

A20.5.2 the Service Provider will be responsible for any Employment Costs relation to the period on and after the Contract Commencement Date,

and Employment Costs will if necessary be apportioned on a time basis between the Current Service Provider(s) and the Service Provider.

A20.6 The Authority warrants to the Service Provider that none of the Authority's employees will transfer to the Service Provider under TUPE as a result of the Transfer of Service.

A20.7 The Service Provider will indemnify and keep indemnified the Authority and the Current Service Provider(s) (and its Sub-Contractors) from and against all Employment Liabilities which the Authority or the Current Service Provider(s) (or its Sub-Contractors) incur or suffer arising out of or in connection with:

A20.7.1 any act or omission by or on behalf of the Service Provider (or its Sub-Contractors) in respect of any person employed or engaged by it (or its Sub-Contractors) (including the Transferring Staff) on or after the Contract Commencement Date;

A20.7.2 any failure by the Service Provider (or its Sub-Contractors) to comply with Regulation 13 of TUPE;

A20.7.3 any claim brought or other action taken by or on behalf of any of the Transferring Staff which arises from or in connection with (directly or indirectly) any act or omission or communication made to the Transferring Staff by the Service Provider (or its Sub-Contractors) before the Contract Commencement Date;

A20.7.4 the employment or termination of employment by the Service Provider (or its Sub-Contractors) of any Transferring Staff on or after the Contract Commencement Date;

A20.7.5 any actual or proposed changes by the Service Provider (or its Sub-Contractors) to the terms and conditions of employment or working conditions of any of the Transferring Staff which are or are alleged to be to the detriment of any of the Transferring Staff.

A20.8 The Service Provider will provide the Current Service Provider(s) (or its Sub-Contractors), as soon as practicable, but in any event in good time before the Contract Commencement Date with all information which the Current Service Provider (or its Sub-Contractors) may reasonably require to enable it to comply with its information and consultation obligations under TUPE and, if requested, will confirm to the Authority when it has done so and provide a copy to the Authority.

A20.9 The Service Provider warrants and undertakes to the Authority that all information given to the Current Service Provider(s) (or its Sub-Contractors) regarding the Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.

A20.10 **Clause 30.1** shall be amended so that benefits conferred on the Current Service Provider or its Sub-Contractors under this **Clause A20** shall be enforceable by them.

Appendix 1 to Clause A20

List of Transferring Staff

1. Senior Customer Care Advisor (Two Staff)
2. Customer Care Advisor (Three Staff)
3. Regional Quality Manager (One Staff)

A21
TERMINATION

TRANSFER OF EMPLOYEES ON EXPIRY OR

A21.1 The Service Provider will promptly provide (and procure that its Sub-Contractors provide) when requested by the Authority (but not more than **twice** in any 12 month period) and not more than 7 days after the date of any notice to terminate this Contract given by either Party, the following information to the Authority:

A21.1.1 an anonymised list of current Service Provider's Personnel and employees and workers of its Sub-Contractors engaged in the provision of the Services (each identified as such in the list) (the "Staff List");

A21.1.2 such of the information specified in Appendix 1 to this Clause A21 as is requested by the Authority in respect of each individual included on the Staff List;

A21.1.3 in the situation where notice to terminate this Contract has been given, a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the Services, whom the 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**".

A21.2 The Service Provider will notify the Authority 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.

A21.3 The Service Provider warrants to the Authority that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.

A21.4 Subject to **Clause A21.5**, the Service Provider will provide the Authority with a final Staff List (the "**Final Staff List**") and Staffing Information relating to persons on that list not less than 28 days before the Further Transfer Date.

A21.5 If the Contract is terminated by either Party in accordance with **Clause 26.1** or by the Authority in accordance with **Clause 26.1, 26.2 or 26.5** then the Final Staff List will be provided by the Service Provider to the Authority as soon as practicable and no later than 14 days after the date of termination of the Contract.

A21.6 The Service Provider warrants that as at the Further Transfer Date:

A21.6.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;

A21.6.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and

A21.6.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re- Transferring Personnel to the Authority.

A21.7 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 Authority (such consent not to be unreasonably withheld or delayed):

A21.7.1 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 Authority is informed promptly of such termination);

A21.7.2 deploy or assign any other person to perform the Services who is not included on the most recent Staff List;

A21.7.3 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;

A21.7.4 increase to any significant degree the proportion of working time spent on the Services by any of the Service Provider's Personnel; or

A21.7.5 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.

A21.8 The Service Provider will promptly notify the Authority of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in **Clause A21.7** regardless of when such notice takes effect.

A21.9 The Service Provider agrees that the Authority will be permitted to disclose any information provided to it under this **Clause A21** in anonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any third party engaged by the Authority to review the delivery of the Services and to any Replacement Service Provider.

A21.10 If TUPE applies on the expiry or termination of the Contract or the appointment of a Replacement Service Provider, the following will apply:

A21.10.1 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 Authority or Replacement Service Provider (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).

A21.10.2 During the Relevant Period the Service Provider will:

A21.10.2.1 provide the Authority or Replacement Service Provider (as appropriate) with access to such employment and payroll records as the Authority or Replacement Service Provider (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 Authority or Replacement Service Provider (as appropriate);

A21.10.2.2 allow the Authority or Replacement Service Provider (as appropriate) to have copies of any of those employment and payroll records;

A21.10.2.3 provide all original employment records relating to the Re-Transferring Personnel to the Authority or Replacement Service Provider (as appropriate); and

A21.10.2.4 co-operate with the Authority and any Replacement Service Provider 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 Authority or Replacement Service Provider (as appropriate) with the same level of access, information and cooperation.

A21.10.3 The Service Provider warrants to each of the Authority and the Replacement Service Provider that as at the Further Transfer Date no Re-Transferring Personnel (except where the Service Provider has notified the Authority and the Replacement Service Provider (if appointed) in writing to the contrary) to the Service Provider's knowledge:

A21.10.3.1 is under notice of termination;

A21.10.3.2 is on long-term sick leave;

A21.10.3.3 is on maternity, parental or adoption leave;

A21.10.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or

misconduct amounting to a breach of any regulations;

A21.10.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Authority or Replacement Service Provider (as appropriate);

A21.10.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;

A21.10.3.7 has received a written warning (other than a warning that has lapsed);

A21.10.3.8 has taken or been the subject of a grievance procedure within the previous two years; or

A21.10.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Authority or Replacement Service Provider (as appropriate) under TUPE.

A21.10.4 The Service Provider undertakes to each of the Authority and any Replacement Service Provider that it will (and will procure that its Sub-Contractors will):

A21.10.4.1 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;

A21.10.4.2 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;

A21.10.4.3 to pay to the Authority or the Replacement Service Provider (as appropriate) within 7 days of the Further Transfer Date an apportioned sum in respect of Employment Costs as set out in **Clause A21.10.5**; and

A21.10.4.4 to comply in all respects with its information and consultation obligations under TUPE and to provide to the Authority or Replacement Service Provider (as appropriate) such information as the Authority or Replacement Service Provider may request in order to verify such compliance.

A21.10.5 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:

A21.10.5.1 the Service Provider will be responsible for any Employment Costs relating to the period up to and including the Further Transfer Date;

A21.10.5.2 the Authority or (where appointed) any Replacement Service Provider 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.

A21.10.6 The Service Provider will indemnify and keep indemnified each of the Authority and any Replacement Service Provider from and against all Employment Liabilities which the Authority and/or the Replacement Service Provider incurs or suffers arising directly or indirectly out of or in connection with:

A21.10.6.1 any failure by the Service Provider to comply with its obligations under this **Clause A21.10**;

A21.10.6.2 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;

A21.10.6.3 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 Authority or the Replacement Service Provider to comply with Regulation 13 of TUPE);

A21.10.6.4 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 Contract Commencement Date to the Further Transfer Date;

A21.10.6.5 any claim or demand or other action taken against the Authority or any Replacement Service Provider 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 Authority or Replacement Service Provider has inherited any liability from the Service Provider (or its

Sub-Contractors) in respect of them by virtue of TUPE.

A21.11 If TUPE does not apply on the expiry or termination of the Contract, the Service Provider will remain responsible for the Service Provider Personnel and will indemnify and keep indemnified the Authority against all Employment Liabilities which the Authority incurs or suffers 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.

A21.12 The Service Provider will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of this Contract and for 2 years following the date of expiry or earlier termination of the Contract the Authority will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

A21.12.1 is still an employee or sub-contractor of the Service Provider or any of the Service Provider's associated companies; and

A21.12.2 was at any time employed or engaged by the Service Provider in order to provide the Services to the Authority under this Contract,

and such access and consultation will be provided on the first occasion free of charge and thereafter be charged at reasonable rates for the time spent by the 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 Authority's requests.

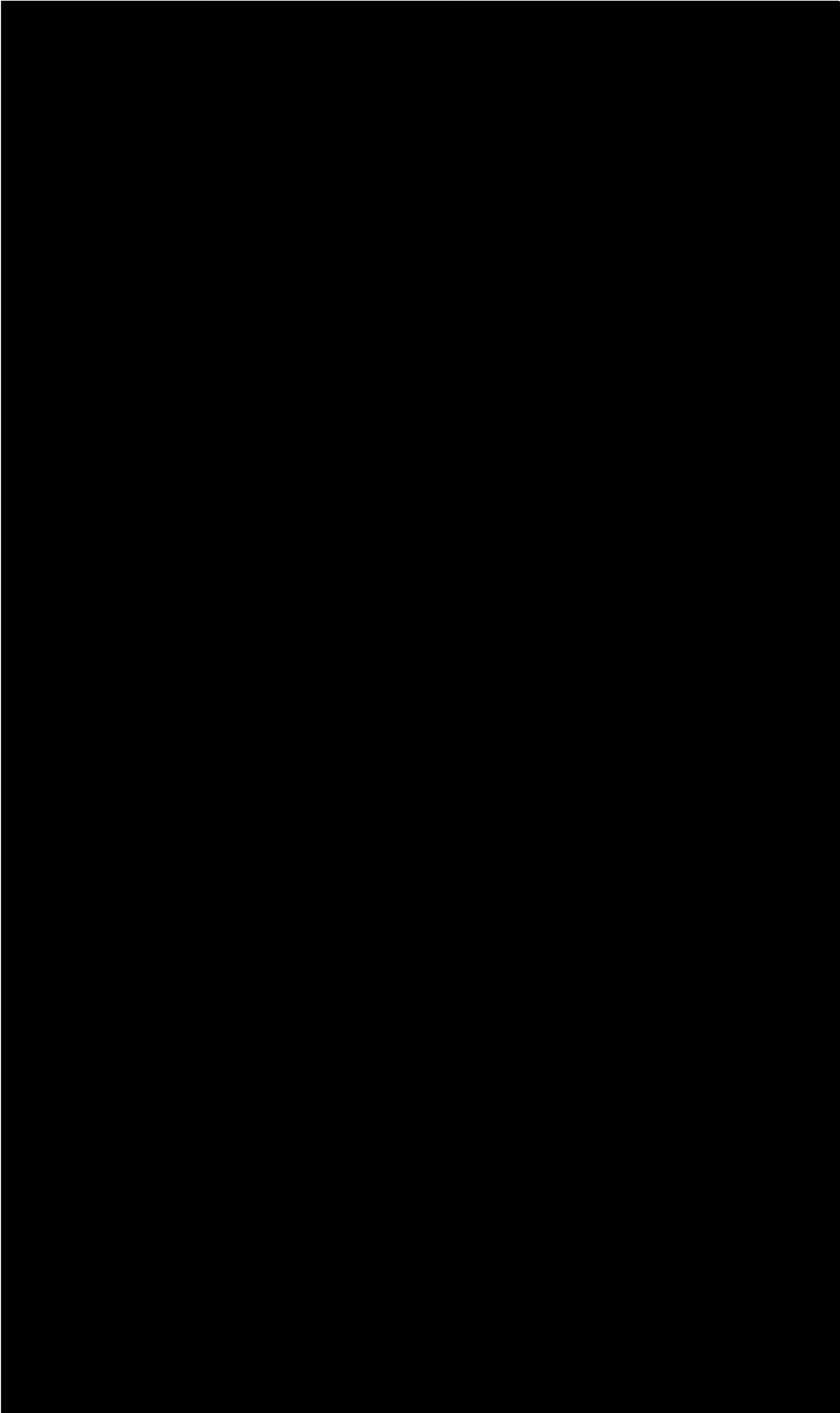
A21.13 Clause 30.1 shall be amended so that benefits conferred on the Replacement Service Provider under this Clause A21 shall be enforceable by them.

Appendix 1 to Clause A21

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

- Amount of time spent on the Services (or any part of the Services specified by the Authority)
- Date of birth
- Role Title/Designation and Role Profile
- Annual Salary £
- Bonus and Commission Amount and Frequency
- Pay Frequency and Date
- Overtime - Contractual or Non Contractual and Rates

- Contractual Working Hours
- Contract Type - Perm/Temp
- Geographical Area Of Work / Location
- Commencement of Employment Date
- Continuous Service Date
- Car Allowance
- Pension Contributions
 - 1) Employer
 - 2) Employee
- Including additional info on:
 - who were originally employees of the Authority,
 - 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 Authority to the Service Provider under TUPE; and
 - who were entitled to broadly comparable benefits under the Current Contractor's Scheme
- 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



- A23.1 Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall, if so required by the Authority, procure that a permitted sub-contractor enters into a warranty agreement with the Authority substantially in the form specified in Appendix D below or in such other form as has been previously approved in writing by the Authority.

THIS AGREEMENT made the day of 20

1. [The Authority – company details to be inserted] ("The Authority"); and
2. [] a company registered in England and Wales under number [] and having its registered office at [] (the "Subcontractor").

- (1) The Authority has entered into an agreement dated [] day of [] 20[] ("the Contract") with [] (the "Service Provider") for the [insert description of Services] (the "Services"); and
- (2) By a contract dated [] day of [] 20[] (the "Subcontract") the Service Provider appointed the Subcontractor to [insert description of Services] (the "Subcontract Services")

1. Without prejudice to any other warranties expressed in the Subcontract or implied by law, the Subcontractor warrants and undertakes to the Authority that:
 - 1.1 it shall provide the Subcontract Services in a good and workmanlike manner in accordance with the Contract;
 - 1.2 the Subcontract Services:
 - 1.2.1 shall be carried out 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 Subcontract Services;
 - 1.2.2 shall be provided using materials and goods which are of sound and satisfactory design and quality and in accordance with the standards referred to in the Contract;
 - 1.2.3 shall be provided in a safe manner and free from any unreasonable or avoidable risk to the health and well-being of persons using, operating or subsequently maintaining any equipment or using any premises referred to in the Contract, or of any other person, and in a safe, economic and efficient manner and free from any unreasonable or avoidable risk of pollution, nuisance, interference or hazard;

- 1.2.4 shall be provided in accordance with the best industry principles and practices in the activity concerned and in accordance with the standards referred to in the Contract;
- 1.3 shall comply with all the requirements of any Act of Parliament, Statutory Instrument or Order or any other regulation having the force of law or bye-law and all regulatory requirements relevant to the Subcontractor's business and/or the Authority's business from time to time in force which are or may become applicable to the Subcontract Services;
- 1.4 all materials and/or goods supplied under the Subcontract and any equipment (or any part thereof) designed or replaced by the Subcontractor shall be new and shall in all respects be fit for the purposes for which such is intended (awareness of which purposes the Subcontractor acknowledges) and in particular but without limitation will be capable of operation as part of any system referred to in the Contract or Subcontract and be so fit at least for the Contract period and will have a rate of deterioration no more than is reasonably to be expected of high quality, reliable, well designed and engineered, materials and goods;
- 1.5 it has complied and shall continue to comply with the terms of, and shall regularly and diligently carry out, its obligations under the Subcontract;
- 1.6 it shall procure that any subcontractor engaged by it who undertakes any part of the Subcontract Services shall enter into warranties in favour of the Authority in terms identical (save as to the parties) to those set out in this Contract, insofar as the terms contained in this Contract are relevant to the scope of such subcontractor responsibility;
- and the obligations contained in this Contract shall apply to the Subcontractor's agents, employees and suppliers, provided that the Subcontractor shall have no greater liability to the Authority hereunder than it would have had if the Authority were the Service Provider.
2. Each warranty referred to in Clause 1 shall be construed as a separate warranty and shall not be limited or restricted by reference to, or reference from, the terms of any other warranty or any term of the Subcontract.
3. In addition and without prejudice to the warranties given in Clause 1 above, the Subcontractor hereby grants to the Authority the same warranties as contained in the Contract.
4. The Subcontractor shall (at its own expense) upon request by the Authority prove to the Authority's reasonable satisfaction that the goods, materials and workmanship comply with the standards required by the Contract.
5. The Subcontractor shall, save insofar as it is delayed by any event in respect of which the Service Provider is granted an extension of time under the Contract for completion of the Services:
- 5.1 execute, complete and maintain the Subcontract Services in accordance with the provisions of the Subcontract; and

- 5.2 ensure that the Service Provider shall not become entitled to any extension of time for completion of the Services or to claim an additional payment under the Contract due to any failure or delay by the Subcontractor.
6. The Subcontractor shall from time to time supply the Authority and the Service Provider with such information as either may reasonably require.
7. Where the copyright in any drawings, designs, specifications, calculations, sketches and other documents ("copyright material") prepared by the Subcontractor in connection with the Subcontract Services is the property of the Subcontractor, the Subcontractor hereby grants to the Authority a world-wide, perpetual, royalty-free, non-exclusive and irrevocable licence to copy and use such copyright material for any purposes related to the project including but not limited to the completion, modification, extension, maintenance and reinstatement of the Subcontract Services, as well as operating, maintaining, modifying, repairing, configuring, replacing, correcting, extending, interfacing with, integrating with, connecting into and adjusting any equipment provided under the Contract and/or continuing any element of the Subcontract Services and the Authority shall be entitled to assign such rights to any nominee or successor and sub-license such rights to any third party.
8. The parties hereby agree that:
- 8.1 This Contract shall be personal to the Subcontractor who shall not be entitled to assign or subcontract any part of the Subcontract or this Contract without the prior written consent of the Authority;
- 8.2 The Authority may assign the benefit of this Contract to any third party;
- 8.3 The rights and remedies contained in this Contract are cumulative and shall not exclude any other right or remedy available to either party in law or equity.
9. Nothing in the Subcontractor's tender or any specification, drawing, programme or other document put forward by or on behalf of the Subcontractor and no approval, consent, comment, acknowledgement, confirmation or advice at any time given by or on behalf of any person shall operate to exclude or limit the Subcontractor's liability for any breach of its obligations hereunder.
10. Any provisions relating to dispute resolution which are set out in the Contract shall be deemed to apply to this Contract as if they were set out herein (*mutatis mutandis*).
11. If any dispute of any kind whatsoever (the "Dispute") arises between the parties in connection with this Contract or the Subcontract Services which raises issues which are in the opinion of the Authority the same as or substantially the same as issues raised in a related dispute (the "Related Dispute") between the Authority and the Service Provider and such Related Dispute has already been referred to a mediator appointed under provisions

to that effect contained in the Contract, then the Subcontractor hereby agrees that the Authority may, at its discretion, by giving notice in writing to the Subcontractor, refer the Dispute to the mediator appointed to determine the Related Dispute. In this event such conciliator shall have power to give such directions for the determination of the Dispute and the Related Dispute as he/she may think fit and to make such awards as may be necessary in the same way as if the procedure of the High Court as to joining one or more defendants or joint co-defendants or third parties was available to the parties and to him/her.

12. Both the Authority and the Subcontractor acknowledge that in entering into this Contract they are not relying upon any representation, warranty, or assurance made or given by the other party or any other person, whether or not in writing at any time prior to the execution of the Contract which is not expressly set out herein provided that nothing in this Clause 12 excludes any liability which one party would otherwise have in respect of any statement it has made fraudulently to the other party.

13. Any notice to be given to either party hereunder shall be deemed to be duly given if it is delivered by hand or sent by registered post or recorded delivery:

13.1 in the case of the Authority to the Authority's address for notices as set out in the Contract; and

13.2 in the case of the Subcontractor to: []

and any such notices shall be deemed to be received 2 working days after being posted, if sent by registered post or recorded delivery, or immediately, if delivered by hand.

14. It is agreed that nothing in this Contract shall negate or diminish any duty or obligation owed to the Authority by the Subcontractor.

15. This Contract shall be governed by and construed according to laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts.

16. Subject to Clause 16.1 below, any person who is not a party to this Contract shall not have any benefit from or any rights under this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.

16.1 The Contracts (Rights of Third Parties) Act 1999 shall apply to the Contract to the effect that any member of the Authority Group (as such term is defined in the Contract) shall have the right to enforce any provision contained in the Contract against the Subcontractor to the extent that such provision confers a benefit or purports to confer a benefit on that member of the Authority Group (as such term is defined in the Contract).

16.2 Notwithstanding Clause 16.1 above, the Parties are entitled to waive time, vary any term of the Contract or rescind the Contract (if applicable) without

the consent of any or all members of the Authority Group (as such term is defined in the Contract).