant Services and shall ensure that the Major Incident Plan reflects the materiality of such Major Incidents.
- 9.4.4 The Service Provider shall expand the Major Incident Plans as the Contract System is modified and new Merchant Services, new systems and other Variations and Changes are introduced.
- 9.4.5 The Service Provider shall ensure that the Major Incident Plan is designed in such a way to ensure that:
 - 9.4.5.1 it does not depend on any other Third Party adjusting their hardware, software or systems as a result of any Major Incident unless this has been agreed in writing by the Merchant;
 - 9.4.5.2 appropriate measures are adopted to ensure that the security of the Merchant Services and the Contract System are not compromised where possible and, where this is not possible, that any associated risk is properly managed; and
 - 9.4.5.3 its objective is to allow the Merchant Services to be provided by the Service Provider in accordance with the Service Levels and to mitigate the adverse impact of a Major Incident.
- 9.5 Review of Major Incident Plans
 - 9.5.1 The Service Provider shall incorporate lessons learned from any Major Incident into the Major Incident Plan and shall issue to the Merchant for approval.
 - 9.5.2 The Service Provider shall regularly review the Major Incident Plan and shall issue the updated plan to the Merchant for approval as new Major Incidents are identified and added to the Major Incident List.
- 9.6 [NOT USED]
- 9.7 Reports and Meetings
 - 9.7.1 Following the resolution of a Major Incident, the Service Provider shall prepare a report (a "**Major Incident Report**") which shall include but shall not be limited to:
 - 9.7.1.1 details of the trigger(s) for the Major Incident;
 - 9.7.1.2 details of the Major Incident (e.g. duration, scope of Merchant Services affected, impact on the Contract System, cause of the Incident etc.);
 - 9.7.1.3 an explanation of the solution deployed by the Service Provider and a summary statement as to how well (or otherwise) the Service Provider handled the Major Incident;
 - 9.7.1.4 the lessons learned by the Service Provider as a result of the Major Incident;
 - 9.7.1.5 any proposed changes to the Service Provider's procedures and the Major Incident Plan; and if appropriate, the Major Incident List;

9.7.1.6 proposed amendments to Third Party procedures, systems and plans in the event that the Service Provider's investigations into the trigger for the Major Incident reveal that the Major Incident was caused as the result of an act or omission of a Third Party.

9.7.2 Unless otherwise agreed with the Merchant, a draft of the Major Incident Report shall be prepared and submitted to the Merchant as soon as reasonably possible but no later than fifteen (15) Business Days of any Major Incident having been resolved and the Service Provider shall finalise the Major Incident Report within a further ten (10) Business Days of the draft being submitted.

9.7.3 [NOT USED]

9.7.4 The Service Provider shall include a summary of all occurrences of a Major Incident in the Service Performance Report prepared each month by the Service Provider which shall be discussed at the corresponding Service Review Meetings.

10. Incident Management

10.1 Overview

10.1.1 The aim of Incident management is to restore the Merchant Services as quickly as possible, often through a work around or temporary fixes, rather than through trying to find a permanent solution.

10.1.2 This section sets out the requirements of the Service Provider for the management of Incidents that are not classified as Major Incidents.

10.2 Requirements

10.2.1 The Parties shall agree a process for the management of Incidents prior to the Service Commencement Date.

10.2.2 The Service Provider shall:

10.2.2.1 use the monitoring capabilities as provided for in paragraph 5 (Monitoring of the Merchant Services) of this Schedule;

10.2.2.2 log Incidents;

10.2.2.3 categorise the Incident and if the Incident meets the criteria of a Major Incident from paragraph 9 (Major Incidents and Service Recovery) then the Service Provider shall manage the Major Incident in accordance with paragraph 9 (Major Incidents and Service Recovery);

10.2.2.4 notify the Merchant Service Operations Team of the Incident and should the Merchant wish to provide a reference number to the Service Provider, which shall be attached to the Incident, the number will be provided by the Merchant separately through the Service Desk, unless otherwise agreed;

10.2.2.5 investigate and diagnose the issue;

10.2.2.6 identify a resolution to recover the Merchant Services;

10.2.2.7 implement the resolution in accordance with the paragraph 7 (Change Management);

10.2.2.8 perform tests and contact the Merchant to confirm the Merchant Services and/or Contract System has been restored;

10.2.2.9 update the ticket and close the Incident with agreement from the Merchant; and

10.2.2.10 progress any follow up action as appropriate.

10.2.3 The severity and response to any Incident shall be governed by the relevant priority of Incident as defined in Appendix 3.

10.2.4 The Service Provider shall fix faults in the first instance and then work with the Merchant to agree the responsibility of the fault after the fact.

10.2.5 The Service Provider shall ensure a Major Incident manager is available to the Merchant twenty four (24) hours a day, seven (7) days a week including all Bank Holidays and Christmas Day.

11. **[NOT USED]**

12. **[NOT USED]**

13. **Service Performance Report**

13.1.1 The Service Provider shall prepare and submit to the Merchant a Service Performance Report.

13.1.2 The Service Provider shall deliver a report which details the Service Provider's performance of the Merchant Services (the "**Service Performance Report**") each month within ten (10) Business Days following the end of that month. The structure and contents of the report is detailed in Appendix 2 (Service Performance Reports).

13.1.3 The Merchant may, at the Service Review Meeting, advise the Service Provider of any items contained in the Service Performance Report that require correction. The Service Provider shall ensure that agreed corrections are communicated to the Merchant. Where the Parties are unable to agree on such corrections they shall be referred to the Contract Manager.

14. **Service Review Meeting**

14.1 Overview

14.1.1 The purpose of the Service Review Meeting is to review the performance of the Service Provider over the previous month to ensure the best quality and standards of performance in the provision of the Merchant Services.

14.2 Requirements

14.2.1 The Service Provider shall send suitably qualified Service Provider Personnel to attend a monthly Service Review Meeting with the Merchant which shall be held at a Merchant Premises in London unless otherwise agreed.

14.2.2 The agenda for the Service Review Meeting shall initially cover:

14.2.2.1 the previous minutes;

14.2.2.2 a review of the Service Provider's Service Performance Report;

14.2.2.3 other matters as jointly agreed;

14.2.2.4 Contract System and Merchant Services operation, Agreement performance and Agreement compliance where appropriate; and

14.2.2.5 transition, where applicable.

14.2.3 The Merchant shall be responsible for the creation and distribution of the agenda and meeting minutes.

14.2.4 The Service Provider shall attend scheduled and ad-hoc operational meetings as reasonably requested by the Merchant.

Appendix 1 - Service Levels

	Description	Service Level Requirement	Service Level	Measure Period
Merchant Services Availability and Processing Response Times				
1	Availability of the Merchant Services – Processing and Responding to Authorisation Requests	The Merchant Services shall be available for processing and responding to authorisation requests throughout the Service Support Day with Availability of 99.85% or higher each month.	99.85%	Per Month
2.1	Processing Time – Authorisation Requests within 22 seconds	The Service Provider shall process and respond to 100% of authorisation requests in accordance with this Agreement within 22 seconds of receipt of authorisation requests each month.	100%	Per Month
2.2	Processing Time – Authorisation Requests within 10 seconds	The Service Provider shall process and respond to 99.5% of authorisation requests in accordance with this Agreement within 10 seconds of receipt of authorisation requests each month.	99.5%	Per Month
2.3	Processing Time – Authorisation Requests within 5 seconds	The Service Provider shall process and respond to 97% of authorisation requests in accordance with this Agreement within 5 seconds of receipt of authorisation requests each month.	97%	Per Month
2.4	Processing Time – Authorisation Requests within 3 seconds	The Service Provider shall process and respond to 95% of authorisation requests in accordance with this Agreement within 3 seconds of receipt of authorisation requests each month.	95%	Per Month
2.5	Processing Time – Authorisation Requests within 1 second	The Service Provider shall process and respond to 80% of authorisation requests in accordance with this Agreement within 1 second of receipt of authorisation requests each month.	80%	Per Month
Repair and Replacement of Terminals				
3.1	Repair or Replacement of Terminals	Subject to the Merchant notifying the Service Provider of a faulty Terminal by 3pm, the Service Provider shall ensure that all faulty Terminals are repaired or replaced within twenty four (24) hours of the Merchant notifying the Service Desk of faults each month. Notifications provided after 3pm will be treated as if provided before 3pm on the next day.	24 hours	Per Month

	Description	Service Level Requirement	Service Level	Measure Period
Major Incident Notification and Resolution				
4	Priority 1 Major Incident - Notification	The Service Provider shall notify the Merchant of a Priority 1 Major Incident within fifteen (15) minutes of the incident start time or within such longer timescales as may be agreed by the Parties in the Major Incident Plan.	15 minutes	Per Incident
5	Priority 1 Major Incident - Resolution	The Service Provider shall resolve Priority 1 Major Incidents as soon as possible in accordance with the Major Incident Plan.	In accordance with Major Incident Plan	Per Incident
6	Priority 2 Major Incident - Notification	The Service Provider shall notify the Merchant of a Priority 2 Major Incident within one (1) hour of the incident start time or within such longer timescales as may be agreed by the Parties in the Major Incident Plan.	1 hour	Per Incident
7	Priority 2 Major Incident - Resolution	The Service Provider shall resolve Priority 2 Major Incidents as soon as possible in accordance with the Major Incident Plan.	In accordance with Major Incident Plan	Per Incident
8	Priority 3 Incident Notification	The Service Provider shall notify the Merchant of a Priority 3 Incident within one (1) hour of the incident start time or within such longer timescales as may be agreed by the Parties in the Major Incident Plan.	1 hour	Per Incident
9	Priority 3 Incident Resolution	The Service provider shall resolve Priority 3 Incidents as soon as possible in accordance with the Major Incident Plan.	In accordance with Major Incident Plan	Per Incident
Incident and Service Performance Reporting				
10.1	Draft Major Incident Report	The Service Provider shall provide draft Major Incident Reports to the Merchant within 15 Business Days following the resolution of Major Incidents.	15 Business Days	Per Incident
10.2	Major Incident Report	The Service Provider shall provide Major Incident Reports to the Merchant within ten (10) Business Days following the provision of draft Major Incident reports.	10 Business Days	Per Incident
11	Service Performance Report	The Service Provider shall provide the Service Performance Report to the Merchant within ten (10) Business Days following the end of each month.	10 Business Days	Per Month

APPENDIX 2 – SERVICE PERFORMANCE REPORTS

The Service Performance Report will consist of the following:

Commentary	The Service Provider shall provide a commentary on the performance of the Merchant Services and/or Contract System against the requirements defined in Schedule 4 (Service Scope Specification) and otherwise in accordance with this Agreement.
Incident Management Report	<p>A monthly report which details the following for each priority level:</p> <ul style="list-style-type: none"> ➤ The total number of Incidents by open/close status; ➤ Repeat failures ➤ Security issues ➤ For Incidents not resolved within Service Levels: <ul style="list-style-type: none"> ▪ Incident reference; ▪ Status; ▪ Date raised; ▪ Raised by name; ▪ Incident description; and ▪ Reason for resolution outside of Service Levels. ➤ A summary of Major Incidents
Service Levels performance	<p>The Service Provider shall provide a report showing the overall Service Level performance against each Service Level detailing:</p> <ul style="list-style-type: none"> ➤ The degree of compliance against each and every Service Level specified in Appendix 1 ➤ The Service Provider's performance against the Service Levels ➤ any claim for relief from performance at Service Level
Statistics	<p>The Service Provider shall provide a report on the volumes of Card Transactions, and any other statistical information as agreed between the Merchant and the Service Provider. These shall include but not be limited to:</p> <ul style="list-style-type: none"> • Number of transactions processed and response times • Authentication rates • Authentication failures
Other	Service specific reporting requirements are detailed in Schedule 4 (Service Scope Specification) and the Merchant, may from time to time, request additional reporting information to support the management of a systems and the Service.

APPENDIX 3 – MAJOR INCIDENT CATEGORIES

This Appendix contains: -

1. an initial list (in the table below) of Incidents which are considered as Major Incidents for the purposes of this Agreement, and
2. the categorisation of those Incidents, in accordance with the following:
 - Priority 1 – a Major Incident which involves a material failure of any part, or all, of the Merchant Services or the material unavailability of any location used by the Service Provider for or in connection with the provision of the Merchant Services (“**Service Provider Site**”) for more than one (1) hour;
 - Priority 2 – a Major Incident which is not a Priority 1 Major Incident but which involves a material failure of a part of the Merchant Services at a Service Provider Site or a prolonged customer-facing system failure for more than one (1) hour but less than four (4) hours. Where a Priority 2 Major Incident continues for more than four (4) hours, it shall be deemed a Priority 1 Major Incident; and
 - Priority 3 – a Major Incident that is not classified as Priority 1 or 2.

Priority 1 Major Incident	Priority 2 Major Incident	Priority 3 Major Incident
<ul style="list-style-type: none"> ❖ Any security breach ❖ Unavailability or degradation of all of the Merchant Services ❖ A complete Card Scheme outage. ❖ Complete loss of the Service Desk. ❖ Acknowledgement of settlement files’ receipt not sent to the Merchant (following receipt of settlement files from the Merchant). 	<ul style="list-style-type: none"> ❖ Any software change results in unavailability or degradation of part of the Merchant Services ❖ Intermittent communications availability to the Service Desk ❖ Loss of alternative back-up to the Service Desk ❖ Two or more faulty Terminals at a POS Priority Merchant location. 	<ul style="list-style-type: none"> ❖ Outage suffered by a significant Issuer. ❖ All other service affecting Incidents that are not categorised as Priority 1 or Priority 2

SCHEDULE 9

Form of Variation

1. General

In this Schedule:

- 1.1 The Merchant's right to require the Service Provider to implement a Variation, or to propose that the Service Provider implements a Variation, is set out in paragraph 2.1;
- 1.2 the Service Provider's right to propose Variations is set out in paragraph 2.2;
- 1.3 the procedures for notifying the other Party of, and specifying, Variations required by the Merchant or proposed by the Service Provider (as the case may be) are set out in paragraphs 3 and 4;
- 1.4 the procedures for implementing Variations are set out in paragraph 5;
- 1.5 the Service Provider's overriding obligations to minimise the cost and provide VFM in respect of any Variation are set out in paragraph 6.1; and
- 1.6 the contract management procedures for developing and implementing Variations are set out in paragraph 8.

2. Variation Rights

- 2.1 The Merchant shall be entitled at any time to:
 - 2.1.1 require the Service Provider to implement a Variation to the Merchant Services; or
 - 2.1.2 propose a Variation to the Merchant Services to the Service Provider, and the Service Provider shall implement each Variation required or authorised in accordance with this paragraph 2.
- 2.2 The Service Provider may propose a Variation to the Merchant Services. The Merchant shall not be obliged to consider or authorise any such proposal.

3. Proposed Variation Notice and Required Variation Notice

For a Variation under paragraph 2.1:

- 3.1 The Merchant shall give notice to the Service Provider of a Proposed Variation (by submitting a "**Proposed Variation Notice**") or a Required Variation (by submitting a "**Required Variation Notice**") substantially in the form set out in this Schedule 9 (Form of Variation). The Merchant may in its absolute discretion at any time issue a Required Variation Notice in respect of a Variation that has previously been the subject of a Proposed Variation Notice or a Service Provider's Proposal Notice (as the latter is defined in paragraph 4).
- 3.2 The Service Provider shall, within 15 Business Days from the date of delivery of any Proposed Variation Notice or Required Variation Notice (or within any additional period requested by the Service Provider and agreed to in writing by the Merchant, the Merchant acting reasonably), produce, sign and return a "**Service Provider Response**" substantially in the form set out in this Schedule 9 (Form of Variation) which shall set out the proposed method of implementing the relevant Variation, specifying inter alia:
 - 3.2.1 the time scale for doing so;
 - 3.2.2 the effect (if any) on the timing of the performance of other obligations under this Agreement (including the effect (if any) on any relevant milestone dates);
 - 3.2.3 the impact of effecting the Variation on the provision of the Merchant Services;

- 3.2.4 the financial consequences of implementing the Variation (including, but not limited to, showing details of any pricing of the Variation including capital and operating costs);
- 3.2.5 anticipated Merchant and/or Third Party dependencies; and
- 3.2.6 the risks associated with the Variation,

provided that any savings made by the Service Provider arising as a result of such Variation or payments to the Service Provider shall be taken into account. Where a Variation is to be charged by reference to the time spent by Service Provider Personnel in relation to the Variation, the rates for such Service Provider Personnel shall not exceed those detailed in Schedule 5 (Charges and Payment).

- 3.3 In the case of a Required Variation Notice, the Merchant shall specify in the Required Variation Notice any requirements in relation to the implementation of the Required Variation.

4. **Service Providers Proposal Notice**

- 4.1 For a Variation under paragraph 2.2, the Service Provider shall notify its proposals for a Variation to the Merchant by a notice substantially in the form set out in this Schedule 9 (Form of Variation) (the "**Service Provider's Proposal Notice**"). The Service Provider shall set out the proposed method of implementing the Variation, specifying inter alia:

- 4.1.1 the time scale for doing so;
- 4.1.2 the effect (if any) on the timing of the performance of other obligations under this Agreement (including the effect (if any) on any relevant milestone dates);
- 4.1.3 the impact of effecting the proposed Variation on the provision of the Merchant Services;
- 4.1.4 the financial consequences of implementing the proposed Variation (including, but not limited to, showing details of any pricing of the Variation including capital and operating costs);
- 4.1.5 anticipated Merchant and/or Third Party dependencies; and
- 4.1.6 the risks associated with the Variation,

provided that any savings made by the Service Provider arising as a result of such proposed Variation or payments to the Service Provider shall be taken into account. Where a Variation is to be charged by reference to the time spent by Service Provider Personnel in relation to the Variation, the rates for such Service Provider Personnel shall not exceed those described in Schedule 5 (Charges and Payment). Within 10 Business Days of the delivery by the Service Provider of a Service Provider's Proposal Notice, the Merchant shall notify the Service Provider whether it wishes to consider the Variation set out in the Service Provider's Proposal Notice.

5. **Implementation of the Variation**

- 5.1 Following receipt of a Required Variation Notice and unless otherwise instructed by the Merchant, the Service Provider shall forthwith implement the Variation required therein within the appropriate and achievable timescale specified in the Required Variation Notice. The Service Provider shall notify the Merchant in writing within twenty four (24) hours of receipt of a Required Variation Notice if the Service Provider believes that it is not possible for the Service Provider to implement such Variation or to effect the Variation within the specified timescale. The Service Provider shall ensure that such notification includes a detailed explanation as to why it is not possible for the Service Provider to implement such Variation in the specified timescale.

- 5.2 Subject to paragraph 5.3, the Service Provider shall not implement any Variation set out in any Proposed Variation Notice or Service Provider's Proposal Notice until a notice substantially in the form set out in this Schedule 8) (the "**Authority to Proceed**") has been issued by the Merchant for that Variation. For the avoidance of doubt, the Service Provider shall implement each Variation set out in a Required Variation Notice in accordance with paragraph 5.1 without any need for issuance of an Authority to Proceed. The Merchant shall

not at any time be obliged to issue an Authority to Proceed in respect of any Proposed Variation Notice or Service Provider's Proposal Notice.

- 5.3 The Merchant may issue an Authority to Proceed at any time following issue of a Proposed Variation Notice even if the details for implementing that Variation have not yet been determined. In that event the provisions of paragraph 5.1 shall apply with effect from the date of the Authority to Proceed as if the Proposed Variation Notice had been a Required Variation Notice.
- 5.4 Any terms (including costs) of implementing a Variation the subject of an Authority to Proceed issued under paragraph 5.2 or 5.3 or of a Required Variation Notice signed and returned by the Service Provider pursuant to, and setting out the information specified in, paragraph 3.2 that are not agreed by the Parties within 14 days of the issue of the Authority to Proceed or of the return by the Service Provider of the Required Variation Notice (as applicable) may be referred by either Party for determination in accordance with the Dispute Resolution Procedure. On final resolution of the outstanding terms of the Variation pursuant to the Dispute Resolution Procedure or the written agreement of the Parties, the Merchant shall either:
- 5.4.1 issue a notice substantially in the form set out in this Schedule 8 (the "**Required Variation Settlement Notice**") setting out the terms of the Variation; or
 - 5.4.2 withdraw the Required Variation Notice or Authority to Proceed (as applicable) by issuing a notice substantially in the form set out in this Schedule 8 (the "**Withdrawal Notice**") in which case:
 - 5.4.2.1 the Service Provider shall immediately cease to implement the Variation; and
 - 5.4.2.2 the Service Provider shall be entitled to make a claim to recover from the Merchant any costs that the Service Provider has reasonably and properly incurred exclusively in connection with implementing the Variation prior to the Service Provider being sent the Withdrawal Notice.

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

6. **Cost Minimisation and Standards**

- 6.1 The Service Provider shall make reasonable efforts to minimise the adverse and maximise the favourable impact on the Merchant of any change in timetable or costs resulting from the implementation of a Variation. In particular the Service Provider shall, where appropriate, when submitting proposals in respect of any Proposed Variation Notice, Required Variation Notice or Service Provider's Proposal Notice or before referring any matter for determination pursuant to the Dispute Resolution Procedure and when implementing any Variation:
- 6.1.1 submit a statement to the Merchant of its proposed method of implementing the Variation demonstrating the steps that it has taken to minimise the costs of doing so;
 - 6.1.2 comply with its VFM obligations in paragraph 7; and
 - 6.1.3 shall not in its proposal for the implementation of the Variation claim to be excused from any liability other than on the same grounds and to the same extent amended accordingly (*mutatis mutandis*) as it would have been excused from liability for performing its obligations under this Agreement (before the proposed Variation took effect), provided that if the Service Provider considers that the risk inherent in the implementation of the Variation means that the Service Provider should be excused from any liability on other grounds or to a different extent, then the Service Provider shall be entitled to provide contemporaneously to the Merchant alternative proposals for the implementation of the Variation. These alternative proposals shall not excuse the Service Provider from any liability other than on the same grounds and to the same extent *mutatis mutandis* as it would have been excused from liability for performing its obligations under this Agreement (before the proposed Variation took effect). The alternative proposal(s)

shall give details of the extent to which the Service Provider seeks to be excused from liability on other grounds or to a different extent in implementing the Variation and the corresponding change (if any) to the amount of the adjustment to the Charges which would otherwise be required in respect of implementing the Variation.

6.2 Unless the Merchant requires otherwise, the Service Provider's proposal shall be a fixed price lump sum based on the allocation of risk specified in the Variation. However, the Service Provider may in addition include pricing for alternative options to be considered by the Merchant.

6.3 The Merchant may, from time to time, provide the Service Provider with information in relation to possible future Variations for the express purpose of providing the Service Provider with the means of taking such possible Variations into account in planning its operations and capital expenditure programmes and so as to reduce the costs of implementing such Variations in the future.

7. Value for Money

7.1 To enable the Merchant to effectively determine whether VfM is being achieved in respect of any Variation, it will be necessary for the Service Provider to be transparent in the pricing of any proposed modification to the Charges arising from that Variation in accordance with this Schedule and its general accounting in so far as these are relevant to demonstrating VfM associated with that Variation.

7.2 Proposed modification to the Charges in accordance with a Variation shall be priced on a transparent and "open book" basis in accordance with paragraph 7.3 below.

7.3 Open Book Accounting

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

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

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

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

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

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

7.4 The Merchant's rights under Clause 47 (Records, Audit and Inspection) shall include the right of audit to ensure that the Service Provider has complied with its obligations under paragraph 6 above and this paragraph 7.

8. Contract Management of Variations

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

8.2 For the avoidance of doubt, each of the Parties shall pay its own costs and expenses, in each case of any nature whatsoever, incurred in connection with the investigation, preparation or negotiation of each Proposed Variation Notice, Required Variation Notice, Service Provider

Response, Service Provider's Proposal Notice, Authority to Proceed, Required Variation Settlement Notice and Withdrawal Notice and otherwise in connection with any acts, omissions or correspondence in connection with agreement on, or determination in accordance with the Dispute Resolution Procedure of, the terms of any Variation and such costs and expenses shall not be taken into account (or included by the Service Provider) in costing any Variation.

Required Variation Notice

Variation No. [XXXX]	Date [DD-MMM-YY]
VARIATION TITLE:	
Service Provider: [Insert Service Provider name] (Contract name and reference no. to be included in header)	

Project Manager	Service Delivery Manager	Commercial Manager	Systems Manager
[Insert PM Name]	[Insert Service Delivery Manager Name]	[Insert CM Name]	[Insert System Owner's Name]

Summary		
<p>➤ Scope of Variation to the Merchant Services <i>Insert a concise summary of the scope of the Variation to the Merchant Services, including any specific deliverables to be provided by the Service Provider</i> Full details of the change to the Merchant Services required are in Section A</p>		
<p>➤ Performance Management <i>Insert a concise summary of the changes to the performance regime including any new, or revised, Service Levels or performance regimes including any thresholds or trigger levels</i> Full details of the performance regime is Section B</p>		
<p>➤ Key Constraints <i>Insert a concise summary of the constraints on the implementation and/or delivery of the Variation to the Merchant Services</i> Full details of the Key Constraints are in Section C</p>		
<p>➤ Key dates/Milestone Dates <i>Provide a timetable for the implementation of the Variation including key dates or Milestone dates (including the deliverables or Merchant Services that the Service Provider must provide by each relevant key date or Milestone date)</i> Full details of the key dates and Milestone Dates are in Section D</p>		
<p>➤ Assurance <i>Insert summary of the key Assurance requirements</i> Full details of the Assurance requirements are in Section E</p>		
<p>➤ Intellectual Property Rights <i>Insert summary of any new IPR created Or state that no new IPR will be created as part of this Variation</i> Full details of the Intellectual Property Rights requirements and verification levels are in Section F</p>		
<p>➤ Charges and payment terms <i>Insert summary of key payment terms</i> Full details of the proposed payment terms are in Section G</p>		
<table style="width: 100%; border: none;"> <tr> <td style="width: 40%; border: none; vertical-align: top;"> For the Merchant: [Transport for London] [insert name] [insert job title] </td> <td style="width: 60%; border: none; vertical-align: top;"> Signed: </td> </tr> </table>	For the Merchant: [Transport for London] [insert name] [insert job title]	Signed:
For the Merchant: [Transport for London] [insert name] [insert job title]	Signed:	

Proposed Variation Notice

Variation No. [XXXX]	Date [DD-MMM-YY]
VARIATION TITLE:	
Service Provider: [Insert Service Provider name] (Contract name and reference no. to be included in header)	

Project Manager	Service Delivery Manager	Commercial Manager	Systems Manager
[Insert PM Name]	[Insert Service Delivery Manager Name]	[Insert CM Name]	[Insert System Owner's Name]

Summary	
<p>➤ Scope of Variation to the Merchant Services</p> <p><i>Insert a concise summary of the scope of the Variation to the Merchant Services, including any specific deliverables to be provided by the Service Provider</i></p> <p>Full details of the change to the Merchant Services required are in Section A</p>	
<p>➤ Performance Management</p> <p><i>Insert a concise summary of the changes to the performance regime including any new, or revised, Service Levels or performance regimes including any thresholds or trigger levels</i></p> <p>Full details of the performance regime is Section B</p>	
<p>➤ Key Constraints</p> <p><i>Insert a concise summary of the constraints on the implementation and/or delivery of the Variation to the Merchant Services</i></p> <p>Full details of the Key Constraints are in Section C</p>	
<p>➤ Key dates/Milestone Dates</p> <p><i>Provide a timetable for the implementation of the Variation including key dates or Milestone dates (including the deliverables or Merchant Services that the Service Provider must provide by each relevant key date or Milestone date)</i></p> <p>Full details of the key dates and Milestone Dates are in Section D</p>	
<p>➤ Assurance</p> <p><i>Insert summary of the key Assurance requirements</i></p> <p>Full details of the Assurance requirements are in Section E</p>	
<p>➤ Intellectual Property Rights</p> <p><i>Insert summary of any new IPR created no new IPR will be created as part of this Variation</i></p> <p>Full details of the Intellectual Property Rights requirements and verification levels are in Section F</p>	
<p>➤ Charges and payment terms</p> <p><i>Insert summary of key payment terms</i></p> <p>Full details of the proposed payment terms are in Section G</p>	
<p>For the Merchant: [Transport for London] [insert name] [insert job title]</p>	<p>Signed:</p>

Service Provider Response

Variation No. [XXXX]	Date [DD-MMM-YY]
VARIATION TITLE:	
Service Provider: [Insert Service Provider name]	
Contract name & reference number: [insert contract name & reference number as it appear on the front cover]	

Service Provider's Project Manager:	Service Provider Contract Manager:
[Insert PM Name]	[Insert Contract Manager Name]

Project Description

➤ METHOD OF IMPLEMENTATION

Detail the implementation schedule with Milestone dates.

➤ FINANCIAL CONSEQUENCES (INCLUDING CHARGES AND SAVING)

Detail the financial consequences of implementing the Variation showing details of any pricing of the Variation including savings, Project risk (with description), CAPEX and OPEX costs.

➤ KEY COMMERCIAL ISSUES

Detail the impact of effecting the Variation on the provision of the Merchant Services.

➤ KEY CONSTRAINTS

Detail any constraints on the implementation and/or delivery of the Variation to the Merchant Services

➤ ASSUMPTIONS, DEPENDENCIES

Detail any anticipated Merchant and/or Third Party assumptions and dependencies.

➤ PERFORMANCE MANAGEMENT

Detail the affect (if any) on the timing of the performance of other obligations under the Agreement, including the affect (if any) on any relevant milestone dates.

➤ RISKS

Assessment of risks associated with the Variation, including those contained in other areas of the Project Description

➤ ASSURANCE

Details how you plan to Assure the Merchant that you will comply with the Agreement obligations.

➤ INTELLECTUAL PROPERTY RIGHTS

Detail any new IPR created.

➤ EXTERNAL INTERFACES

Detail the interfaces with the Sales Website and where relevant, Third Parties systems.

For the Service Provider: [Service Provider name] [insert name] [insert job title]	Signed:
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Service Provider's Proposal Notice

Proposal Ref No. [XXXX]	Date [DD-MMM-YY]
PROPOSAL TITLE:	
Service Provider: [Insert Service Provider name]	
Contract name & reference number: [insert contract name & reference number as it appear on the front cover]	

Service Provider's Project Manager:	Service Provider Contract Manager:
[Insert PM Name]	[Insert Contract Manager Name]

Project Description

➤ REASON FOR PROPOSAL

Details the business need for the proposal

➤ METHOD OF IMPLEMENTATION

Detail the implementation schedule with Milestone dates.

➤ FINANCIAL CONSEQUENCES (INCLUDING CHARGES AND SAVING)

Detail the financial consequences of implementing the Variation showing details of any pricing of the Variation including savings, Project risk (with description), CAPEX and OPEX costs.

➤ KEY COMMERCIAL ISSUES

Detail the impact of effecting the Variation on the provision of the Merchant Services.

➤ KEY CONSTRAINTS

Details any constraints on the implementation and/or delivery of the Variation to the Merchant Services

➤ ASSUMPTIONS, DEPENDENCIES

Detail any anticipated Merchant and/or Third Party assumptions and dependencies.

➤ PERFORMANCE MANAGEMENT

Detail the affect (if any) on the timing of the performance of other obligations under the Agreement, including the affect (if any) on any relevant milestone dates.

➤ RISKS

Assessment of risks associated with the Variation, including those contained in other areas of the Project Description

➤ ASSURANCE

Detail how you plan to Assure the Merchant that you will comply with the Agreement obligations.

➤ INTELLECTUAL PROPERTY RIGHTS

Detail any new IPR created.

➤ EXTERNAL INTERFACES

Detail the interfaces with the Sales Website and Third Parties systems.

For the Service Provider: [Service Provider name] [insert name] [insert job title]	Signed:
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Authority to Proceed

Variation No. [XXXX]	Date [DD-MMM-YY]
VARIATION TITLE:	
Service Provider: [Insert Service Provider name] (Contract name and reference no. to be included in header)	

Project Manager	Service Delivery Manager	Commercial Manager	Systems Manager
[Insert PM Name]	[Insert Service Delivery Manager Name]	[Insert CM Name]	[Insert System Owner's Name]

Please Refer to Proposed Variation Notice dated [Insert Date] and Service Provider Response dated [Insert Date]. Authority is hereby given for the implementation of the Variation set out below.

Summary	
<p>➤ Summary of changes to the Merchant Services <i>Insert a concise summary of the changes to the deliverables</i> Full details of the change to the Merchant Services required are in Section A</p>	
<p>➤ Value of Variation <i>Insert value</i> Full details of the performance regime is Section B</p>	
<p>➤ Amended Terms <i>Insert summary of any changes agreed subsequent to the Service Provider Response. This is to include key constraints, key dates, assurances, IPR and performance management.</i> Full details of the Amended Terms are in Section C</p>	
<p>➤ Payment terms <i>Insert summary of key payment terms</i> Full details of the key dates and Milestone Dates are in Section D</p>	
For the Merchant: [Transport for London] [insert name] [insert job title]	Signed:

Required Variation Settlement Notice

Variation No. [XXXX]	Date [DD-MMM-YY]
VARIATION TITLE:	
Service Provider: [Insert Service Provider name] (Contract name and reference no. to be included in header)	

Merchant Project Manager:	Merchant Commercial Manager:
[Insert PM Name]	[Insert Commercial Manager Name]

➤ Nature of issue

Merchant to detail the nature of the issue which is the subject of the Required Variation Settlement Notice

➤ Agreed Variation terms

Merchant to detail the terms of the Variation as agreed by the Parties

For the Merchant: [Transport for London] [insert name] [insert job title]	Signed:
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Withdrawal Notice

Variation No. [XXXX]	Date [DD-MMM-YY]
VARIATION TITLE:	
Service Provider: [Insert Service Provider name]	

Merchant Project Manager:	Merchant Commercial Manager:
[Insert PM Name]	[Insert Commercial Manager Name]

Dear [Service Provider Contract Manager],

RE: [Contract name and date]

We are hereby withdrawing Variation [Variation no.] – [Title] with immediate effect. Please cease implementation of the Variation and update your records accordingly.

[Please advise whether any abortive costs have been incurred and, if so, provide full details of such costs within 10 Business Days. - ***Not to be used for Proposed Variations unless an Authority to Proceed has already been issued***]

Copy to: [Merchant Contract Manager], [Merchant Project Manager]

For the Merchant: [Transport for London] [insert name] [insert job title]	Signed:
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SCHEDULE 10

Service Provider Confidential Information

Pre Qualification Documents:

Page 15/16:

[REDACTED]

Attachments 1 & 2:

[REDACTED]

Invitation to Tender

Module 4:

[REDACTED]

Module 6:

[REDACTED]

Module 7:

[REDACTED]

Module 9:

[REDACTED]

Module 10:

[REDACTED]

Module 11:

[REDACTED]

Module 12:

[REDACTED]

Appendix 9c:

[REDACTED]

Clarifications

Pricing, 03 June:

[REDACTED]

Legal, 09 June:

[REDACTED]

Implementation, 10 June:

[REDACTED]

Problem management, 13 June:

[REDACTED]

BAFO

BAFO, 19 August:

[REDACTED]

SCHEDULE 11

Handback of Merchant Services

1. Introduction

1.1 Scope & Purpose

1.1.1 This Schedule 11 (Handback of Merchant Services):

1.1.1.1 sets out the strategy to be followed on handback of the Merchant Services (or services similar to the Merchant Services, where appropriate, to a member of the Merchant Group and/or any Successor Operator(s); and

1.1.1.2 requires the Service Provider to support an orderly, controlled handover of responsibility for the provision of the Merchant Services from the Service Provider to a member of the Merchant Group and/or any Successor Operator(s) (as applicable), at the Merchant's direction, with the minimum of disruption and so as to prevent or mitigate any inconvenience to the Merchant by means of the implementation of the Handback Plan.

1.1.2 It is recognised that this Agreement needs to make provision for a member of the Merchant Group and/or any Successor Operator not only to take responsibility for any services that are the same as the Merchant Services, but also to provide services which are similar to the Merchant Services (or any of the activities comprised within them) and/or which have the same or similar use, function, or application as the Merchant Services (in whole or part) or their outputs. This Schedule 11, and in particular references to "handback of the Merchant Services" "services similar to the Merchant Services" and similar expressions shall be interpreted accordingly.

2. Handback

2.1 Handback Plan

2.1.1 The "**Handback Plan**" shall, in relation to all aspects of the handover of the Merchant Services (or services similar to the Merchant Services) or part thereof to a member of the Merchant Group and/or any Successor Operator(s), include details of the following as a minimum:

2.1.1.1 the organisation arrangements including roles and responsibilities for specific individuals and the allocation of resources for the Merchant Services (or services similar to the Merchant Services) and an organisational chart clearly showing how the Merchant Services are provided (including details of sub-contractors and the element of the Merchant Services provided by any sub-contractors);

2.1.1.2 the rationale considered and any assumptions made in developing the Handback Plan;

2.1.1.3 the interface arrangements with the Merchant, any Interfacing Parties, or any other person;

2.1.1.4 a complete breakdown of all tasks and workstreams structured by the Merchant Services as reasonably required by the Merchant;

2.1.1.5 the handback process for the Merchant Services;

2.1.1.6 time frames with milestones for the transfer of the provision of the Merchant Services (or services similar to the Merchant Services) from the Service Provider to any member of the Merchant Group and/or any Successor Operator(s) and transfer of or access to Data to any member(s) of the Merchant Group and/or any Successor Operator(s);

- 2.1.1.7 implications of the transfer of the relevant Merchant Services (or services similar to the Merchant Services) including any applicable Third Party software licences and configurations for the Service Provider's requirements under the performance regimes;
 - 2.1.1.8 details of the transfer of assets, where appropriate and a timetable for the handback of relevant assets including all Merchant Assets;
 - 2.1.1.9 the approach to access to and the transfer of Intellectual Property Rights and Data, including provisions for enhanced information exchange and knowledge transfer to assist the Merchant personnel and/or any Successor Operator(s) to understand and operate the system and Merchant Services (or services similar to the Merchant Services);
 - 2.1.1.10 details regarding any transfer of the relevant Service Provider Personnel, as required by TUPE, and information regarding all the Service Provider Personnel who are engaged in the performance of the Service Provider's obligations under this Agreement and such other information as set out at Appendices 1 (Transfer of Employees on Expiry or Termination) and 2 (Information to be provided in respect of those on the Staff List) of this Schedule 11, and ongoing access to Key Personnel or any other personnel who the Merchant considers key for a smooth transition of Merchant Services (or services similar to the Merchant Services) to any member(s) of the Merchant Group and/or any Successor Operator(s);
 - 2.1.1.11 all relevant Data regarding the Merchant Services including Contract System information and Service Provider information in such form as the Merchant and/or any Successor Operator(s) may reasonably require;
 - 2.1.1.12 a description of the processes for the recording and storage of all the information referred to in paragraph 2; and
 - 2.1.1.13 such other details or information as the Merchant may reasonably require.
- 2.1.2 The Handback Plan shall, in accordance with the process set out in paragraphs 2.1.3 to 2.1.5 below:
- 2.1.2.1 make reasonable assumptions using the Service Provider's experience under this Agreement as to how the Merchant Services can be transferred to a member of the Merchant Group and/or any Successor Operator(s) (at the Merchant's direction), with details of mitigation actions until such time when the Merchant and/or any Successor Operator(s) have defined what such arrangements will be implemented by the Merchant and/or any Successor Operator(s) in any future Merchant and/or Successor Operator(s) transition plan(s); and
 - 2.1.2.2 detail all the ongoing Project and Programme type activities relating to this Agreement.
- 2.1.3 The Service Provider shall submit a draft Handback Plan to the Merchant no later than the earlier of the second anniversary of the Service Commencement Date or as required by the Merchant in relation to termination of this Agreement. The Contractor shall finalise the Handback Plan:
- 2.1.3.1 not later than six (6) months prior to the third anniversary of the Service Commencement Date, taking due account of the Merchant's comments; or
 - 2.1.3.2 as required by the Merchant in relation to a termination of this Agreement pursuant to Clause 30 (Termination),
- (as applicable).

- 2.1.4 Save as specified in any Successor Plan, all Handback Plans delivered to the Merchant shall:
- 2.1.4.1 in respect of the first Handback Plan due by the Service Provider:
 - (a) cater for all Merchant Services to have phased End Dates;
 - (b) unless otherwise specified by the Merchant, be based on handback to a single member of the Merchant Group or Successor Contractor; and
 - (c) be based on any other information reasonably specified by the Merchant and/or where necessary any other reasonable assumptions (which shall be explicitly set out in the Handback Plan); and
 - 2.1.4.2 in respect of each Handback Plan thereafter, cater for different Merchant Services having phased or staggered End Dates to the extent specified by the Merchant in the most recent Successor Plan and/or take account of any notice served by the Merchant pursuant to Clause 30.13.
- 2.1.5 The Service Provider shall, as soon as reasonably practicable and in any event within two (2) months of the first Successor Plan being provided to it, deliver to the Merchant an updated Handback Plan which shall reflect such Successor Plan. Thereafter, the Service Provider shall, within one (1) month following its receipt of a change to the Successor Plan, review, update and submit to the Merchant for approval a revised Handback Plan which reflects such revised Successor Plan.
- 2.1.6 The Service Provider shall consult fully with the Merchant in relation to the preparation of each version of the Handback Plan, and shall take full account of the Merchant's comments.
- 2.1.7 The Service Provider shall, within fourteen (14) days of receipt of a notification from the Merchant, amend the latest Handback Plan to correct identified non-conformities, incorporate any other comments or feedback from the Merchant and resubmit it to the Merchant. The Merchant shall, within fourteen (14) days of resubmission of the Handback Plan, notify the Service Provider of any remaining or new non-conformities. Subject to Clause 48 (Dispute Resolution) and without limiting the Merchant's right to issue a Required Variation (including in relation to any aspect of the Handback Plan), the procedure in this paragraph 2.1.7 shall be repeated until the Handback Plan is free from non-conformities and agreed and confirmed by the Merchant in writing.

2.2 Handback Programme

- 2.2.1 The Service Provider shall prepare the "**Handback Programme**" and deliver it to the Merchant with each Handback Plan. The Handback Programme shall be consistent with the most up to date Handback Plan and shall detail the Service Provider's recommended approach, assumptions, sequencing, responsibilities and timescales for the handback of all Merchant Services (or services similar to the Merchant Services). The Handback Programme shall be updated to reflect the comments of the Merchant and any changes to the Handback Plan and any revised version of the Handback Programme shall be delivered to the Merchant with each update of the Handback Plan or, where no such Handback Plan is to be provided, such date as may be stipulated by the Merchant.
- 2.2.2 When developing the Handback Plan, the Service Provider shall, unless otherwise directed in writing by the Merchant, assume that handback will be to an organisation similar in capability to the Service Provider and will not necessitate significant changes to the Merchant Services.
- 2.2.3 The Service Provider shall consult fully with the Merchant in relation to the preparation of the Handback Programme, and shall take full account of the Merchant's comments in accordance with paragraph 2.2.1.

- 2.2.4 The Service Provider shall, within five (5) days of receipt of a notification from the Merchant, amend the Handback Programme to correct identified non-conformities, incorporate any other comments or feedback from the Merchant which may include feedback from any Successor Operator(s), and resubmit it to the Merchant. The Merchant shall, within five (5) days of resubmission of the Handback Programme, notify the Service Provider of any remaining or new non-conformities. Subject to Clause 48 (Dispute Resolution) and without limiting the Merchant's right to issue a Required Variation (including in relation to any aspect of the Handback Plan, the procedure in this paragraph 2.2.4 shall be repeated until the Handback Programme is free from non-conformities, agreed and confirmed by the Merchant in writing.
- 2.2.5 The Handback Programme shall clearly identify when consultation shall begin for any Service Provider Personnel who may be subject to TUPE and how this process should be managed if these people are to be transferred on or before the Expiry Date.
- 2.2.6 The Handback Programme shall detail all of the work-streams, activities and timescales identified in the Handback Plan.

3. **[NOT USED]**

4. **Reports and Meetings**

4.1 **Handback Status Report**

- 4.1.1 The Service Provider shall provide a report (a "**Handback Status Report**") in the form of a RAG (being Red, Amber or Green) document which shall provide detailed status information on the handback activities identified in the Handback Plan and Handback Programme. The RAG document shall identify the relevant activity, a description of the activity, the lead person in charge of the activity, its RAG scoring (according to scoring criteria reasonably requested by the Merchant) and a commentary explaining the current status and reasons supporting the RAG scoring. The commentary shall also describe the dependencies on any member of the Merchant Group and/or any Third Parties and provide a detailed description of what they are required to do.
- 4.1.2 The Handback Plan, Handback Programme and Handback Status Report shall be ordered in the same sequence and be cross referenced with common activity identifiers and descriptions. The Service Provider shall endeavour to structure these documents and reference the handback activities in a structured manner as and where reasonably required by the Merchant.
- 4.1.3 The Handback Status Report shall identify any dependencies or points of demarcation in relation to the handback of the Merchant Services.
- 4.1.4 The Service Provider shall update the Handback Status Report and deliver it to the Merchant at least every time when the Handback Plan and/or Handback Programme is updated to reflect the risks associated with the handback and record mitigation actions and fall back positions in case of operational difficulties during the Handback Period.

4.2 **Performance Reports and Meetings**

- 4.2.1 The Service Provider shall report on progress of handback in the Service Performance Report and matters affecting handback shall be discussed at the Service Review Meeting.
- 4.2.2 As the volume of work increases, the Merchant shall at a time of its choosing convene a dedicated handback progress group ("**Handback Review Group**") (such meetings of the Handback Review Group being "**Handback Review Meetings**").
- 4.2.3 The purpose of the Handback Review Group is to oversee and provide overall direction in relation to handback and such group shall meet in accordance with the Merchant's reasonable requirements.

Appendix 1 to Schedule 11

Transfer of Employees on Expiry or Termination

1. The Service Provider will promptly provide (and procure that its Sub-Contractors provide) when requested by the Merchant from time to time and in any event not more than 7 days after the date of any notice to terminate this Agreement being given by either Party, the following information to the Merchant:
 - 1.1.1 an anonymised list of current Service Provider Personnel and employees and workers of its Sub-Contractors engaged in the provision of the Merchant Services (each identified as such in the list) (the **"Staff List"**);
 - 1.1.2 such of the information specified in Appendix 2 to Schedule 11 as is requested by the Merchant in respect of each individual included on the Staff List; and
 - 1.1.3 a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the Merchant Services, whom the Service Provider considers will not transfer under TUPE for any reason whatsoever together with details of their role and a full explanation of why the Service Provider thinks such persons will not transfer,such information together being the **"Staffing Information"**.
- 1.2 The Service Provider will notify the Merchant as soon as practicable and in any event within 5 days of the Service Provider becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.
- 1.3 The Service Provider warrants to the Merchant that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.
- 1.4 Subject to paragraph 1.5, the Service Provider will provide the Merchant with a final Staff List (the **"Final Staff List"**) and Staffing Information relating to persons on that list not less than 28 days before the Further Transfer Date.
- 1.5 If this Agreement is terminated in accordance with Clauses 30.1, 30.2, 30.3, 30.6, 30.11, 30.12 or 30.13 then the Final Staff List will be provided by the Service Provider to the Merchant as soon as practicable and no later than 14 days after:
 - 1.5.1 the date of the notice; or
 - 1.5.2 the date of termination of this Agreement,(whichever is the earlier).
- 1.6 The Service Provider warrants that as at the Further Transfer Date:
 - 1.6.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
 - 1.6.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
 - 1.6.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Merchant.
- 1.7 During the Relevant Period the Service Provider will not and will procure that its Sub-Contractors do not without the prior written consent of the Merchant (such consent not to be unreasonably withheld or delayed):
 - 1.7.1 terminate or give notice to terminate the employment or engagement or replace the persons listed on the most recent Staff List or any Re-Transferring Personnel (save for any termination for gross misconduct, provided that the Merchant is informed promptly of such termination);
 - 1.7.2 deploy or assign any other person to perform the Merchant Services who is not included on the most recent Staff List;

- 1.7.3 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List or any Re-Transferring Personnel;
 - 1.7.4 increase to any significant degree the proportion of working time spent on the Merchant Services by any of the Service Provider Personnel; or
 - 1.7.5 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List or any Re-Transferring Personnel.
- 1.8 The Service Provider will promptly notify the Merchant of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in paragraph 1.7 regardless of when such notice takes effect.
- 1.9 The Service Provider agrees that the Merchant will be permitted to disclose any information provided to it under this Appendix 1 of Schedule 11 in anonymised form for the provision of the Merchant Services (or similar services) and to any Third Party engaged by the Merchant to review the delivery of the Merchant Services and to any Successor Operator.
- 1.10 If TUPE applies on the expiry or termination of this Agreement or the appointment of a Successor Operator, the following will apply:
- 1.10.1 The contracts of employment of each member of the Re-Transferring Personnel will have effect from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the Merchant or Successor Operator (as appropriate) (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005).
 - 1.10.2 During the Relevant Period the Service Provider will:
 - 1.10.2.1 provide the Merchant or Successor Operator (as appropriate) with access to such employment and payroll records as the Merchant or Successor Operator (as appropriate) may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the Merchant or Successor Operator (as appropriate);
 - 1.10.2.2 allow the Merchant or Successor Operator (as appropriate) to have copies of any of those employment and payroll records;
 - 1.10.2.3 provide all original employment records relating to the Re-Transferring Personnel to the Merchant or Successor Operator (as appropriate); and
 - 1.10.2.4 co-operate with the Merchant and any Successor Operator in the orderly management of the transfer of employment of the Re-Transferring Personnel.

If the Re-Transferring Personnel are employed or engaged by Sub-Contractors, the Service Provider will procure such Sub-Contractors provide the Merchant or Successor Operator (as appropriate) with the same level of access, information and cooperation.
 - 1.10.3 The Service Provider warrants to each of the Merchant and the Successor Operator that as at the Further Transfer Date no Re-Transferring Personnel (except where the Service Provider has notified the Merchant and the Successor Operator (if appointed) in writing to the contrary) to the Service Provider's knowledge:
 - 1.10.3.1 is under notice of termination;
 - 1.10.3.2 is on long-term sick leave;
 - 1.10.3.3 is on maternity, parental or adoption leave;
 - 1.10.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;

- 1.10.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Merchant or Successor Operator (as appropriate);
 - 1.10.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;
 - 1.10.3.7 has received a written warning (other than a warning that has lapsed);
 - 1.10.3.8 has taken or been the subject of a grievance procedure within the previous two years; or
 - 1.10.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Merchant or Successor Operator (as appropriate) under TUPE.
- 1.10.4 The Service Provider undertakes to each of the Merchant and any Successor Operator that it will (and will procure that its Sub-Contractors will):
- 1.10.4.1 continue to perform and observe all of its obligations under or in connection with the contracts of employment of the Re-Transferring Personnel and any collective agreements relating to the Re-Transferring Personnel up to the Further Transfer Date;
 - 1.10.4.2 pay to the Re-Transferring Personnel all Employment Costs to which they are entitled from the Service Provider or any Sub-Contractor which fall due in the period up to the Further Transfer Date;
 - 1.10.4.3 pay to the Merchant or the Successor Operator (as appropriate) within 7 days of the Further Transfer Date an apportioned sum in respect of Employment Costs as set out in paragraph 1.10.5; and
 - 1.10.4.4 comply in all respects with its information and consultation obligations under TUPE and to provide to the Merchant or Successor Operator (as appropriate) such information as the Merchant or Successor Operator may request in order to verify such compliance.
- 1.10.5 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:
- 1.10.5.1 the Service Provider will be responsible for any Employment Costs relating to the period up to and including the Further Transfer Date;
 - 1.10.5.2 the Merchant or (where appointed) any Successor Operator will be responsible for the Employment Costs relating to the period after the Further Transfer Date,
- and will if necessary be apportioned on a time basis (regardless of when such sums fall to be paid) except that there will be no apportionment in respect of the Re-Transferring Personnel's holiday entitlements.
- 1.10.6 The Service Provider will indemnify and keep indemnified each of the Merchant and any Successor Operator from and against all Employment Liabilities which the Merchant and/or the Successor Operator does or will incur or suffer arising directly or indirectly out of or in connection with:
- 1.10.6.1 any failure by the Service Provider to comply with its obligations under this paragraph 1.10;
 - 1.10.6.2 any act or omission by or on behalf of the Service Provider (or its Sub-Contractors) in respect of the Re-Transferring Personnel whether occurring before, on or after the Further Transfer Date;
 - 1.10.6.3 any failure by the Service Provider (or its Sub-Contractors) to comply with Regulation 13 of TUPE (except to the extent that such failure arises from a failure by the Merchant or the Successor Operator to comply with Regulation 13 of TUPE);
 - 1.10.6.4 any claim or demand by HMRC or any other statutory authority in respect of any financial obligation including but not limited to PAYE and national insurance contributions in relation to any Re-Transferring

Personnel to the extent that such claim or demand relates to the period from the Service Commencement Date to the Further Transfer Date;

- 1.10.6.5 any claim or demand or other action taken against the Merchant or any Successor Operator by any person employed or engaged by the Service Provider (or its Sub-Contractors) (other than Re-Transferring Personnel included on the Final Staff List) who claims (whether correctly or not) that the Merchant or Successor Operator has inherited any liability from the Service Provider (or its Sub-Contractors) in respect of them by virtue of TUPE.

1.11 If TUPE does not apply on the expiry or termination of this Agreement, the Service Provider will remain responsible for the Service Provider Personnel and will indemnify and keep indemnified the Merchant against all Employment Liabilities which the Merchant does or will incur or suffer arising directly or indirectly out of or in connection with the employment or termination of employment of any of the Service Provider Personnel or former Service Provider Personnel.

1.12 The Service Provider will procure that whenever the Merchant so requires on reasonable notice at any time during the continuance in force of this Agreement and for 2 years following the date of expiry or earlier termination of this Agreement the Merchant will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

- 1.12.1 is still an employee or Sub-Contractor of the Service Provider or any of the Service Provider's associated companies; and

- 1.12.2 was at any time employed or engaged by the Service Provider in order to provide the Merchant Services to the Merchant under this Agreement,

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

Appendix 2 to Schedule 11

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

- Amount of time spent on the Merchant Services (or any part of the Merchant Services specified by the Merchant)
- Date of birth
- Role title/designation and role profile
- Annual salary £
- Bonus and commission amount and frequency
- Pay frequency and date
- Overtime - contractual or non-contractual and rates
- Contractual working hours
- Contract type - permanent/temporary
- Geographical area of work / location
- Commencement of employment date
- Continuous service date
- Car allowance
- Pension contributions
 - Employer
 - Employee
 - Including additional info on:
 - who were originally employees of the Merchant,
 - who were members of (or eligible to become members of) the TFL Pension Fund / The Local Government Pension Scheme for England and Wales/The Principal Civil Service Pension Scheme,
 - whose employment transferred from the Merchant to the Service Provider under TUPE; and
- Details of any contracting out certificate
- Details of the relevant employee representative body or bodies and relevant collective agreements
- Date of annual pay award
- Annual leave entitlement
- Contractual notice period
- Public holiday /concessionary days entitlement
- Sickness entitlement (in 12 month rolling period)
- Salary/wage increases pending
- Eligibility for enhanced redundancy pay and any other contractual or non-contractual termination of severance arrangements (including methods of calculation)
- Details of any other benefits provided, whether contractual or non-contractual
- Copy of employment contract or applicable standard terms and employee handbook
- Any loans or educational grants
- For those employees who are foreign nationals the country of citizenship, immigrant status and all documentation required by law to demonstrate a right to work in the United Kingdom
- Information on any disciplinary or grievance procedure taken against or by an employee in the two years immediately preceding the information being provided

- Information about any tribunal claims in the immediately preceding two years or whether there are reasonable grounds to believe a claim may be brought
- Department and place on organisation chart
- Average absence due to sickness
- Training and competency records

SCHEDULE 12

Liability Shift Table

PART 1

Risk Transfer Matrix – Attended Terminal Face to Face Transactions
(excluding Contactless Ticketing)

Terminal Capability	Chip/PIN Card	Chip Card not PIN enabled	Magnetic stripe only card
EMV device with PIN pad	Issuer - all fraud	Issuer - all fraud	Issuer - all fraud
EMV Device without PIN pad	Issuer - Counterfeit Tfl -	Issuer - all fraud	Issuer - all fraud
Magnetic stripe only	Tfl - all fraud	Tfl - Counterfeit fraud Issuer - all	Issuer - all fraud

PART 2

Risk Transfer Matrix – Unattended Terminal Face to Face Transactions
(excluding Contactless Ticketing)

Chip & PIN card enabled		
Card Issuer	EMV Device with PIN pad	EMV Device without PIN pad
Visa UK	Issuer - all fraud	Issuer - Counterfeit fraud Tfl - all other fraud
Visa EU	Issuer - all fraud	Issuer - Counterfeit fraud Tfl - all other fraud
Visa International	Issuer - all fraud	Issuer - Counterfeit fraud Tfl - all other fraud
MasterCard UK	Issuer - all fraud	Issuer - Counterfeit fraud Tfl - all other fraud
MasterCard EU	Issuer - all fraud	Issuer - Counterfeit fraud Tfl - all other fraud
MasterCard International	Issuer - all fraud	Issuer - Counterfeit fraud Tfl - all other fraud
Maestro UK	Issuer - all fraud	Issuer - Counterfeit fraud Tfl - all other fraud
Maestro International	Issuer - all fraud	Issuer - Counterfeit fraud Tfl - all other fraud

Chip Card not PIN enabled		
Card Issuer	EMV Device with PIN pad	EMV Device without PIN pad
Visa UK	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud
Visa EU	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud
Visa International	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud
	PIN Verified	Non PIN verified
MasterCard UK	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud
MasterCard EU	Issuer - Counterfeit fraud TfL - all other fraud	Issuer - Counterfeit fraud TfL - all other fraud
MasterCard International	Issuer - Counterfeit fraud TfL - all other fraud	Issuer - Counterfeit fraud TfL - all other fraud
Maestro UK	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud
Maestro International	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud

Magnetic Stripe		
Card Issuer	EMV Device with PIN pad	EMV Device without PIN pad
Visa UK	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud
Visa EU	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud
Visa International	TfL - all fraud	TfL - all fraud
MasterCard UK	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud
MasterCard EU	Issuer - Counterfeit fraud TfL - all other fraud	Issuer - Counterfeit fraud TfL - all other fraud
MasterCard International	TfL - all fraud	TfL - all fraud
Maestro UK	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud
Maestro International	Issuer - all fraud	Issuer - Counterfeit fraud TfL - all other fraud

PART 3

Risk Transfer Matrix – Contactless Ticketing

Contactless ticketing	
Counterfeit fraud	Issuer
Not received fraud	Issuer
Lost and stolen cards	Issuer - transactions under chargeback limit (currently £6)
	TfL - transactions over chargeback limit (currently £6)
Declined cards	Issuer - transactions under chargeback limit (currently £6)
	TfL - transactions over chargeback limit (currently £6)
All other fraud	Issuer

Please note:

- The above tables are for guidance only and based on the card scheme rules at the time. These card scheme rules are subject to change.
- Liability shift only relates to counterfeit, lost & stolen and not received fraud
- Liability shift is only subject to the original transaction being processed correctly
- All other chargebacks are dealt with on a case by case basis

In accordance with the Visa/MasterCard Transaction Model, TfL is only required to submit a card for authorisation when the card is either new to TfL, hasn't successfully authorised within the Time Limit (currently 14 days) or reaches a Cumulative Spend, since the last successful authorisation above the Trigger Limit (as set out in the relevant card scheme rules). Rules and limits are subject to change.

SCHEDULE 13

Card Schemes

Card Schemes:

Visa UK Visa EU

Visa International

MasterCard UK

MasterCard EU

MasterCard International

Maestro UK

Maestro International

JCB (Japanese Credit Bureau)

SCHEDULE 14

Assurance

1. Overview

- 1.1 The Service Provider shall provide Assurance to the Merchant to ensure the Merchant gains the necessary levels of confidence that the Service Provider is complying with its obligations under this Agreement and, in particular, in relation to the delivery of the Merchant Services.
- 1.2 The purpose of the Assurance process set out below is to provide clarity and visibility of the methods by which the Merchant will gain Assurance.
- 1.3 In relation to a project or a programme, the Service Provider shall propose how it plans to Assure the Merchant that it will comply with this Agreement. The Merchant may at its sole discretion require additional Assurance activities.
- 1.4 Given the size and complexity of the Merchant Services and the CE Systems Portfolio, the Service Provider agrees that several different business units and groups internal and external to the Merchant may be affected by Changes, and may require to be involved in the Assurance process at different times and to varying levels. Notwithstanding this, the Contract Manager shall be the Merchant's prime point of contact with the Service Provider.

2. General Assurance Process

- 2.1 The Service Provider shall ensure that the Merchant gains Assurance:
 - 2.1.1 through the Service Provider's maintenance and submission of the documentation and information set out in this Agreement (including Clause 10 (Major Incident Management), 4 (Service Scope Specification), 8 (Service Management), 9 (Form of Variation) and 11 (Handback of Merchant Services));
 - 2.1.2 in relation to Technical Changes, through the processes set out in Schedule 8 (Service Management); and
 - 2.1.3 through audits, Assurance Events and/or milestones as provided for under this Agreement.
- 2.2 The Service Provider acknowledges and agrees that the Merchant may use (as the Merchant sees appropriate), as a minimum, the following general methods throughout all phases of the Assurance process as a means of gaining Assurance regarding the Service Provider's performance:
 - 2.2.1 assessing the Service Provider's approach to identifying, evaluating and resolving emerging issues and unforeseen problems;
 - 2.2.2 auditing the Service Provider's processes and operations against the documents submitted by the Service Provider;
 - 2.2.3 measuring the Service Provider's performance for compliance with the Service Levels set out in Schedule 8 (Service Management);
 - 2.2.4 reviewing the Service Provider's performance in the achievement of identified events in individual project or programme plans; and
 - 2.2.5 reviewing the Service Provider's performance at regular meetings.

3. Corrective Action Notices

- 3.1 After each audit in accordance with Clause 47 (Records, Audit and Inspection) the Contract Manager will prepare an audit report reviewing the Service Provider's performance. Copies of the Contract Manager's audit reports shall be issued to the Service Provider along with any comments or observations. If the Contract Manager determines that the Service Provider is non-compliant with any part of this Agreement, the Contract Manager may issue a Corrective Action Notice in accordance with the provisions of Clause 22 (Corrective Action Notices).

- 3.2 In addition to any Corrective Action Notices issued as a result of an audit in accordance with paragraph 3.1 of this Schedule, the Contract Manager may, from time to time, issue such other Corrective Action Notices on any other matter where it considers that the Service Provider has failed to comply with its obligations under this Agreement (including any failure to achieve a Service Level), in accordance with the provisions of Clause 22 (Corrective Action Notices).
- 3.3 Each Corrective Action Notice shall state clearly the reason why the Merchant believes that the Service Provider is not complying with its obligations under this Agreement. The Service Provider shall respond to the Contract Manager within ten (10) Business Days of the Corrective Action Notice being issued:
- 3.3.1 stating the action it proposes to take and the timescale for completing the action;
or
- 3.3.2 providing an alternative proposal for achieving the objective(s) as set out in the relevant Corrective Action Notice and/or timescale for resolving the non-conformance along with a reasoned explanation. The Merchant shall consider any such alternative proposal and at its sole discretion instruct the Service Provider to implement such a proposal which may include such amendments as are agreed with the Service Provider.
- 3.4 The Service Provider shall then implement the corrective action(s) as agreed with the Merchant under paragraph 3.3 of this Schedule.
- 3.5 The Service Provider shall provide a Corrective Action Notice status report each month in the Service Performance Report produced in accordance with Schedule 8 (Service Management) or as otherwise instructed by the Merchant.
4. **Assurance Feedback**
- 4.1 The Merchant shall provide feedback to the Service Provider at each Service Review Meeting held in accordance with Schedule 8 (Service Management) in relation to the Merchant Services on the level of Assurance that the Merchant has gained in the Service Provider's performance during the preceding month or over a longer period as appropriate.
- 4.2 The Merchant shall identify and notify the Service Provider of areas where the Service Provider needs to increase its efforts to provide Assurance and the Service Provider shall comply with the Merchant's reasonable instructions to provide such Assurance.

SCHEDULE 15

Operational Guide

<https://www.barclaycard.co.uk/business/files/Procedure-guide.pdf>

SCHEDULE 16

Letter of Adherence (Associated Companies)

[Service Provider]

[Address]

Dear Sirs

MERCHANT SERVICES

We write further to the agreement (the "**Agreement**") dated [insert] between [insert] ("**Service Provider**") and Transport Trading Limited ("**TTL**") as the same may be amended from time to time.

We are an Affiliate of TTL (as defined in the Agreement). Clause 2 of the Agreement sets out the procedure for such an Affiliate to adhere as an Associated Company to the provisions of the Agreement as if it were TTL.

In consideration of the Service Provider:

- (a) providing Merchant Services to us (as defined in the Agreement); and
- (b) agreeing to perform its obligations, and be bound by the Agreement in every way, in each case as if we had been named as the Merchant in the Agreement,

we agree to be bound by the terms of the Agreement so far as they apply to the Merchant, but solely in respect of those Merchant Services provided to us, as if we were party to the Agreement as the Merchant.

We acknowledge that:

- (a) notices to be provided to us as Merchant shall be provided to TTL in accordance with Clause 34 of the Agreement;
- (b) the Agreement may be amended from time to time in accordance with its terms without our agreement.

Accordingly, we confirm our agreement to adhere to the Agreement, so resulting in the Service Provider and us being mutually bound by our respective obligations as set out in the Agreement as the Agreement may be amended from time to time.

Yours faithfully

Name:

Title:

Signature:

.....

For and on behalf of [the Associated Company]

Transport Trading Limited agrees to be bound by the terms of the above letter.

Name:

Title:

Signature:

.....

For and on behalf of **Transport Trading Limited**

[Service Provider] agrees to be bound by the terms of the above letter.

Name:

Title:

Signature:

.....

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

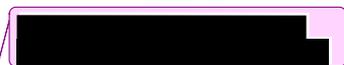
SCHEDULE 17

Additional Terms

1. **Additional Terms - ePDQ additional service conditions – April 2015**



2. **Additional Terms - Fraud-reporter additional service conditions – April 2015**



3. **Additional Terms - Processing equipment hire additional service conditions – April 2015**

