



Contract Reference Number: *ICT12549*

Date: 23 March 2018

**Agreement for the Design, Supply and Installation of a
Digital Mobile Radio System and Associated Services for
Buses**

between

Transport for London

and

Tait Europe Limited

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THIS AGREEMENT is made on the date set out on the front page of this Agreement

BETWEEN

- (1) **Transport for London**, a statutory company whose principal office is at 55 Broadway, London ("TfL"); and
- (2) **Tait Europe Limited** a company incorporated in England and Wales (under company registration number 01453444) and whose registered office is at Unit A Buckingham Business Park, Anderson Road, Swavesey, Cambridge, England, CB24 4UQ (the "Supplier")

BACKGROUND

- (A) TfL wishes to procure and the Supplier wishes to supply a digital mobile radio system and associated services across TfL's bus network to replace the existing analogue radio system.
- (B) The Supplier will be required to design, supply and install the radio system, which will include the phased installation of new radios into all of the buses operating across TfL's bus network, as well as installation of radios into bus garages and other TfL premises.
- (C) The Supplier will also be required to specify, install and commission the relevant network equipment/infrastructure necessary to enable communication across the TfL bus network, as well as interfaces with existing TfL and other TfL Group systems of the Relevant TfL Group Members.
- (D) Following implementation and acceptance of the new radio system, the Supplier will take on the ongoing responsibility for operating the new radio system (excluding the network) and for maintaining and replacing faulty equipment, and may be required to provide spare and/or equipment on an ongoing basis.
- (E) During the installation and implementation of the new radio system, the Supplier will be required to remove and dispose of elements of TfL's existing bus radio system in accordance with recycling regulations and good industry practice.
- (F) The parties have agreed to enter into this Agreement to define their contractual rights and liabilities in relation to such supply.

OPERATIVE PROVISIONS

1. DEFINITIONS

1.1 In this Agreement the following expressions shall have the following meanings unless inconsistent with the context:

- "Acceptance"** FAT Acceptance, Pilot Scheme Acceptance, Critical Mass Acceptance or Final Acceptance (as applicable);
- "Acceptance Procedures"** the procedures in respect of FAT Acceptance, Pilot Scheme Acceptance, Critical Mass Acceptance and Final Acceptance, as set out in **clause 6**;
- "Acceptance Tests"** the FAT Acceptance Tests, the Pilot Scheme Acceptance Tests, the Critical Mass Acceptance Tests and the Final Acceptance Tests;
- "Affiliate"** any person which is, in relation to a company, its parent undertaking or its subsidiary undertaking, or a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control either directly or indirectly. **"parent**

undertaking” and **“subsidiary undertaking”** will have the meanings attributed to them in section 1162 of the Companies Act 2006;

“Agreement”	this Agreement, its Schedules, Annexes and Appendices (if any) and any other document expressly incorporated into this Agreement by virtue of any provision of this Agreement;
“Agreement Personal Data”	means the Personal Data (as defined under Data Protection Legislation) that is Processed pursuant to this Agreement, as set out in Schedule 23 ;
“Alternative Equipment”	all equipment and Software to be installed at an Installation Location, which does not form part of the New System and may from time to time be ordered in accordance with clause 8 and the price for which is as described in the Price Book. The Supplier shall include all Alternative Equipment in the Asset Register that it maintains under clause 3.8 ;
“Applicable Laws”	has the meaning given to that term in clause 16.2.18 ;
“Asset”	any tangible item intended to, forming or having formed part of the New System including, but not limited to, parts, components, devices and modules in all cases whether spares, in storage, in transit, being repaired or connected to the New System and including Equipment, Alternative Equipment, Spares, TFL Equipment and (solely to the extent, if any, that it is integrated into the New System) the Supplier Equipment;
“Asset Register”	the register of Assets, sub-contracts and other relevant agreements (including software licences) to be created and maintained by the Supplier throughout the Term as further described in paragraph 3.1.1 of Schedule 18 and which forms part of the CMDB;
“Base Station”	the Supplier’s TB9300 dual mode radio base station unit;
“Bus”	any bus associated with, and which operates from, a Garage and which is to be connected to the New System via Equipment, Software and the Network Services;
“Bus Radio”	the Supplier’s TM9300 dual mode radio unit (or any alternative radio unit agreed from time to time);
“Business Continuity”	the capability of the Supplier and/or Tfl to continue delivery of products or services at acceptable predefined levels following a disruptive incident;
“Business Day”	a day other than a Saturday or Sunday or a public or bank holiday in England;
“CEDR”	has the meaning given to that term in clause 47.5 ;

"Cessation Plan"	a plan agreed between the parties or determined by Tfl pursuant to clause 33 to give effect to a Declaration of Ineffectiveness or a Public Procurement Termination Event, which shall be based on the latest version of the Exit Plan that is then in place;
"Change of Control"	change of the control of a company, and " control " shall be as defined by Section 840 of the Income and Corporation Taxes Act 1988;
"Charges"	charges set out in Schedule 3 (Charges) and which include Service Charges (as defined in that Schedule 3);
"Code Agreement"	has the meaning given to it in clause 21.2 ;
"Commencement Date"	the date of this Agreement;
"Confidential Information"	all information in respect of the business of Tfl and/or any of the Tfl Group Members and/or the Supplier including, without prejudice to the generality of the foregoing, any ideas; business methods; pricing or financial information; business, financial, marketing, development or manpower plans; customer lists or details; computer systems and software; the Tfl Data or the Supplier Data; products or services including information concerning Tfl's and/or the Tfl Group Members' and/or the Supplier's relationships with actual or potential clients, customers or suppliers and the needs and requirements of Tfl and/or Tfl Group Members and/or the Supplier and any other information which, if disclosed, will be liable to cause harm to Tfl and/or a Tfl Group Member and/or the Supplier;
"Configuration Item (CI)"	any component of the New System. Information about each CI is recorded in a Configuration Record and is maintained throughout its lifecycle by Configuration Management. CIs include Services and Further Services (if any), hardware, software, buildings, people and formal documentation such as process documentation;
"Configuration Management"	the process of maintaining information about CIs required to deliver the New System, Services and Further Services (if any), including their relationships and as further described in paragraph 13 of Schedule 2 .
"Configuration Management Database" or "CMDB"	a database to store Configuration Records throughout their lifecycle. The CMDB shall store Attributes of CIs and relationships with other CIs and constitutes the Asset Register;
"Configuration Record"	a record containing the details of a Configuration Item;
"Consents"	has the meaning given to that term in clause 16.2.12 ;

"Consumer Price Index" or "CPI"	the United Kingdom consumer prices index published by the Office for National Statistics
"Contract Information"	(i) this Agreement in its entirety (including from time to time agreed changes to this Agreement); and (ii) data extracted from the invoices submitted pursuant to clause 5 which shall consist of the Supplier's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;
"Contracted Bus Fleet"	The sum of the maximum number of buses required to run each route (the PVR (Peak Vehicle Requirement)) and the number of agreed spare buses required to operate the route;
"Critical Mass Acceptance"	has the meaning given to that term in clause 6.17.4
"Critical Mass Acceptance Tests"	the Critical Mass Acceptance Tests set out in Schedule 7 and the Test Plan developed by the Supplier and agreed by TfL in accordance with Schedule 7 ;
"Critical Mass Equipment"	the Equipment and Software for installation at the Installation Locations set out in the Project Plan for the Critical Mass Rollout;
"Critical Mass Rollout"	the installation of Equipment and Software, in accordance with the Project Plan, in the number of Buses and such other Installation Locations identified in the Project Plan (or such other number of Buses and such other Installation Locations as is agreed in writing by the parties);
"Critical Mass Target Acceptance Date"	the date identified in the fourth column of the table in Annex A of Schedule 6 ;
"Data Client"	means the relevant TfL Group Member that is the Data Controller in relation to Agreement Personal Data processed by the Supplier (or any Sub-Contractor) pursuant to this Agreement;
"Data Protection Legislation"	all Applicable Laws relating to data protection, the processing of personal data and privacy, including without limitation: <ul style="list-style-type: none"> (a) the Data Protection Act 1998; (b) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679 ("GDPR"); (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and (d) any legislation that, in respect of the United Kingdom, replaces the GDPR, the proposed

Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union;

and references to **"Data Controller"**, **"Data Processor"**, **"Data Subjects"**, **"Personal Data"**, **"Process"**, **"Processed"**, **"Processing"**, **"Processor"** and **"Supervisory Authority"** shall have the meanings set out in, and will be interpreted in accordance with:

- (i) in respect of processing undertaken on or before 24 May 2018, the Data Protection Act 1998;
- (ii) in respect of processing undertaken on or after 25 May 2018, the GDPR; and
- (iii) in respect of processing undertaken on or after the date on which legislation comes into force that, in respect of the United Kingdom, replaces the GDPR, that legislation;

"Data Security Incident"

- (a) a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Agreement Personal Data transmitted, stored or otherwise Processed;
- (b) a discovery or reasonable suspicion that there is a vulnerability in any technological measure used to protect any Agreement Personal Data that has previously been subject to a breach within the scope of paragraph (a), which may result in exploitation or exposure of that Agreement Personal Data; or
- (c) any defect or vulnerability with the potential to impact the ongoing resilience, security and/or integrity of systems Processing Agreement Personal Data;

"Day Rate"

the price/cost of a particular service for a day's period, which translates to 7.5 hours;

"Declaration of Ineffectiveness"

a declaration of ineffectiveness in relation to this Agreement made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulation 113 of the Utilities Contracts Regulations 2016;

"Delay Plan"

a plan to manage delay in respect of the Project Plan, with the meaning given to that term in

paragraph 4.2 of Schedule 6;

"Dependency(ies)"	deliverable(s) in respect of the Project Plan, which may rely on other factors or require other deliverables to be present for completion and has the meaning given to that term in Appendix 1 of Schedule 6;
"Dependency Register"	has the meaning given to that term Appendix 1 of Schedule 6;
"Direct Losses"	all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, claims, demands, proceedings, fines and judgments but solely to the extent that such are a direct losses and excluding indirect and consequential losses;
"Disaster"	unplanned interruption (whether of information processing facilities or systems or otherwise), including as a result of fire, interruption in power supply, act of terrorism, threat of act of terrorism, earthquake, extraordinary storm, flood or abnormal weather conditions, which impairs the ability of the Supplier to perform the Services or the Further Services (in whole or in part and other than in some superficial manner) to the standard of the Service Levels and/or in accordance with this Agreement;
"Disaster Recovery Plan"	the Supplier's plan for its emergency response, back-up procedures and Business Continuity in the event of a Disaster and which complies with clauses 45.1, 45.3.1 and 45.3.2;
"Dispute"	has the meaning given to that term at clause 47.2;
"Dispute Resolution Procedure"	procedure for resolving/attempting to resolve disputes, as set out in clause 47;
"Documentation"	technical and user documentation (including report guides, user manuals, technical manuals, computer operation manuals, installation and support manuals, operating standards, specifications and training materials and the Specification) that describe in detail the configuration, installation, intended operation and maintenance of the Equipment, Alternative Equipment and Software (as applicable) as such written material may be updated from time to time in accordance with this Agreement;
"EEA"	means the European Economic Area or, in the event that the United Kingdom no longer forms a part of the European Economic Area, the United Kingdom;
"Electronic Communications Code"	the electronics communications code set out in Schedule 3A of the Communications Act 2002;
"Equipment"	any item of communications hardware, or other equipment, forming part of the New System together with, and including in each case, any related installation, commissioning, testing and integration work which is provided by the Supplier as part of the

	supply of such item of equipment, all of which is, as at the Operational Commencement Date listed in Schedule 18 (Asset Management), excluding Alternative Equipment. The Supplier shall include all Equipment in the asset register that it maintains under clause 3.8 ;
"Equipment Lead Time"	has the meaning set out in clause 7.2.3 ;
"Equipment Order Form"	an equipment order form as set out in Schedule 4 ;
"Equipment Specification"	the technical description, functionality and performance levels relating to the New System, Equipment, Alternative Equipment and Spares as set out or referred to in Schedule 5 ;
"Exclusive Assets"	those Assets which are used exclusively in the provision of the New System and Services and Further Services (if any);
"Existing System"	the voice communication radio system currently in use by TfL across the London bus network, the system diagram for which is included at Annex D of Schedule 1 (Key Contract Information);
"Exit Plan"	plan for dealing with the exit of the Services and the Further Services (if any) upon termination or expiry (in whole or in part), an initial version of which will be produced by the Supplier in accordance with paragraph 5.1 of Schedule 10 (Exit Management) and set out in Annex A to Schedule 10 (Initial Exit Plan), and as that version is then updated in accordance with Schedule 10 (Exit Management);
"FAT"	has the meaning given to that term in paragraph 3.1 of Schedule 7 ;
"FAT Acceptance"	has the meaning given to that term in clause 6.11.4 ;
"FAT Acceptance Tests"	the FAT acceptance tests as set out in Schedule 7 and the Test Plan developed by the Supplier and agreed by TfL in accordance with Schedule 7 ;
"FAT Equipment"	the Equipment to be provided and installed under FAT, as set out in the Project Plan;
"FAT Liquidated Damages"	has the meaning given to that term in clause 6.12 ;
"FAT Target Acceptance Date"	the date identified in the fourth column of the table in Annex A of Schedule 6 ;
"Final Acceptance"	has the meaning given to that term in paragraph 3.4.2 of Schedule 7 ;
"Final Acceptance Liquidated Damages"	has the meaning given to that term in clause 6.18 ;
"Final Acceptance Target Acceptance Date"	the date identified in the fourth column of the table in Annex A of Schedule 6 ;

"FOI Legislation"	Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004, 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 of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes (but excluding any strikes, lock-outs or other industrial disputes of or relating to employees of the party whose obligation to perform is thereby affected, or employees of such party's Sub-Contractors) 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 to the extent that such event would have been negated by the implementation of a disaster recovery plan that accords with Good Industry Practice or insofar as the event 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 a Force Majeure Event or its impact and provided that an inability to meet payment obligations due to a lack of funds will not be considered a Force Majeure Event unless such lack of funds is itself due to a Force Majeure Event (such as but not limited to the unavailability of banking or payment systems due to a natural catastrophe);
"Force Majeure Period"	a period being no more than thirty (30) days after the first date of the applicable Force Majeure Event;
"Functional Specification"	the specification for the Equipment and the New System, as set out in Schedule 5 , which may be updated by agreement in writing from time to time by both parties;
"Further Services"	has the meaning given to that term in clause 8.1.2 ;
"Garage"	any identified Bus garage (or group of garages) together with the Bus fleet associated with that garage (as identified in the Project Plan) which is to be connected to the New System;
"Good Industry Practice"	in relation to the provision of the Services and the Further Services (if any) and any ancillary performance obligations, the provision of such Services or the performance of such obligations using the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management using what the industry would (at the relevant time) regard as the best generally accepted processes, techniques and materials;

"Guarantor"	Tait Limited a company incorporated in New Zealand (under company registration 126925, whose registered office is 245 Woodridge Road, Harewood, Christchurch 8051, New Zealand, or any alternative guarantor appointed in accordance with clause 2.2 ;
"Holding Company"	any company which from time to time directly or indirectly controls the Supplier as set out by section 1159 of the Companies Act 2006;
"Hosting Centre"	the extant Hosting Centre, which is currently located at Park Royal;
"ICO"	the Information Commissioner's Office;
"Implementation Phase"	the period from Commencement Date to Pilot Scheme Acceptance;
"Information"	information recorded in any form held by TfL or any member of the TfL Group or by the Supplier on behalf of TfL or any member of the TfL Group;
"Information Access Request"	request for any Information under the FOI Legislation;
"Initial Term"	the period which runs from the Operational Commencement Date until 23:59 on the day immediately preceding the 10th (tenth) anniversary of the Operational Commencement Date or the expiry of the Termination Assistance Period (as defined in Schedule 10 (Exit Management), whichever is the latter;
"Insolvency Event"	any of the following: <ul style="list-style-type: none"> (a) either or both of the Supplier or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order; (b) a receiver, administrative receiver, manager or administrator being appointed over all or part of the business of either or both of the Supplier or the Holding Company; (c) the Supplier and/or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency); (d) either or both of the Supplier or the Holding Company ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts within the meaning of the Insolvency Act 1986; (e) any similar event to those in (a) to (d) above occurring in relation to either or both of the

Supplier or the Holding Company under the law of any applicable jurisdiction;

- "Installation Acceptance"** the successful installation of Equipment or Alternative Equipment at an Installation Location, as certified by the Supplier in accordance with the process set out in **clause 6**;
- "Installation Acceptance Tests"** the acceptance test to be carried out in relation to the installation of Equipment or Alternative Equipment at an Installation Location as set out in **Schedule 7** and the Test Plan developed by the Supplier and agreed by TfL in accordance with **Schedule 7**;
- "Installation Location"** any Bus, Garage, TfL Mast Location, Buses CentreComm, control centre or other location at which the Supplier may be required to install Equipment and/or Alternative Equipment and/or remove and dispose of any assets, equipment or other materials as part of the implementation of the New System;
- "Installation Remedy Plan"** has the meaning given to that term in **clause 6.6**;
- "Insurance" or "Insurances"** insurances, as set out in **Annex A of Schedule 1** (Key Contract Information);
- "Intellectual Property Rights" or "IPR"** any and all patents, trademarks, trade names, service marks, copyright, moral rights, rights in design, rights in databases, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating thereto;
- "Interfaces"** those interfaces referred to at **paragraph 2.3** of the Functional Specification to be implemented by the Supplier, which shall operate to ensure that there is a seamless interconnect between the Interfacing Systems and the New System;
- "Interfacing Systems"** the software, systems and technology used by TfL, any Relevant TfL Group Member and/or its third party contractors as at the Commencement Date and thereafter from time to time with which the New System and/or Supplier Equipment and/or Software will interface, interconnect and interoperate, as described in the Functional Specification;
- "Key Milestones"** the key Milestones for delivery of the Software, the Services and the Further Services (if any), or parts thereof, as identified in **Annex A of Schedule 6** (Milestones, Implementation and Deliverables);
- "Key Personnel"** the Supplier's Personnel recognised by the parties as being materially important to the successful delivery of the Services and the Further Services (if any), as listed in **Annex B of Schedule 1** (Key Contract Information), as may be updated by agreement in

	writing by the parties from time to time;
"KPI(s)"	the Key Performance Indicators as set out in Schedule 2 ;
"Lead Time"	either of Equipment Lead Time or Spares Lead Time, as applicable (if specified);
"London Area"	is the area inside the M25 motorway, plus the area within a boundary of 11 kilometres outside of the M25 motorway, which encompasses all TfL bus routes;
"Liquidated Damages"	the financial damages as set out in clause 6.12 , clause 6.15 and clause 6.18 ;
"Maintenance Services"	maintenance services for the Software and/or Equipment and/or Alternative Equipment as detailed in paragraph 7.1.3 of Schedule 2 ;
"Milestone"	has the meaning given to that term in clause 15.1 ;
"Milestone Dates"	those dates set out in Schedule 6 by which the Supplier shall provide or complete the performance of Service(s) related to the corresponding Milestone;
"Milestone Remedy Plan"	has the meaning given to that term in clause 6.10 ;
"Milestone Target Dates"	has the meaning given to that term in clause 6.10 ;
"Network"	the electronic communications networks and apparatus used by the Supplier to provide the New System, including all the components (including Supplier Equipment and Software and TfL Equipment, TfL Premises and/or TfL Mast Locations, as applicable) to be specified, provided, supported, used or maintained by Supplier in accordance with this Agreement and all passive and active network infrastructure, network capacity, and facilities used to support the Network Services and the interconnection or integration of the Network Services;
"Network Services"	the network services more particularly defined in the Functional Specification (including the connectivity of the equipment in the Hosting Centre between elements of the DMR system and between the existing system and the DMR system) to be provided by the Supplier;
"New System"	the new digital, mobile, integrated voice radio system which is: <ul style="list-style-type: none"> a) described in the Functional Specification and including all items of Equipment, Software and TfL Equipment stipulated therein; b) any elements of the Network (in whole or in part as applicable) provided, supported, procured, used or maintained by Supplier for TfL and/or any Relevant TfL Group Member;

- c) the Network Services (in whole or in part as applicable); and
- d) any addition or variation to the New System made in accordance with the Change Control Procedure set out in **Schedule 8**

or such part of it as relates to a specified Bus, Garage, specified Garages or TfL Mast Locations as the context requires, working together on an end to end basis and interfacing with the TfL Software and systems as specified in **Schedule 5**;

"Non-Exclusive Assets"	those Assets (if any) which are used by the Supplier in the provision of the New System and Services and Further Services (if any) but which are also used by the Supplier for other purposes not Exclusive Assets;
"Notice"	has the meaning given to that term in clause 47.4 ;
"Open Source Software"	has the meaning given to that term in clause 27.7 ;
"Open Standards Principles"	<p>the Government's open standards principles as documented at:</p> <p>https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles</p> <p>as amended, updated and replaced from time to time;</p>
"Operating Environment"	<p>the environment within which the Supplier will supply and install the New System and carry out the Services including in particular, but without limitation:</p> <ul style="list-style-type: none"> (a) the physical technical and Bus operational/commercial environment including within Buses (and any other vehicles); and within Garages and associated public streets within Greater London; and (b) the Interfacing Systems;
"Operational Commencement Date"	the successful completion of the Pilot Scheme Milestone, being the date on which Pilot Scheme Acceptance takes place;
the "parties"	the parties to this Agreement;
"Permitted Sub-Contractors"	those parties named and listed in Schedule 14 in relation to the activities specified for each such party in Schedule 14 , and any others added to the list by prior written agreement of the parties;
"Persistent Breach"	<p>where there is:</p> <ul style="list-style-type: none"> (a) a failure to achieve the same KPI in two (2) or three (3) months of any three (3) month rolling period; and/or (b) a failure to achieve eight (8) or more KPIs, in

any rolling twelve (12) month period (and for the purposes of this calculation, a KPI can fail each time that it is measured in that twelve (12) month period);

"Pilot Scheme"	an early demonstration of the proposed technology to be provided by the Supplier under this Agreement comprising of Pilot O, Pilot A and Pilot B (each as identified in Schedule 7), the scope of which is limited to the Pilot Scheme Installation Locations, as further described in Schedule 7 ;
"Pilot Scheme Acceptance"	has the meaning given to that term in clause 6.14.4 ;
"Pilot Scheme Acceptance Tests"	the pilot scheme acceptance tests set out in Schedule 7 and the Test Plan developed by the Supplier and agreed by TfL in accordance with Schedule 7 ;
"Pilot Scheme Equipment"	the Equipment to be provided and installed under the Pilot Scheme, as set out in the Project Plan;
"Pilot Scheme Installation Location"	the Installation Locations where Equipment is to be installed under the Pilot Scheme as described in the Project Plan;
"Pilot Scheme Liquidated Damages"	has the meaning given to that term in clause 6.15 ;
"Pilot Scheme Target Acceptance Date"	the date identified in the fourth column of the table in Annex A of Schedule 6 ;
"Price Book"	the itemised price list of Equipment, Alternative Equipment and Software and of various associated services (including installation and development of new Equipment and/or Alternative Equipment and new Software, re-deployment of existing Equipment and Software, and decommissioning services) which forms Schedule 4 as the same is varied and updated from time to time pursuant to the provisions of Schedule 4 ;
"Project Plan"	the plan in relation to any part of the design, supply, installation and implementation of the New System (including the provision of Equipment and Software) and/or Services and the Further Services (if any) as set out in Schedule 6 , or as agreed between the parties in writing from time to time;
"Project Manager(s)"	together the Supplier Project Manager and the TfL Project Manager;
"Proprietary Tools"	a tool, system, piece of Software, Software licence or equipment (a " tool ") which is: <ol style="list-style-type: none">a) used by the Supplier in providing the New System, Services and/or the Further Services (if any); andb) not connected to, or does not form part of,

the New System (or, if connected to or forming part of the New System, it was agreed in writing between the parties, prior to the tool being connected to or forming part of the New System, that the tool would be a Proprietary Tool); and

- c) one, in respect of which, a Replacement Supplier ought reasonably to be able to supply or procure a similar or equivalent tool from the open market;

and which:

- d) is owned by a Third Party (that is not a Sub-Contractor or a member of the Sub-Contractor's group of companies, nor holding the ownership as a result of any disposal, sale, assignment or transfer, or the granting of a security interest, by any member of the Sub-Contractor's group of companies); or
- e) is owned by a Sub-Contractor or a member of the Sub-contractor's group of companies and is required by the Sub-Contractor or the Sub-contractor's group of companies (as applicable) for use in the normal course of its business other than to provide the Services and Further Services (if any) (including for other customers of the Sub-Contractor or the Sub-Contractor's group of companies (as applicable));

"Proprietary Tools Register"	the register of Proprietary Tools as set out in paragraph 3.1.2 of Schedule 18 ;
"Public Procurement Termination Event"	where a Court determines that one or more of the circumstances described in regulation 73(1) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25 has occurred;
"Radio Licence"	any licence awarded to TfL under the Wireless Telegraphy Act 2006 to use radio spectrum for the provision of business radio, where such radio spectrum is used for the operation of the New System;
"Radio Regulations"	the Radio Equipment Regulations 2017 as amended and/or replaced from time to time and such other relevant legislation relating to the manufacture, design or operation of electronic communications equipment as apply to the New System and Further Equipment and the provision of the Services or any part of them;
"Records"	has the meaning given to that term in clause 23.1.1 ;
"Registers"	the Assets Register, the Proprietary Tools Register and the Configuration Management Database/CMDB (as defined in Schedule 2 (Service Requirements));
"Regulatory Authority"	any governmental, statutory or regulatory bodies and any other competent authorities or entities in

any jurisdiction having responsibility for the regulation or governance of TfL and/or the TfL Group, the Supplier, this Agreement, the design, supply, installation and implementation of the New System and performance of the Services and the Further Services (if any), the Equipment and/or Alternative Equipment or the activities which are comprised in all or some of the Services and the Further Services (if any) or the use or application of the output from any part of the Services and the Further Services (if any);

"Relevant TfL Group Member"

means all TfL subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time:

- a) that are included within the scope of design, supply and installation of the New System and/or the Supplier's delivery of the Services and/or Further Services (if any); and/or
- b) whose equipment or tangible property is included within the scope of design, supply and installation of the New System and/or the Supplier's delivery of the Services and/or Further Services (if any); and/or
- c) that operate or use any Interfacing Systems, pursuant to this Agreement;

"Replacement Supplier"

any replacement supplier (including a Step-In Provider and, if applicable, a TfL Group Member) or provider to TfL and/or a TfL Group Member of the Services or services similar to the Services (or any part of the Services and the Further Services (if any)) and any Sub-Contractor to such replacement supplier or provider;

"Request"

has the meaning given to that term in **clause 8.1**;

"Required Action"

has the meaning given to that term in **clause 34.3**;

"Retention Period"

has the meaning given to that term in **clause 23.1.2**;

"Risk Mitigation Plan"

has the meaning given to that term in **clause 36.1**;

"Rollout"

the work undertaken from Pilot Scheme Acceptance to Final Acceptance in order to install the Equipment at the relevant Installation Locations and otherwise complete the work necessary to achieve Critical Mass Acceptance and Final Acceptance;

"Rollout Period"

the period from Pilot Scheme Acceptance until Final Acceptance (and which includes the Critical Mass Rollout);

"Schedules"

the Schedules attached to and forming part of this Agreement;

"Security Policy"

the TfL Group's security polic(y)(ies), the current version(s) of which is/are as set out in **Schedule 16**

	(TfL Policies), as such security polic(y)(ies) may be updated by TfL in writing from time to time;
"Self Certification Form"	has the meaning given to that term in clause 6.2.1 ;
"Senior Personnel"	has the meaning given to that term in clause 47.3 ;
"Service Credits"	the service credits calculated in accordance with Schedule 2 ;
"Service Level Period"	the period in which Service Credits shall be paid, as set out in Schedule 2 ;
"Service Levels"	standards of performance to be achieved for the Services and the Further Services (if any) as set out in Schedule 2 ;
"Services"	<p>(i) services required from the Supplier in designing, supplying, specifying, procuring, installing or implementing the Equipment and/or the New System and/or building and supplying the Software;</p> <p>(ii) the Maintenance Services;</p> <p>(iii) the Training Services;</p> <p>(iv) the Network Services (as applicable); and</p> <p>(v) any services, functions and responsibilities (including any incidental services, functions and responsibilities) not specifically set out in this Agreement but which are within the scope of the Services and which are reasonably to be inferred from this Agreement;</p>
"Site(s)"	TfL Premises, as specified in Schedule 1 ;
"Software"	Supplier Software, TfL Software, and the Third Party Software (which shall include all software that constitutes the Interfaces);
"Spares"	the items of Equipment and Alternative Equipment listed in the Price Book, as updated from time to time. The Supplier shall include all Spares in the asset register that it maintains under clause 3.8 ;
"Spares Lead Time"	has the meaning given to that term in clause 9.2.2 ;
"Spares Order Form"	a spares order form as set out in Schedule 4 ;
"Stability Period"	the stability period as set out and described in Schedule 7 ;
"Step-In Provider"	has the meaning given to that term in clause 34.4 ;
"Sub-Contractor"	means any sub-contractor to the Supplier or the Replacement Supplier as the context dictates which is engaged in the provision of the Services and the Further Services (if any), or any part of them (or services substantially similar to the Services and the Further Services (if any) or any part of them);

"Successor Authority"	person created by statute or subordinate legislation to assume all (or part of) the Tfl Group's functions;
"Supplier Equipment"	equipment and materials of whatsoever nature used by the Supplier in providing the New System, Equipment, Alternative Equipment, Spares, Services and the Further Services (if any) which do not themselves form part of the New System, Equipment, Alternative Equipment, Spares, Services and/or the Further Services (if any) or the Software and in which title is not intended to pass to Tfl under this Agreement, if any;
"Supplier Project Manager"	the person named as such in Schedule 1 or such other person as notified to Tfl by the Supplier as performing the lead project management role in relation to this Agreement for and on behalf of the Supplier;
"Supplier Premises"	any site(s): a) from which the Services are provided from time to time (including any site from which the Supplier (or any Supplier Personnel or a Sub-Contractor) accesses Tfl's systems (including the New System) or accesses or processes any Data (as defined in Schedule 9); or b) at which any Supplier Equipment or any books, records, systems, procedures or documents operated, kept, or used by the Supplier (or any Supplier Personnel or a Sub-Contractor) in connection with the provision of the Services or the performance of this Agreement (including the Records) are located, accessed or used, from time to time;
"Supplier Software"	Software where the IPR is to be retained by the Supplier, as set out in Schedule 1 , as such software may be updated, replaced or amended from time to time, if any;
"Supplier's IPR"	parts of the Software or Services or the Further Services (if any) which exist prior to the commencement of this Agreement which are owned by the Supplier and the Intellectual Property Rights in which are to be retained by the Supplier, as specified in Schedule 1 , if any;
"Supplier's Personnel"	employees, officers, suppliers, Sub-Contractors and agents of the Supplier engaged in the performance of any of the Services and the Further Services (if any), which includes the Key Personnel;
"Term"	the Initial Term;
"Tfl Data"	has the meaning given to that term in clause 26.1 ;
"Tfl Deliverables"	has the meaning given to that term in clause 27.14 ;

"TfL Equipment"	any assets or equipment that TfL agrees to provide to the Supplier from time to time under this Agreement for the Supplier's use during the implementation of the New System or which the Supplier may be required to integrate into the New System in conjunction with the Equipment and Alternative Equipment;
"TfL Group"	Transport for London (" 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 " TfL Group Member " shall refer to TfL or any such subsidiary;
"TfL Mast Location" or "Base Site"	any location (excluding Buses and Garages) at which an antenna, transmitter/receiver, repeater or other item of hardware which forms part of the Existing System or New System is located as Specified in Schedule 1 ;
"TfL Obligations"	the obligations to be performed by TfL as set out in Schedule 12 ;
"TfL Period"	each period, typically of twenty-eight (28) days within the TfL financial calendar as identified by TfL from time to time;
"TfL Premises"	land or premises (including temporary buildings) owned or occupied by or on behalf of TfL and/or any member of the TfL Group;
"TfL Project Manager"	the person named as such in Schedule 1 or such other person as notified to the Supplier by TfL as is performing the lead project management role in relation to this Contract for and on behalf of TfL;
"TfL Software"	software to be provided by the Supplier to TfL under this Agreement which is not Third Party Software or Supplier Software, as may be updated, replaced or amended from time to time;
"Third Party"	person, partnership, company or any other undertaking not being the Supplier or a TfL Group Member;
"Third Party Act"	has the meaning given to that term in clause 48.1 ;
"Third Party IPR"	parts of the Software or Services or the Further Services (if any) which are owned by a Third Party, the Intellectual Property Rights in which TfL has expressly agreed may be retained by a Third Party as specified in Schedule 1 , as may be updated, replaced or amended from time to time;
"Third Party Premises"	buildings, locations, properties, antennae or similar at which TfL Equipment is located and/or TfL Mast Locations which are not owned by TfL or a TfL Group Member;
"Third Party Software"	third party software to be provided to TfL under this Agreement which is specified as Third Party Software in Schedule 1 , as may be updated, replaced or

amended from time to time with the prior written agreement of both parties. The Supplier shall include all Third Party Software in the asset register that it maintains under **clause 3.8**;

- "Third Party User"** any Third Party who uses the Software and/or accesses Information as a consequence of TfL and/or any member of the TfL Group operating its business, in either case whether directly, via the Interfaces or via the Interfacing Systems;
- "Training Services"** one of the Services which involves the Supplier providing training, as set out in **paragraph 15 of Schedule 2** (Service Requirements);
- "Transparency Commitment"** TfL's commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and TfL's own published transparency commitments (as amended, updated and replaced from time to time);
- "TUPE"** has the meaning given to that term in **clause 12.1.9**;
- "User"** any person who is permitted by TfL to use the Equipment and/or Alternative Equipment and/or the New System under this Agreement;
- "Virus"** program code or a set of instructions intentionally or recklessly constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations including trojan horses, logic bombs, time bombs, data disabling code or any similar materials of any nature; and
- "Week"** shall mean 7 (seven) days.
- 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 law, statute, enactment, order, regulation or other similar instrument, unless the context otherwise requires, shall be construed as a reference to the statute, enactment, order, regulation or instrument as modified, amended, extended, consolidated, replaced and/or re-enacted (whether in whole or in part) from time to time by any subsequent law, statute, enactment, order, regulation or other similar instrument and shall include all statutory instruments, orders and/or subordinate legislation made pursuant to or under it, whether in place before or after the date of this Agreement;
- 1.4 except as specified in **clause 1.3** or expressly elsewhere in this Agreement, a reference to any document 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, Schedules, Annexes and Appendices are, unless otherwise provided, references to clauses of and Schedules, Annexes and Appendices to this Agreement and any reference to a section or paragraph in any Schedule or Annex or

Appendix (if any) shall, in the absence of provision to the contrary, relate to the section or paragraph in that Schedule or Annex or Appendix;

- 1.7 in the event, and only to the extent, of any conflict or inconsistency between any provision contained in the clauses, and any of the Schedules, the Annexes, the Appendices (if any) or any other documents incorporated herein by reference, the following order of precedence will apply, but only insofar as necessary to resolve that conflict or inconsistency:
- 1.7.1 the clauses of this Agreement;
 - 1.7.2 the Schedules to this Agreement (other than Schedule 21);
 - 1.7.3 an Annex or an Appendix to a Schedule;
 - 1.7.4 Schedule 21 to this Agreement; and
 - 1.7.5 any other documents incorporated into this Agreement by reference;
 - 1.7.6 the Schedules, Annexes and Appendices (if any) form part of this Agreement and, subject to **clause 1.7**, will have the same force and effect as if expressly set out in the body of this Agreement;
 - 1.7.7 the expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
 - 1.7.8 the words "including", "includes" and "included" will be construed without limitation unless inconsistent with the context.

2. **COMMENCEMENT, DURATION AND SECURITY**

- 2.1 This Agreement shall commence on the Commencement Date and shall, unless and until terminated in accordance with its terms, continue in force for the remainder of the Initial Term.
- 2.2 As a condition precedent to the Agreement, the Supplier shall (to the extent that it has not already done so) provide, at its own expense a parent company guarantee from the Guarantor in the form set out in **Appendix A to Schedule 13** (with a supporting legal opinion in the form set out in **Appendix B of Schedule 13**, if the new guarantor is incorporated outside of England and Wales). Where, at any time following the date of this Agreement, the financial standing of the Guarantor reduces to a level that TfL, acting reasonably, believes does not offer sufficient protection in the event that the Supplier cannot perform under this Agreement, then the Supplier shall (if requested by TfL in writing) promptly provide, at its own expense, a company guarantee from an Affiliate of the Supplier whose financial standing is equivalent or better than that of the Guarantor as at the date of this Agreement, such guarantee to be in the form set out in **Appendix A of Schedule 13** (with a supporting legal opinion in the form set out in **Appendix B of Schedule 13**, if the new guarantor is incorporated outside of England and Wales).
- 2.3 TfL shall not be obliged to make any payment to the Supplier under the Agreement whether for the Charges or otherwise during any time that the parent company guarantee has not been provided in compliance with **clause 2.2**. TfL will make such payments in accordance with the terms of this Agreement during any period in which the parent company guarantee remains valid and in place.
- 2.4 The Supplier shall be regarded as being in material breach of the Agreement, which is incapable of remedy, in the event that:
- 2.4.1 the duly executed parent company guarantee is not delivered within seven (7) days of the Commencement Date; or

- 2.4.2 the Supplier does not promptly, and at the latest within twenty (20) days deliver a duly executed company guarantee from an Affiliate of the Supplier in accordance with **clause 2.2**; or
- 2.4.3 the parent company guarantee is, or becomes, invalid or otherwise unenforceable; or
- 2.4.4 the parent company guarantee from an Affiliate of the Supplier is, or becomes, invalid or otherwise unenforceable.

3. **SUPPLIER'S OBLIGATIONS**

- 3.1 The Supplier shall design, supply, install and implement the New System and perform the Services and the Further Services (if any) in accordance with the terms and conditions of this Agreement for the benefit of TfL and the Relevant TfL Group Members.
- 3.2 The Supplier shall perform its obligations in relation to:
 - 3.2.1 the Services and the Further Services (if any) in order to provide the level of security required by **Schedule 9** (Cyber Security Management);
 - 3.2.2 the Project Plan, so as to achieve the Milestones by the relevant Milestone Dates; and
 - 3.2.3 the Acceptance Tests in accordance with **Schedule 7** (Testing & Acceptance), so as to achieve the Milestones by the relevant Milestone Dates.
- 3.3 The Supplier:
 - 3.3.1 acknowledges that it has sufficient information about the TfL Group and its requirements for the New System and/or the Services and the Further Services (if any) and that it has made all appropriate and necessary enquiries to enable it to design, supply, install and implement the New System and perform the Services and the Further Services (if any) in accordance with this Agreement;
 - 3.3.2 shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement due to any misinterpretation or misunderstanding by the Supplier of any fact relating to the TfL Group's requirements for the New System and/or the Services and the Further Services (if any) or otherwise;
 - 3.3.3 shall comply with all lawful and reasonable directions of TfL and/or any Relevant TfL Group Member relating to its design, supply, installation and implementation of the New System and performance of the Services and the Further Services (if any);
 - 3.3.4 shall, when required, give to TfL or any Relevant TfL Group Member such written or oral advice or information regarding the New System and/or the Services and the Further Services (if any) as TfL or any Relevant TfL Group Member may reasonably require;
 - 3.3.5 where a format for electronic receipt of orders by the Supplier is set out in **Schedule 1** (Key Contract Information), shall, unless TfL and/or any Relevant TfL Group Member requires otherwise, receive orders in such format and shall maintain its systems to ensure that it is able to do so throughout the Term; and
 - 3.3.6 shall provide training to TfL's and/or any Relevant TfL Group Member's personnel (including its employees, officers, suppliers, Sub-Contractors and agents) as specified in **Schedule 2** (Service Requirements).

- 3.4 Notwithstanding anything to the contrary in this Agreement, the TFL Group's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement.
- 3.5 The Supplier agrees that, save to the extent explicitly stated in this Agreement as being an obligation of TFL, the Supplier shall be responsible for, and shall provide, all necessary equipment, software and services necessary for the implementation of the New System and the proper and timely performance and management of the New System and the Services and the Further Services (if any) in accordance with this Agreement, and for TFL and the Relevant TFL Group Members to receive the benefit of the New System and Services and the Further Services (if any) in accordance with this Agreement.
- 3.6 Unless TFL notifies the Supplier otherwise, the Supplier shall be responsible for removing and disposing of any redundant assets, equipment or other materials from the Installation Locations at which the Supplier installs Equipment and/or Alternative Equipment from time to time (whether as part of the Pilot Scheme, during the Rollout Period or otherwise), that forms part of the Existing System and is not TFL Equipment. Any such disposal shall, without prejudice to **clause 19**, be carried out by the Supplier strictly in accordance with: (i) the terms of the Waste Electrical and Electronic Equipment Regulations 2013 (SI 2013/3113); and (ii) **Schedule 9** (Cyber Security Management) unless an agreement in writing is reached to the contrary, but always subject to compliance with Applicable Laws.
- 3.7 Subject to **clause 3.6**, the Supplier shall, throughout the term of this Agreement, comply with the asset management obligations set out in **Schedule 18** (Asset Management) in order to ensure the effective and efficient lifecycle administration (receipt, transfers, swap out and disposal) of the Equipment, Alternative Equipment and/or Spares that is the subject of the Services. As part of this obligation, the Supplier shall provide TFL with a written report relating to the delivery of any Equipment, Alternative Equipment and/or Spares within five (5) Business Days of the date of delivery of the same.
- 3.8 In addition to the obligations set out in **clause 3.7**, the Supplier will (in accordance with the terms of **Schedule 18** (Asset Management)) maintain a detailed Asset Register and will (if applicable) provide reports to TFL in a format which is compatible with and can be incorporated into TFL's asset tracking database. As new Equipment, Alternative Equipment or Spares are installed, or existing Equipment, Alternative Equipment or Spares are redeployed to a different location or different element of the New System, or existing Equipment, Alternative Equipment or Spares are removed, replaced and/or disposed of, the Supplier shall provide updated information to TFL and update the Asset Register as described in **Schedule 18** (Asset Management).
- 3.9 The Supplier shall provide Supplier's Personnel as necessary for the proper and timely performance and management of the Services and the Further Services (if any) in accordance with this Agreement and shall give TFL, if so requested, full particulars of all such persons who are or may be at any time employed on performing this Agreement. The Supplier shall ensure that all Supplier's Personnel deployed on work relating to the Agreement shall be properly managed and supervised.
- 3.10 Subject to the provisions of this **clause 3**, the Supplier shall maintain the continued involvement of the Key Personnel in the performance of the Services and the Further Services (if any) and shall take all reasonable steps to avoid changes to any of its staff designated as Key Personnel. The Supplier shall give TFL reasonable notice of any proposals to change Key Personnel and **clause 3.9** shall apply to the proposed replacement personnel.
- 3.11 The Supplier will only use personnel to design, install and implement the New System, perform the Services and perform the Further Services (if any) who:
- 3.11.1 are suitably qualified and experienced to perform their role in designing, installing and implementing the New System, in performing the Services and in performing the Further Services (if any);

3.11.2 hold up to date and comply with professional certifications and qualifications relevant to the design, installation and implementation of the New System, the Services and the Further Services (if any) they are providing; and

3.11.3 in these and any other respects are acceptable to TFL.

The Supplier shall demonstrate compliance with this **clause 3.11** as is required by TFL from time to time.

- 3.12 Without prejudice to any of TFL's other rights, powers or remedies under this Agreement, TFL or the owner of Third Party Premises (as relevant) may (without liability to the Supplier) deny access to any Supplier's Personnel to any TFL Premises or Third Party Premises and/or require that any Supplier's Personnel be immediately removed from designing, installing or implementing the New System, performing the Services and performing the Further Services if such Supplier's Personnel in TFL's or the owner of the Third Party Premises' 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. TFL shall notify the Supplier of such denial and/or requirement in writing and in which case the Supplier shall comply with such notice and provide a suitable replacement (with TFL's prior written consent in the case of Key Personnel).
- 3.13 If TFL requests, acting reasonably, that any member of the Supplier's Personnel should cease to be involved in the design, installation or implementation of the New System or the performance of the Services or the performance of the Further Services under this Agreement, it shall notify the Supplier in writing and state the reasons for the request. If the Supplier agrees to the request (such agreement not to be unreasonably withheld) the said member shall be removed immediately and the Supplier shall provide a suitably and similarly qualified replacement as soon as reasonably practicable and, in any event, within five (5) Business Days unless otherwise agreed. The removal of a member of the Supplier's Personnel will not relieve the Supplier from performance of its obligations under this Agreement nor provide grounds for an extension of time for the design, supply, installation and implementation of the New System and/or the performance of the Services or the Further Services.
- 3.14 The Supplier shall not assign any of the Key Personnel to other duties which would prevent them from or interfere with their ability to properly carry out their duties in respect of the design, installation or implementation of the New System, performing the Services or performing the Further Services without the prior consent of TFL. This shall not prevent the Supplier from allowing members of the Supplier's Personnel to take sickness, maternity, paternity, compassionate, religious or holiday leave or to attend a reasonable number of training courses.
- 3.15 In the event that a member of the Key Personnel resigns or shall for any reason cease to be engaged in the design, installation or implementation of the New System, the provision of the Services or the provision of the Further Services, the Supplier shall ensure that a suitably and similarly qualified replacement who is acceptable to TFL is appointed as soon as reasonably practicable and, in any event, within five (5) Business Days unless otherwise agreed; that there is a reasonable hand over period (and that the costs of bringing the replacement up to the required level of knowledge are borne by the Supplier); and that the performance of the Services and/or the Further Services and the design, installation and implementation of the New System are not affected. TFL shall not unreasonably withhold agreement to the appointment of such replacement.
- 3.16 The Supplier acknowledges and agrees that it shall be wholly responsible for the acts and omissions of the Supplier's Personnel regardless of whether or not they are employees of the Supplier. TFL shall be wholly responsible for the acts or omissions of its personnel and any other person, entity or agent acting on its behalf (other than the Supplier or a Sub-Contractor of the Replacement Supplier).
- 3.17 The Supplier shall (unless otherwise agreed by TFL in writing) procure that all sub-contracts and other agreements with Third Parties, which are or would be necessary to enable TFL and/or any Replacement Supplier to use the New System or perform the Services and Further Services (if any) in accordance with this Agreement or any

replacement for the New System, Services and/or replacement for the Further Services (if any) (including all licences for Third Party Software, where the Supplier is the licensee), shall be assignable and/or capable of novation at the request of TfL to TfL (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the New System, Services and Further Services (if any) (or part of them) without restriction (including any need to obtain any consent or approval) or payment by TfL.

- 3.18 Where the Supplier is unable to procure that any sub-contract or other agreement referred to in **clause 3.17** above which the Supplier proposes to enter into after the Commencement Date is assignable and/or capable of novation to TfL (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify TfL of this and the parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where TfL so directs, may include the Supplier seeking an alternative sub-contractor, to be agreed with TfL.
- 3.19 The parties shall each comply with their respective obligations set out in **Schedule 10** (Exit Management).
- 3.20 The Supplier shall develop and maintain the Interfaces in accordance with **Schedule 5** (Functional Specification) and the requirements of this Agreement.
- 3.21 The content of **Schedule 21** (Verification Cross Reference Matrix ("**VCRM**")) will consist of the completed VCRM – Bidder Response Template (as set out in the ITT documentation (Volume 1, Appendix 2)) and shall be completed to the reasonable satisfaction of TfL by the Supplier to meet the requirements previously set out in the ITT/ISFT documentation relating to the procurement of the New System within 30 Business Days following the Commencement Date.

4. **NETWORK SERVICES**

- 4.1 Notwithstanding the subsequent provisions of this clause, the Supplier will specify the technical, provisioning, capacity and availability requirements of the Network and the Network Services as are required to ensure that the New System meets and continues to meet the New System KPIs and will procure and/or supply directly those elements of the Network and Network Services as are identified in the Functional Specification (if any).
- 4.2 The Supplier acknowledges that to the extent it procures on behalf of TfL or directly provides the Network (in whole or in part) and the Network Services it will be the provider of Public Electronic Communications Services and Electronic Communications Services, and the provider of a Public Electronic Communications Network and an Electronic Communications Network and without limiting the generality of **clause 16**:
- 4.2.1 it shall comply in all respects with the General Conditions of Entitlement insofar as they apply in respect of the Network Services and the Network;
- 4.2.2 it shall comply in all respects with all Applicable Laws that apply to the retention of data in respect of the Network Services and the Network;
- 4.2.3 it shall comply with all of its obligations under the Data Protection Legislation;
- 4.2.4 to the extent it procures on behalf of TfL or any member of the TfL Group or directly provides the Network (in whole or in part) or the Network Services it shall be responsible for the security of the relevant elements of the Network and shall ensure that any breaches of such security shall be notified to TfL as well as to any other third parties that it may be required to notify under Applicable Law;
- 4.2.5 it warrants and represents to TfL and the other members of the TfL Group that at all times, without prejudice to the generality of **clause 16**:

4.2.5.1 the equipment used in respect of the Network and the Supplier Equipment complies with the Wireless Telegraphy Act 2006 and the interface requirements and standards set out in the Wireless Telegraphy Exemptions Regulations 2003 (where applicable);

4.2.5.2 all equipment used in connection with the Network and Supplier Equipment operates at the correct frequencies and operates in such a way that it remains compliant with the Wireless Telegraphy Act 2006 and the exemptions set out in the Wireless Telegraphy Exemptions Regulations 2003 (where applicable); and

4.2.5.3 it will (and it will procure that all Supplier's Personnel will):

- (a) operate the equipment in the Network, Network Services, Services and the Further Services in such a way that it remains compliant with the Wireless Telegraphy Act 2006 and the exemptions set out in the Wireless Telegraphy Exemptions Regulations 2003 (where applicable);
- (b) not cause or contribute to any undue interference to any wireless telegraphy equipment or networks; and
- (c) exercise a high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced companies providing networks and network services of a similar scope, type and complexity to the Network and Network Services with sufficient resources including project management resources to prevent or minimise the impact of any security incidents on Users;

4.2.6 The Supplier also acknowledges that to the extent it procures or directly provides the Network and/or Network Services:

4.2.6.1 it shall procure that or otherwise ensure that the Network Services are provided using a Network that does not have any single point of failure and have sufficient resilience and capacity to ensure that the Supplier can meet the KPIs and Service Levels (including sufficient redundancy to ensure that the KPIs and Service Levels can be met at peak times of usage);

4.2.6.2 it shall have in place sufficient restoration capacity on other networks and/or diversely routed capacity on its own network to ensure continuity of the Network Services in circumstances where there are any cable cuts, failures or faults on the Network ordinarily used by the Supplier to provide the Network Services;

4.2.6.3 it shall minimise latency, packet loss, packet delay variation, noise, attenuation and other quality of service issues that may affect the Network Services;

- 4.2.6.4 it shall regularly maintain all Supplier Equipment, Supplier Software and infrastructure used to provide the Network and Network Services so as to ensure that they: (i) operate as intended and in accordance with their specifications and any manufacturer's documentation; and (ii) to prevent problems, failures, errors and defects that may be reasonably anticipated or prevented in accordance with up-to-date industry standards or practices;
- 4.2.6.5 it shall have in place appropriate support arrangements in accordance with Good Industry Practice to ensure efficient resolution of problems, faults, failures, errors and defects in the Network Services and the Network, Supplier Equipment, Supplier Software and infrastructure used to provide them;
- 4.2.6.6 it shall have in place appropriate monitoring systems and processes in accordance with Good Industry Practice to ensure that any problems, faults, failures, errors and defects in the Network Services and the Network, Equipment and/or Alternative Equipment, Software and infrastructure used to provide them are promptly brought to the attention of the Supplier or the Supplier Personnel responsible for managing support and maintenance;

4.3 The Supplier acknowledges that to the extent it is responsible for specifying the technical, provisioning, capacity and availability requirements of the Network Services and/or Network, then the Supplier will be liable for any failure of the New System to meet the New System KPIs as if the Supplier had provided the Network Services and/or Network to TFL itself. The Supplier's liability under this **clause 4.3** is limited solely to the extent that the failure of the New System to meet the New System KPIs is due to a problem, issue, error, fault, failure or inadequacy of a part or element of the Network and/or Network Services which was specified (or which should have been specified had the Supplier otherwise followed Good Industry Practice) by the Supplier.

5. **CHARGES AND PAYMENTS**

5.1 Subject to the Supplier complying with and performing its obligations under this Agreement, the Supplier shall be entitled to invoice TFL in accordance with this **clause 5**.

5.2 In consideration of the performance of the Services, the design, supply, installation and implementation of the New System and/or the supply, installation and implementation of Equipment and/or Alternative Equipment in accordance with this Agreement, the Supplier may invoice TFL the Charges in respect of the Equipment, Alternative Equipment, New System and/or the Services at the amounts and on the basis set out in **Schedule 3** (Charges). Where no such amounts and invoicing basis are set out in **Schedule 3** (Charges), then the Supplier shall be entitled, within thirty (30) days following the end of each TFL Period, or upon the successful achievement of a Milestone payment date set out in any Project Plan (as applicable), to submit an invoice in respect of the Charges arising during such TFL Period or upon achievement of such Milestone (as applicable). For the avoidance of doubt, the Supplier may not invoice TFL for payments in relation to Milestone Dates or any other agreed payment milestones until such time

that the Supplier has delivered the applicable Equipment and/or Alternative Equipment, Services and/or parts of the New System and has fully performed its obligations in relation to such Milestone Dates or other agreed payment milestones.

- 5.3 Any sum payable by one party to the other under this Agreement will be exclusive of Value Added Tax ("**VAT**") and any other similar tax which may be chargeable and which will be payable in addition to the sum in question at the rate for the time being prescribed by law on delivery of a valid VAT invoice.
- 5.4 The Supplier shall submit invoices to the following postal address (or such other address as otherwise specified by TfL from time to time): Accounts Payable, 1st Floor, PO Box 45276, 14 Pier Walk, London, SE10 1AJ. Alternatively, where an electronic format for submission of invoices is specified by TfL from time to time such electronic format shall be used. Each such invoice shall contain all information required by TfL including the Contract Reference Number, SAP order number, the Supplier's name and address and bank account details to which payment should be made, a separate calculation of VAT and an adequate description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.
- 5.5 TfL shall consider and verify each invoice, which is submitted by the Supplier in accordance with this **clause 5.5**, in a timely manner. If TfL considers (acting reasonably) that any sums, fees or other charges claimed by the Supplier in any invoice have:
- 5.5.1 been correctly calculated and that such invoice is correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System ("**BACS**")) or such other method as TfL may choose from time to time within thirty (30) days of receipt of such invoice;
- 5.5.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, TfL shall notify the Supplier and the parties shall expeditiously work together to resolve the error or inadequacy. Upon resolution, the Supplier shall submit a revised invoice to TfL.
- TfL shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.
- 5.6 No payment made by TfL (including any final payment) or act or omission or approval by TfL (whether related to payment or otherwise) shall:
- 5.6.1 indicate or be taken to indicate the TfL Group's acceptance or approval of the Equipment and/or Alternative Equipment, Services or New System or any part of them or any act or omission of the Supplier, or otherwise prejudice any rights, powers or remedies which TfL may have against the Supplier, or absolve the Supplier from any obligation or liability imposed on the Supplier under or by virtue of this Agreement; or
- 5.6.2 prevent TfL from recovering any amount overpaid or wrongfully paid including payments made to the Supplier by mistake of law or fact. Without prejudice to **clause 5.7**, TfL shall be entitled to withhold such amount from any sums due or which may become due to the Supplier or TfL may recover such amount as a debt.
- 5.7 All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by TfL arising out of or attributable to this Agreement or any other contract between TfL or any TfL Group Member and the Supplier (howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) may be deducted by TfL from monies due or which may become due to the Supplier under this Agreement or TfL may recover such amount as a debt. The TfL Group Members' rights under this **clause 5.7** will be without prejudice to any other rights or remedies available to TfL under this Agreement or otherwise.

- 5.8 If Tfl receives an invoice which Tfl reasonably believes specifies a Charge which is not valid or due or in respect of which any Service has not been duly provided or where Tfl reasonably believes the invoice has not been calculated correctly or if the invoice contains any other error or inadequacy ("**Disputed Charge**"):
- 5.8.1 Tfl shall pay to the Supplier the part of the Charges under that invoice which is not a Disputed Charge;
- 5.8.2 Tfl may withhold payment of the Disputed Charge in that invoice and, in that case, Tfl shall promptly (and in any event within thirty (30) days after receipt of the invoice) notify the Supplier of the nature of the dispute and the parties shall commence, within five (5) days after the receipt of the Tfl's notice, to resolve the dispute in accordance with the Dispute Resolution Procedure set out in **clause 47**; and
- 5.8.3 once the dispute has been resolved, Tfl shall pay any amount due as part of that resolution within ten (10) days of such resolution.
- 5.9 Except where otherwise provided in this Agreement, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Supplier in discharging its obligations under this Agreement.
- 5.10 Interest shall accrue at the rate of two percent (2%) above the base rate of HSBC Bank plc from time to time on all sums due and payable under this Agreement from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty-five (365) day year and compounded at monthly intervals. The parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under this Agreement in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

6. **ACCEPTANCE PROCEDURES**

- 6.1 The Supplier shall not install Equipment and/or Alternative Equipment at an Installation Location unless: (a) such an installation is required at that Installation Location as part of the Pilot Scheme or during the Rollout Period; or (b) the Supplier has received an Equipment Order Form or a Request in respect of that Installation Location in compliance with the procedure set out in **clause 7** or **clause 8** (as applicable). If the Supplier does install Equipment and/or Alternative Equipment in breach of this **clause 6.1**, then Tfl shall, at its absolute discretion (and within twenty-eight (28) days) of the completion of the installation) either:
- 6.1.1 elect to retain the Equipment and/or Alternative Equipment and/or Software, in which case the Equipment and/or Alternative Equipment shall be developed, supplied and installed at no cost to Tfl; or
- 6.1.2 require the Supplier to remove all Equipment and/or Alternative Equipment and/or Software that the Supplier has installed at the Installation Location in question and re-install all equipment and software that was removed at the Installation Location to the same standard as such old equipment and software was installed immediately before the Supplier commenced installation of the Equipment and/or Alternative Equipment, all at the cost of the Supplier,
- in each case, by notifying the Supplier accordingly.
- 6.2 In respect of all Equipment or Alternative Equipment (if any) that is installed by the Supplier under this Agreement (including as part of the Pilot Scheme or Rollout), the Supplier shall be responsible for ensuring that the relevant Installation Acceptance Tests have been successfully completed in respect of the Equipment and/or Alternative Equipment. The following steps must have been completed in respect of any Equipment or Alternative Equipment in order for the Supplier to have achieved Installation Acceptance for that Equipment or Alternative Equipment:

6.2.1 once the Supplier is satisfied that the relevant Installation Acceptance Tests have been successfully completed and can demonstrate this to TfL, the Supplier shall, in respect of the Equipment or Alternative Equipment in question, sign and deliver to TfL (with the method of delivery to be as identified by TfL from time to time) the Installation self certification form that is set out in **Schedule 7** (Testing & Acceptance) (the "**Self Certification Form**"), to demonstrate to TfL that the Supplier is of the view that the Installation Acceptance Tests have been successfully completed;

6.2.2 following receipt of the Self Certification Form, TfL shall either:

6.2.2.1 counter-sign the Self Certification Form within fifteen (15) Business Days of receipt of the Self Certification Form, at which point Installation Acceptance in respect of the Equipment or Alternative Equipment shall be deemed to have taken place; or

6.2.2.2 within fifteen (15) Business Days of receipt of the Self Certification Form), notify the Supplier in writing, that it requires the Supplier to demonstrate to the reasonable satisfaction of TfL that the Installation Acceptance Tests have been successfully completed for the Equipment or Alternative Equipment in question (the "**Clarification Request**") and TfL, and/or any third party that TfL nominates, shall be entitled to attend and witness the running of the Installation Acceptance Tests in respect of the Equipment or Alternative Equipment in question,

and if TfL does neither of the steps described in **clauses 6.2.2.1 and 6.2.2.2** within fifteen (15) Business Days of receipt of the Self Certification Form, then Installation Acceptance in respect of the Equipment or Alternative Equipment shall be deemed to have taken place;

6.2.3 if TfL makes a Clarification Request under **clause 6.2.2.2**, then it shall be the responsibility of the Supplier to demonstrate to the reasonable satisfaction of TfL that the Installation Acceptance Tests have all been passed in respect of the Equipment or Alternative Equipment and if any part of the Equipment or Alternative Equipment fails the Installation Acceptance Tests, then the Supplier will, at its own cost, expeditiously implement any alterations that are required to ensure that the Equipment or Alternative Equipment and each of its parts, passes the Installation Acceptance Tests as soon as possible. Once TfL is reasonably satisfied that the Installation Acceptance Tests have all been passed in respect of the Equipment or Alternative Equipment, then TfL shall counter-sign the Self Certification Form, at which point Installation Acceptance in respect of the Equipment or Alternative Equipment shall be deemed to have taken place.

6.3 In respect of each Installation Location at which Equipment is to be installed as part of the Project Plan in accordance with this **clause 6**, the Supplier shall achieve Installation Acceptance in respect of all relevant Installation Locations set out in the Project Plan so that the Pilot Scheme and all elements of the Rollout (as applicable) can be completed on or before the relevant date set out in the Project Plan.

6.4 In respect of each Installation Location at which Equipment is to be installed in compliance with an Equipment Order Form in accordance with **clause 7**, the Supplier shall achieve Installation Acceptance on or before the expiry of the Equipment Lead Time and if no Equipment Lead Time is specified, within a reasonable time to be agreed in writing by the parties.

- 6.5 In respect of each Installation Location at which Alternative Equipment is to be installed in accordance with **clause 8**, the Supplier shall achieve Installation Acceptance on or before the expiry of any Lead Time for that Alternative Equipment that is specified in the Price Book from time to time and if no Lead Time is specified, within a reasonable time to be agreed in writing by the parties.
- 6.6 The Supplier shall (promptly upon becoming aware) inform Tfl in writing of any likelihood of delay in achieving Installation Acceptance in accordance with **clause 6.3**, **clause 6.4** or **clause 6.5**, and the reasons for such a delay. When notifying Tfl of a possible delay, the Supplier shall either: (a) demonstrate, to the reasonable satisfaction of Tfl that the delay is due to the failure of Tfl to meet a Tfl Obligation and the procedure set out at **clauses 13.3** to **13.6** shall therein apply; or (b) demonstrate, to the reasonable satisfaction of Tfl, the processes that it is putting in place and the additional resources that it is deploying in order to achieve Installation Acceptance at the Installation Location in question and to prevent further delays (and also in respect of any delay in achieving Installation Acceptance under **clause 6.3**, to ensure Final Acceptance is carried out on time) (together the "**Installation Remedy Plans**"). The Supplier shall ensure that the Installation Remedy Plans include such processes and additional resource Tfl (acting reasonably) believes should be put in place or deployed. The Supplier shall comply with the terms of the Installation Remedy Plans.
- 6.7 At all times without prejudice to the Supplier's obligations under this Agreement to meet the requirements of the Equipment Specification, the Supplier shall obtain the prior written consent of Tfl prior to incorporating any new components or parts into any Equipment and/or Alternative Equipment. It shall be reasonable for Tfl to withhold its consent if:
- 6.7.1 Tfl has not been given a sufficient opportunity to test the new components or parts (which includes a right to run or re-run the part or parts of the Installation Acceptance Tests that are relevant to the new components or parts); or
 - 6.7.2 the Supplier has not provided the Equipment and/or Alternative Equipment incorporating the new components or parts so that Tfl can conduct such tests; or
 - 6.7.3 the Supplier refuses to make the new components or parts available to Tfl as Spares at a reasonable cost and subject to the terms of this **clause 6.7.3**,
- and if Tfl provides its consent, then the section of the Price Book headed "Spares" shall be updated to include any such new components or parts at the cost agreed under **clause 6.7.3**.

Key Acceptance Milestones

- 6.8 The Supplier shall develop, supply and install Equipment in accordance with the remainder of this **clause 6** and the Project Plan, and by following the Acceptance Procedures and by successfully passing the Acceptance Tests.
- 6.9 The following are the Key Milestones in respect of the process described in **clause 6**:
- 6.9.1 FAT Acceptance;
 - 6.9.2 Pilot Scheme Acceptance; and
 - 6.9.3 Final Acceptance.
- 6.10 The Supplier shall promptly inform Tfl in writing of any likelihood of delay in achieving: (a) FAT Acceptance by the FAT Target Acceptance Date; (b) Pilot Scheme Acceptance by the Pilot Scheme Target Acceptance Date; (c) Critical Mass Acceptance by the Critical Mass Target Acceptance Date; and/or (d) Final Acceptance by the Final Acceptance Target Acceptance Date (together the "**Milestone Target Dates**"), and the reasons for such a delay. When notifying Tfl of a possible delay, the Supplier shall either: (a)

demonstrate, to the reasonable satisfaction of TfL that the delay is due to the failure of TfL to meet a TfL Obligation and the procedure set out at **clauses 13.3 to 13.6** shall therein apply; or (b) demonstrate, to the reasonable satisfaction of TfL, the processes that it is putting in place and the additional resources that it is deploying to this project in order to continue to meet the Milestone Target Dates and all future Milestone Target Dates (or to keep any delay to a minimum and prevent future delays if a Milestone Target Date has not been achieved). The Supplier shall ensure that any Delay Plan put in place in accordance with **Schedule 6** includes whatever processes and additional resource that TfL (acting reasonably) believes should be put in place, or deployed. The Supplier shall, at its own cost, comply with the Delay Plan (as described in **Schedule 6**) and otherwise shall keep TfL regularly updated in respect of progress and shall meet with TfL as and when required by TfL to discuss progress.

FAT Acceptance

6.11 The following acceptance process shall apply in relation to FAT Acceptance:

- 6.11.1 prior to submitting the FAT Equipment for the FAT Acceptance Tests, the Supplier shall firstly certify to TfL that thorough testing (inclusive of component and architectural testing) of each part of the FAT Equipment and the FAT Equipment as a whole has been successfully completed and that all errors and faults discovered in that process have been corrected, with the exception only of any errors and faults that are both minor and immaterial and which the Supplier shall correct within five (5) Business Days of certification under this **clause 6.11.1**;
- 6.11.2 following certification under **clause 6.11.1**, the Supplier shall notify TfL that the FAT Acceptance Tests can be run. Following this notification, the Supplier shall run the FAT Acceptance Tests, in part to undertake technical and functional testing of the FAT Equipment, as further described in **Schedule 6** and **Schedule 7**;
- 6.11.3 if any part of the FAT Equipment fails the FAT Acceptance Tests, then the Supplier will, at its own cost, expeditiously implement any alterations that are required to ensure that the FAT Equipment and each part of the FAT Equipment, passes the FAT Acceptance Tests as soon as possible;
- 6.11.4 the process set out in **clause 6.11.2** and **6.11.3** shall be repeated until the FAT Acceptance Tests are passed, at which point TfL shall sign an acceptance certificate in the form set out in **Schedule 7** (Testing & Acceptance) (a "**FAT Acceptance Certificate**") at which point the Supplier shall have passed the FAT Acceptance Tests ("**FAT Acceptance**"). The Supplier shall indemnify TfL and all Relevant TfL Group Members from and against any Direct Losses that TfL and/or the Relevant TfL Group Member incurs in respect of faults or errors that are discovered by either Party during the acceptance process and that should have been fixed prior to certification by the Supplier under **clause 6.11.1**.
- 6.11.5 it shall be the responsibility of the Supplier to demonstrate that the FAT Acceptance Tests and Acceptance Criteria have all been passed in respect of all the FAT Equipment, as further described in **Schedule 6** and **Schedule 7**;
- 6.11.6 the Supplier shall provide TfL with at least fifteen (15) Business Days' notice that it is to run any FAT Acceptance Tests, with such notice specifying the date, time and location for the FAT Acceptance Tests. TfL and/or any third party that TfL nominates shall be entitled to attend and witness the running of any FAT Acceptance Tests;
- 6.11.7 the Supplier shall provide (and shall procure that any relevant Sub-Contractors provide) TfL with any assistance and advice in the conduct of the FAT Acceptance Tests that TfL may reasonably require, in each case at no additional cost to TfL; and

- 6.11.8 it shall be the responsibility of TfL to issue the FAT Acceptance Certificate or a Milestone Rejection Notice in accordance with the timescales set out in **Schedule 6** (Project Plan). Where TfL fails to issue either a FAT Acceptance Certificate or a Milestone Rejection Notice in accordance with the timescales set out in **Schedule 6**, then **paragraphs 1.7 to 1.10 of Schedule 6** will apply.
- 6.12 The Supplier acknowledges that it is critical and material to TfL's strategic plans, commercial and financial interests and passengers that FAT Acceptance takes place by the FAT Target Acceptance Date. Subject to the provisions of **clauses 6.21.4, 6.21.5 and 13**, if FAT Acceptance does not take place by the FAT Target Acceptance Date, then the Supplier shall pay TfL liquidated damages of four thousand and six hundred pounds sterling (£4,600) for every day (or part day) (the "**FAT Liquidated Damages**") which elapses between the FAT Target Acceptance Date and the date that FAT Acceptance takes place, for up to a maximum period of forty-five (45) days from the FAT Target Acceptance Date (the "**FAT Long Stop Date**").
- 6.13 Subject to the provisions of **clause 13**, if FAT Acceptance has not taken place by the FAT Long Stop Date, then TfL shall be entitled to terminate this Agreement without liability to the Supplier on not less than ten (10) Business Days' prior notice (without prejudice to TfL's other rights and remedies in respect of such a breach), such notice to be delivered at any time after the FAT Long Stop Date. If FAT Acceptance takes place after TfL has served a notice to terminate under this **clause 6.13**, then that notice shall continue to apply, unless TfL notifies the Supplier that it has decided to withdraw the notice.

Pilot Scheme Acceptance

- 6.14 The following acceptance process shall apply in relation to Pilot Scheme Acceptance:
- 6.14.1 prior to submitting the Pilot Scheme Equipment for the Pilot Scheme Acceptance Tests, the Supplier shall firstly certify to TfL that thorough testing (inclusive of component and architectural testing) of each part of the Pilot Scheme Equipment and the Pilot Scheme Equipment as a whole has been successfully completed and that all errors and faults discovered in that process have been corrected, with the exception only of any errors and faults that are both minor and immaterial and which the Supplier shall correct within five (5) Business Days of certification under this **clause 6.14.1**;
- 6.14.2 following certification under **clause 6.14.1**, the Supplier shall notify TfL that the Pilot Scheme Acceptance Tests can be run. Following this notification, the Supplier shall run the Pilot Scheme Acceptance Tests, in part to undertake technical and functional testing of the Pilot Scheme Equipment, as further described in **Schedule 6** and **Schedule 7**;
- 6.14.3 if any part of the Pilot Scheme Equipment fails the Pilot Scheme Acceptance Tests, then the Supplier will, at its own cost, expeditiously implement any alterations that are required to ensure that the Pilot Scheme Equipment and each part of the Pilot Scheme Equipment, passes the Pilot Scheme Acceptance Tests as soon as possible;
- 6.14.4 the process set out in **clause 6.14.2** and **6.14.3** shall be repeated until the Pilot Scheme Acceptance Tests are passed, at which point TfL shall sign an acceptance certificate in the form set out in **Schedule 7** (Testing & Acceptance) (a "**Pilot Scheme Acceptance Certificate**") at which point the Supplier shall have passed the Pilot Scheme Acceptance Tests ("**Pilot Scheme Acceptance**"). The Supplier shall indemnify TfL and the Relevant TfL Group Members from and against any Direct Losses that TfL and/or the Relevant TfL Group Member incurs in respect of faults or errors that are discovered by either Party during the acceptance process and that should have been fixed prior to certification by the Supplier under **clause 6.14.1**;
- 6.14.5 it shall be the responsibility of the Supplier to demonstrate that the Pilot Scheme Acceptance Tests and Acceptance Criteria have all been passed in respect of all

the Pilot Scheme Equipment, as further described in **Schedule 6** and **Schedule 7**;

- 6.14.6 the Supplier shall provide TfL with at least fifteen (15) Business Days' notice that it is to run any Pilot Scheme Acceptance Tests, with such notice specifying the date, time and location for the Pilot Scheme Acceptance Tests. TfL and/or any third party that TfL nominates shall be entitled to attend and witness the running of any Pilot Scheme Acceptance Tests;
- 6.14.7 the Supplier shall provide (and shall procure that any relevant Sub-Contractors provide) TfL with any assistance and advice in the conduct of the Pilot Scheme Acceptance Tests that TfL may reasonably require, in each case at no additional cost to TfL;
- 6.14.8 it shall be the responsibility of TfL to issue the Pilot Scheme Acceptance Certificate or a Milestone Rejection Notice in accordance with the timescales set out in **Schedule 6** (Project Plan). Where TfL fails to issue either a Pilot Scheme Acceptance Certificate or a Milestone Rejection Notice in accordance with the timescales set out in **Schedule 6**, then **paragraphs 1.7 to 1.10 of Schedule 6** will apply;
- 6.15 The Supplier acknowledges that it is critical and material to TfL's strategic plans, commercial and financial interests and passengers that Pilot Scheme Acceptance takes place by the Pilot Scheme Target Acceptance Date. Subject to the provisions of **clauses 6.21.4, 6.21.5 and 13**, if Pilot Scheme Acceptance does not take place by the Pilot Scheme Target Acceptance Date, then the Supplier shall pay TfL liquidated damages of four thousand and six hundred pounds sterling (£4,600) for every day (or part day) (the "**Pilot Scheme Liquidated Damages**") which elapses between the Pilot Scheme Target Acceptance Date and the date that Pilot Scheme Acceptance takes place, for up to a maximum period of forty-five (45) days from the Pilot Scheme Target Acceptance Date (the "**Pilot Scheme Long Stop Date**").
- 6.16 Subject to the provisions of **clause 13**, if Pilot Scheme Acceptance has not taken place by the Pilot Scheme Long Stop Date, then TfL shall be entitled to terminate this Agreement without liability to the Supplier on not less than ten (10) Business Days' prior notice (without prejudice to TfL's other rights and remedies in respect of such a breach), such notice to be delivered at any time after the Pilot Scheme Long Stop Date. If Pilot Scheme Acceptance takes place after TfL has served a notice to terminate under this **clause 6.16**, then that notice shall continue to apply, unless TfL notifies the Supplier that it has decided to withdraw the notice.

Critical Mass Acceptance

- 6.17 The following acceptance process shall apply in respect of Critical Mass Acceptance:
- 6.17.1 prior to submitting the Critical Mass Equipment for the Critical Mass Acceptance Tests, the Supplier shall firstly certify to TfL that thorough testing (inclusive of component and architectural testing) of the Critical Mass Equipment has been successfully completed and that all errors and faults discovered in that process have been corrected, with the exception only of any errors and faults that are both minor and immaterial and which the Supplier shall correct within five (5) Business Days of certification under this **clause 6.17.1**;
- 6.17.2 following certification under **clause 6.17.1**, the Supplier shall notify TfL that the Critical Mass Acceptance Tests can be run. Following this notification, the Supplier shall run the Critical Mass Acceptance Tests in order to undertake technical, functional, volume and performance testing of the Critical Mass Equipment, as further described in **Schedule 6** and **Schedule 7**;
- 6.17.3 if any of the Critical Mass Equipment fail the Critical Mass Acceptance Tests, then the Supplier will, at its own cost, expeditiously implement any alterations that are required to ensure that the Critical Mass Equipment and each of its parts, passes the Critical Mass Acceptance Tests as soon as possible;

- 6.17.4 the process set out in **clause 6.17.2** and **clause 6.17.3** shall be repeated until the Critical Mass Equipment (or relevant part or parts), pass the Critical Mass Acceptance Tests at which point TfL shall sign the acceptance certificate in the form set out in set out in **Schedule 7** (Testing & Acceptance) (a "**Critical Mass Acceptance Certificate**") at which point the Supplier shall have passed the Critical Mass Acceptance Tests ("**Critical Mass Acceptance**"). The Supplier shall indemnify TfL and the Relevant TfL Group Members from and against any Direct Losses that TfL and/or the Relevant TfL Group Member incurs in respect of faults or errors that are discovered by either Party during the acceptance process, and that should have been fixed prior to certification by the Supplier under **clause 6.17.1**;
- 6.17.5 it shall be the responsibility of the Supplier to demonstrate that the Critical Mass Acceptance Tests and Acceptance Criteria have all been passed, as further described in **Schedule 6** and **Schedule 7**;
- 6.17.6 the Supplier shall provide TfL with at least fifteen (15) Business Days' notice that it is to run any Critical Mass Acceptance Tests, with such notice specifying the date, time and location for the Critical Mass Acceptance Tests. TfL and/or any third party that TfL nominates shall be entitled to attend and witness the running of any Critical Mass Acceptance Tests;
- 6.17.7 the Supplier shall provide (and shall procure that any relevant Permitted Sub-Contractors provide) TfL with any assistance and advice in the conduct of the Critical Mass Acceptance Tests that TfL may reasonably require, in each case at no additional cost to TfL; and
- 6.17.8 it shall be the responsibility of TfL to issue the Critical Mass Acceptance Certificate or a Milestone Rejection Notice in accordance with the timescales set out in **Schedule 6** (Project Plan). Where TfL fails to issue either a Critical Mass Acceptance Certificate or a Milestone Rejection Notice in accordance with the timescales set out in **Schedule 6**, then **paragraphs 1.7 to 1.10** of **Schedule 6** will apply.

Final Acceptance

- 6.18 The Supplier acknowledges that it is critical and material to TfL's strategic, commercial and financial interests (and particularly to ensure that TfL provides a bus service in Greater London that is attractive to passengers) that Final Acceptance occurs by the Final Acceptance Target Acceptance Date. Subject to the provisions of **clauses 6.21.4** and **13**, if Final Acceptance has not taken place by the Final Acceptance Target Acceptance Date, then the Supplier shall pay TfL liquidated damages of four thousand and six hundred pounds sterling (£4,600) for every day (or part day) (the "**Final Acceptance Liquidated Damages**") which elapses between the Final Acceptance Target Acceptance Date, and the date of Final Acceptance, up to a maximum period of ninety (90) days from the Final Acceptance Target Acceptance Date (the "**Final Acceptance Long Stop Date**").
- 6.19 Subject to the provisions of **clause 13**, if Final Acceptance has not taken place by the Final Acceptance Long Stop Date, then TfL shall be entitled to terminate this Agreement without liability to the Supplier on not less than ten (10) Business Days' notice (without prejudice to TfL's other rights and remedies in respect of such a breach), such notice to be delivered at any time after the Final Acceptance Long Stop Date.
- 6.20 If Final Acceptance takes place after TfL has served a notice to terminate under **clause 6.19**, then that notice shall continue to apply, unless TfL notifies the Supplier that it has decided to withdraw the notice. If TfL terminates the Agreement under **clause 6.19** then TfL shall, at its absolute discretion (and within twenty-eight (28) days of termination) either:
- 6.20.1 purchase Equipment and/or Alternative Equipment and/or Software that the Supplier has installed up to the date of termination and which TfL wishes to purchase, with the sum payable by TfL for any Equipment and/or Alternative

Equipment and/or Software being the open market value of the relevant assets at the relevant time, as between a willing buyer and a willing seller; and/or

6.20.2 in respect of all Equipment and/or Alternative Equipment and/or Software that the Supplier has installed and that Tfl does not elect to purchase under **clause 6.20.1**, the Supplier shall promptly remove all such Equipment and/or Alternative Equipment and/or Software from the Installation Locations and the Tfl Premises, at its own cost.

in each case by notifying the Supplier accordingly.

6.21 Further, it is agreed that:

6.21.1 all sums payable by the Supplier to Tfl pursuant to **clause 6.12**, **clause 6.15** and/or **clause 6.18** shall be paid as liquidated damages for delay and not as a penalty, and the parties acknowledge that such amounts are a genuine attempt to estimate the Direct Loss that shall be suffered by Tfl in the event of any failure to achieve FAT Acceptance by the FAT Target Acceptance Date, Pilot Scheme Acceptance by the Pilot Scheme Target Acceptance Date; and/or to achieve Final Acceptance by the Final Acceptance Target Acceptance Date;

6.21.2 Tfl may:

6.21.2.1 deduct and retain the amount of any Liquidated Damages becoming due under the provisions of **clause 6.12**, **clause 6.15** and/or **clause 6.18** from any sums due or which become due to the Supplier; or

6.21.2.2 require the Supplier to pay such amounts to Tfl, in which event the Supplier shall pay such amounts within thirty (30) days of receipt of a written notice requiring payment; and

6.21.3 payment of Liquidated Damages in accordance with **clause 6.12**, **clause 6.15** and/or **clause 6.18** shall not relieve the Supplier from its obligations to achieve Final Acceptance by the Final Acceptance Target Acceptance Date, to achieve Pilot Scheme Acceptance by the Pilot Scheme Target Acceptance Date, to achieve FAT Acceptance by the FAT Target Acceptance Date.

6.21.4 Liquidated damages will not accrue or become payable to the extent that the Supplier obtains relief from its obligations:

6.21.4.1 as a result of the failure by Tfl to comply with one or more of the Tfl Obligations in accordance with **clause 13.3**; and/or

6.21.4.2 under **clause 34.6**, following Tfl's taking of a Required Action prior to the deadline for a Supplier obligation or Milestone which prevents the Supplier from fulfilling its obligations under the Agreement or meeting such a Milestone.

6.21.5 Solely in relation to Liquidated Damages payable in accordance with **clauses 6.12** and **6.15**, Tfl agrees to waive its right to claim Liquidated Damages:

6.21.5.1 in respect of the FAT Target Acceptance Date pursuant to **clause 6.12**, if FAT Acceptance takes place within 30 days of the FAT Target Acceptance Date;

- 6.21.5.2 in respect of the Pilot Scheme Target Acceptance Date pursuant to **clause 6.15**, if Pilot Scheme Acceptance takes place within 30 days of the Pilot Scheme Target Acceptance Date,

providing always that if the relevant Acceptance occurs more than thirty (30) days after the FAT Target Acceptance Date or the Pilot Scheme Target Acceptance Date (as applicable), the Supplier will pay Liquidated Damages in respect of the entire period of the delay (subject to the specified maximum period), including for the first thirty (30) days of such delay.

- 6.21.6 **Clause 6.21.5** will not operate to extend or grant additional time in relation to or otherwise change the Milestone Acceptance Dates or any other deadline or date specified in this Agreement, including the Project Plan.

7. Provision and Installation of Equipment (other than as part of the Pilot Scheme or Rollout)

- 7.1 TfL shall be entitled at any time whilst this Agreement remains in force, and at no additional cost (save as set out in an Equipment Order Form), by following the procedure set out in this **clause 7**, to require the Supplier (at all times on a non-exclusive basis) to supply and install Equipment at an additional Installation Location or at additional Installation Locations. For the avoidance of any doubt, the reference to "on a non-exclusive basis" in this **clause 7.1** means that:

7.1.1 TfL does not commit to the Supplier that TfL will deliver any minimum, or any other agreed number, of Equipment Order Forms to the Supplier; and

7.1.2 TfL may appoint, and nothing in this Agreement shall prevent TfL from appointing, other suppliers or organisations from installing bus radios or base station equipment similar, or identical to, the Equipment or the Alternative Equipment both before, during and following the Pilot Scheme, subject to any impact on the Supplier achieving its obligations under the Agreement which is due to the appointment and work of such suppliers, organisations and installations being notified to TfL by the Supplier and where necessary (in TfL's reasonable opinion) any Changes will be in accordance with the Contract Change Control procedure as set out in **Schedule 8**; and

7.1.3 TfL and/or another member of the TfL Group may install, and nothing in this Agreement shall prevent TfL and/or another member of the TfL Group from installing, equipment similar, or identical to, the Equipment both before, during and following the Pilot Scheme.

- 7.2 TfL may, from time to time and subject to **clause 7.1**, both during and following the completion of the Pilot Scheme, issue an Equipment Order Form to the Supplier, by completing each section of the Equipment Order Form and delivering it to the Supplier Project Manager (with the method of delivery of the Equipment Order Form to be as identified by TfL from time to time). When completing the Equipment Order Form, TfL shall apply the provisions of the Price Book. It is agreed that:

7.2.1 the "Installation" section (where included) is the total cost of the Supplier performing certain types of installation tasks in respect of the Equipment;

7.2.2 the "Maintenance" section (where included) is the total cost per annum of providing the Services in respect of Equipment purchased outside of the Pilot Scheme and the Rollout; and

7.2.3 the "Lead Time" section (where included) is the maximum period of time that the Supplier will be permitted from: (a) receipt of an Equipment Order Form; to (b) installing the Equipment at the Installation Location(s) that is (are) the

subject of that Equipment Order Form and achieving Installation Acceptance in respect of that Equipment (the "**Equipment Lead Time**"),

and where a cost varies depending on quantity, the quantity is the amount being ordered at any one time, rather than a cumulative figure taking into account previous order volumes.

- 7.3 Following receipt of an Equipment Order Form from TFL, the Supplier shall be obliged to promptly proceed to supply and install the Equipment at the Installation Location that is the subject of the Equipment Order Form, in compliance with the terms of that Equipment Order Form and this Agreement. The Supplier shall ensure that the Equipment is supplied, installed and has achieved Installation Acceptance within the relevant Equipment Lead Time and if no Equipment Lead Time is specified, within a reasonable time to be agreed in writing by the parties. Notwithstanding the above, the Supplier shall use its reasonable endeavours to complete the installation of Equipment at an Installation Location within any timescale that TFL requires that is shorter than the Equipment Lead Time.
- 7.4 An Equipment Order Form that has been delivered to the Supplier in accordance with **clause 7.3** shall be a binding agreement between the parties, incorporating the terms and conditions of the Agreement.
- 7.5 If, in respect of Equipment that has been ordered by way of an Equipment Order Form, the Supplier does not achieve Installation Acceptance within the Equipment Lead Time, then, subject to **clause 13**, the Equipment Cost for that Equipment shall be reduced by the amount identified in the relevant Order Form as the "Equipment LD Sum" for each Week, or part of a Week, after the expiry of the Equipment Lead Time, during which the Supplier continues to fail to achieve Installation Acceptance in respect of the relevant Equipment, for up to a maximum of ten (10) Weeks from the expiry of the Equipment Lead Time.
- 7.6 Without prejudice to **clause 7.5** and notwithstanding any other rights and remedies under this Agreement, TFL shall have the right to terminate immediately in whole or in part, upon written notice to the Supplier and without liability to the Supplier, the Equipment Order Form if Installation Acceptance has not been achieved in respect of any or all Equipment ordered under that Equipment Order Form by the date that is five (5) Weeks after the expiry of the relevant Equipment Lead Time.

8. **ALTERNATIVE EQUIPMENT AND FURTHER SERVICES**

- 8.1 TFL may, from time to time, during the term of this Agreement, issue a written request (the "**Request**") to the Supplier for the provision of:
- 8.1.1 Alternative Equipment; and/or
- 8.1.2 certain other types of services that are in addition to the Services, as may be described within the Price Book from time to time (the "**Further Services**").
- 8.2 When completing the Request, TFL shall apply the provisions of the Price Book, with any equipment in the Price Book other than that which constitutes Equipment being the Alternative Equipment. The prices and other figures for the Alternative Equipment in the Price Book shall, subject to **clause 8.5** in respect of Lead Times only, be interpreted in the same way as described in **clause 7.2** in respect of the Equipment.
- 8.3 The Further Services section of the Price Book describes the total cost to TFL of the Supplier providing each Further Service.
- 8.4 Following receipt of the Request, the Supplier shall be obliged to promptly proceed to install Alternative Equipment and/or provide the Further Services in compliance with the terms of the Request and this Agreement. A Request which has been signed by TFL and delivered to the Supplier shall be a binding agreement between the parties, incorporating the terms and conditions of the Agreement.

8.5 The Supplier shall use all reasonable endeavours to ensure that all Alternative Equipment is installed and has achieved Installation Acceptance within any Lead Time specified in the Price Book for Alternative Equipment. Where there is no Lead Time specified for Alternative Equipment, the Supplier shall use its reasonable endeavours to complete the installation of the Alternative Equipment within any timescale that Tfl reasonably requires.

8.6 The Further Services shall be provided promptly and diligently and fully in accordance with any description of the Further Services included in the Price Book from time to time. The terms of clauses **10.5.2 to 10.5.8** (inclusive) shall also apply to the provision of the Further Services as if the Further Services were Services for the purpose of those clauses.

9. **SPARES, RISK AND TITLE**

9.1 For the term of this Agreement and for a period of 3 years following the date of the termination or expiry of this Agreement (for any reason), the Supplier shall sell and Tfl shall purchase, on a non-exclusive basis, such quantities of the Spares as Tfl, at its discretion, orders from time to time in accordance with this **clause 9**.

9.2 Orders for the Spares shall be given by Tfl in writing by Tfl completing the Spares Order Form and delivering it to the Supplier Project Manager. Tfl can require the Spares to be delivered to any location in the London Area and to persons of its choice, including third parties. When completing the Spares Order Form, Tfl shall apply the provisions of the Price Book. In respect of the Price Book it is agreed that:

9.2.1 the itemised Equipment and Alternative Equipment sections at Annex 1 and Annex 2 of the Price Book set out only the total cost to Tfl of the Supplier selling the relevant Spares to Tfl and do not (unless specifically stated to the contrary) include installation or design or other services or project management time or costs; and

9.2.2 any lead time for Spares stated in the Price Book from time to time is the maximum period of time that the Supplier requires from: (a) receipt of a Spares Order Form; to (b) delivering the relevant Spares in compliance with the Spares Order Form (the "**Spares Lead Time**").

9.3 A Spares Order Form that has been signed by Tfl and delivered to the Supplier in accordance with **clause 9.2** shall be a binding agreement between the parties, incorporating the terms and conditions of the Agreement. Following receipt of a signed Spares Order Form, the Supplier shall be obliged to deliver the Spares that are the subject of the Spares Order Form, in compliance with the terms of the Spares Order Form and this Agreement. The Supplier shall ensure that all Spares are delivered within the relevant Spares Lead Time. Notwithstanding the above, the Supplier shall use its reasonable endeavours to provide Spares to Tfl within any timescale that Tfl requires that is shorter than the applicable Spares Lead Time.

9.4 The following process shall apply in respect of delivery of the Spares:

9.4.1 the Spares will be delivered, carriage paid, to the address stated on the Spares Order Form. The Supplier will off-load the Spares at its own risk as directed by Tfl;

9.4.2 the Spares will be delivered during the recipient's normal office hours on the date, or within the period, specified in the Spares Order Form;

9.4.3 the Supplier will ensure that:

9.4.3.1 the Spares are marked in accordance with Tfl's instructions and any applicable regulations or requirements of the carrier and properly packed and stored so as to

- reach their destination in an undamaged condition;
- 9.4.3.2 each delivery is accompanied by a prominently displayed delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered;
- 9.4.3.3 Tfl is supplied, on delivery of the Spares, with all operating and safety instructions and other information as may be necessary for their proper use, maintenance and repair; and
- 9.4.3.4 without prejudice to Tfl's other rights under the Agreement, if the Spares are delivered to Tfl in excess of the quantities ordered, Tfl will be entitled to retain but will not be bound to pay for the excess and such excess will be and remain at the Supplier's risk and be returnable at the Supplier's expense.
- 9.5 Tfl will not be deemed to have accepted the Spares until it has had thirty (30) days to inspect them following delivery. Tfl will also have the right to reject the Spares as though they had not been accepted for ninety (90) days after any latent defect in the Spares has become apparent.
- 9.6 The Supplier shall, at all times until the date 3 years after the expiry of this Agreement, maintain sufficient stocks of the Spares to fulfil its obligations under this Agreement and the means to produce further Spares within the Spares Lead Time. Should any part or component or product making up the Spares become unavailable during such period, the Supplier shall be entitled to provide parts or components or products that are functionally equivalent and (unless agreed otherwise in writing by Tfl) of an equivalent standard of build quality, in order to meet such obligation. Where the cost to the Supplier of obtaining or manufacturing such equivalent parts, components or products is less than the cost of obtaining or manufacturing the part, component or product in use originally, the price payable by Tfl for such part, component or product will be reduced by an equivalent amount, and in all other circumstances the price for such part, component or product shall be in accordance with Schedule 3 unless otherwise agreed in writing with Tfl.

Risk and Title

- 9.7 Risk in all Spares supplied under this Agreement will pass from the Supplier to Tfl:
- 9.7.1 once they are delivered to and off-loaded at the address stated on the Spares Order Form where such address is part of Tfl Premises or the address is specified by Tfl and is not a part of Supplier Premises; or
- 9.7.2 upon the date such Spares are installed by the Supplier for Tfl's use,
- whichever is the earlier.
- 9.8 Risk in all Equipment and/or Alternative Equipment supplied under this Agreement (other than that dealt with in **clause 9.7**) will pass from the Supplier to Tfl, upon the date of Installation Acceptance in respect of such Equipment and/or Alternative Equipment.

9.9 Title in all Equipment and/or Alternative Equipment and/or Spares supplied under this Agreement will pass from the Supplier to Tfl, upon the date that Tfl makes full payment to the Supplier in respect of an item of Equipment and/or Alternative Equipment and/or Spares.

9.10 The Supplier undertakes to deliver to Tfl good title, with full title guarantee and free from any encumbrances or retention rights whatsoever, to all Equipment, Alternative Equipment, Spares and other equipment that is supplied as part of the Equipment and/or Alternative Equipment free from any claims and/or encumbrances whatsoever and Tfl shall be entitled to quiet possession of each and every item of Equipment, Alternative Equipment, Spares and other equipment that is supplied as part of the Equipment and/or Alternative Equipment.

9.11 In respect of any equipment that the Supplier (or one of its Sub-Contractors) is holding where title has passed to Tfl, the Supplier shall (and shall procure that each of its Sub-Contractors shall):

9.11.1 store such equipment separately from all other goods held by the Supplier (or its Sub-Contractor) so that they remain readily identifiable as the property of Tfl;

9.11.2 label such equipment as being the property of Tfl;

9.11.3 maintain such equipment in satisfactory condition and keep them insured on Tfl's behalf for their full price against all risks with an insurer that is reasonably acceptable to Tfl. The Supplier shall obtain an endorsement of Tfl's interest in the equipment on its insurance policy, subject to the insurer being willing to make the endorsement; and

9.11.4 on request, allow Tfl to inspect such equipment.

9.12 Any equipment supplied by Tfl for use or integration with the Equipment and/or Alternative Equipment (including the Tfl Equipment) will, as between the parties, remain the property of Tfl and the Supplier will not acquire any legal or beneficial interest (or any other rights) in such equipment.

9.13 Risk in:

9.13.1 all of the Supplier's Equipment shall be with the Supplier at all times; and

9.13.2 all other equipment and materials forming part of the Services or the Further Services ("**Materials**") shall be with the Supplier at all times unless or until ownership and risk transfers to Tfl as agreed in writing by the parties,

regardless of whether or not the Supplier's Equipment and Materials are located at Tfl Premises.

10. THE SERVICES

10.1 In respect of the Pilot Scheme Equipment, the Supplier shall provide the Services to Tfl in accordance with the terms of this Agreement from the Commencement Date.

10.2 From the date of Pilot Scheme Acceptance, the Supplier shall provide the Services to Tfl in accordance with the terms of this Agreement in respect of the New System and all Equipment and any Alternative Equipment that the Supplier has provided to Tfl as a result of the Rollout and/or an Equipment Order Form, or otherwise. The obligation to provide the Services in respect of the New System and each piece of Equipment or any Alternative Equipment under this **clause 10.2**, shall commence at the point in time at which Installation Acceptance occurs at the Installation Location at which the Equipment or any Alternative Equipment has been installed.

- 10.3 The Supplier acknowledges that it has sufficient information about TfL and the Installation Locations and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the Agreement.
- 10.4 The Supplier shall provide the Training Services to TfL and/or any Relevant TfL Group Member, in accordance with the timescales in the Project Plan and **paragraph 15 of Schedule 2** (Service Requirements).
- 10.5 The Supplier warrants, represents and undertakes that it will provide the Services and the Further Services (if any):
- 10.5.1 promptly and diligently and fully in accordance with **Schedule 5** (Specification) and **Schedule 6** (Project Plan, Milestones and Deliverables) (as appropriate);
 - 10.5.2 in a sound and workmanlike manner;
 - 10.5.3 following Good Industry Practice;
 - 10.5.4 using only suitably qualified and trained Supplier Personnel;
 - 10.5.5 without infringing the Intellectual Property Rights of any third party;
 - 10.5.6 in accordance with the Service Levels;
 - 10.5.7 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
 - 10.5.8 in all respects, fully in accordance with this Agreement.
- 10.6 If at any time the Supplier fails to achieve any or all of the Service Levels, then the Supplier will, without cost to TfL and as soon as is reasonably practicable upon becoming aware of such failure:
- 10.6.1 notify TfL in writing of (and if required by TfL discuss with TfL as soon as is reasonably possible) the reason for the failure to achieve the Service Levels, and the Supplier's proposals to remedy the failure and avoid a reoccurrence of that failure;
 - 10.6.2 without prejudice to TfL's other rights under this Agreement or otherwise, take the steps specified by the Supplier in compliance with **clause 10.6.1** and such other steps as TfL reasonably requires to remedy such failure (provided the failure in question is remediable) to the reasonable satisfaction of TfL; and
 - 10.6.3 use all its reasonable endeavours to ensure that such a failure to achieve the Service Levels is not repeated during the continuance in force of this Agreement.

11. **SERVICE LEVELS, KPIS & SERVICE CREDITS**

- 11.1 The Supplier acknowledges that it is critical and material to TfL's strategic plans, commercial and financial interests and passengers that the Supplier meets the Service Levels when providing the Services and the Further Services (if any). Subject to the provisions of **clause 13** and **clause 15.6.**, if the Supplier does not meet the Service Levels and/or the KPIS then TfL may be entitled to Service Credits, in accordance with the provisions of **Schedule 2** (Service Requirements). Further, it is agreed that:
- 11.1.1 all sums payable by the Supplier to TfL as Service Credits are a genuine attempt to estimate the Direct Loss that shall be suffered by TfL in the event of any failure to meet the Service Levels and/or the Equipment KPI and/or the New System KPIS and/or the Network Services KPIS (if applicable) and are not a penalty;
 - 11.1.2 TfL may:

- 11.1.2.1 deduct and retain the amount of any Service Credits becoming due under the provisions of this **clause 11** and **Schedule 2** (Service Requirements) from any sums due or which become due to the Supplier; or
- 11.1.2.2 require the Supplier to pay such amounts to TfL, in which event the Supplier shall pay such amounts within thirty (30) days of receipt of a written notice requiring payment.
- 11.1.3 payment of Service Credits in accordance with this **clause 11** and **Schedule 2** (Service Requirements) shall not relieve the Supplier from its obligations to meet the Service Levels and the KPIs or from any other liability or obligation under this Agreement. The provisions of this **clause 11** do not prevent TfL from exercising any of its other rights under this Agreement (including any right to terminate this Agreement), or to claim general damages at law. If TfL is entitled to payment of any sum (including damages) by the Supplier, in respect of an act or omission which gave rise to a payment of Service Credits, then the Service Credits previously levied in respect of that act or omission will be deemed part discharge of that sum.

12. TUPE

12.1 For the purposes of this **clause 12**, unless the context indicates otherwise, the following expressions shall have the following meanings:

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

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

12.1.3 **"Final Staff List"** has the meaning set out in **clause 12.2.4**;

12.1.4 **"Further Transfer Date"** means the date on which the Services (or any part of them or the Further Services) cease to be provided by the Supplier and start to be performed by TfL or any Replacement Supplier when the transfer of employment of the Re-Transferring Personnel from the Supplier to TfL or any Replacement Supplier occurs;

12.1.5 **"Relevant Period"** means the period starting on the earlier of:

(a) the date falling six (6) calendar months before the date of expiry of the Agreement; or

(b) if the Agreement is terminated by the Supplier in accordance with **clause 31.5** or by TfL in accordance with **clauses 6.13, 6.16, 6.19, 31.1, 31.2, 31.3, 31.4** or **31.6**, the date of the relevant termination notice;

and ending on the Further Transfer Date;

12.1.6 **"Re-Transferring Personnel"** means any Supplier's Personnel who are assigned (for the purposes of TUPE) to the relevant Services or Further Services immediately before the Further Transfer Date and whose employment contract will transfer to TfL or the Replacement Supplier pursuant to TUPE with effect from the Further Transfer Date;

- 12.1.7 "**Staff List**" has the meaning set out in **clause 12.2.1.1**;
- 12.1.8 "**Staffing Information**" has the meaning set out in **clause 12.2.1.3**; and
- 12.1.9 "**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

12.2 Transfer of Employees on Expiry or Termination

12.2.1 The Supplier will promptly provide (and procure that its Sub-Contractors provide) when requested by Tfl (but not more than twice in any twelve (12) month period)) and not more than seven (7) days after the date of any notice to terminate this Agreement given by either party, and, subject to compliance with the Data Protection Legislation, the following information to Tfl:

- 12.2.1.1 an anonymised list of current Supplier's Personnel and employees and workers of its Sub-Contractors engaged in the provision of the Services or the Further Services (each identified as such in the list) (the "**Staff List**");
- 12.2.1.2 such of the information specified in **Schedule 10** (TUPE information on Exit) as is requested by Tfl in respect of each individual included on the Staff List;
- 12.2.1.3 In the situation where notice to terminate this Agreement has been given, a list of all persons who are engaged or have been engaged during the preceding six (6) months in the provision of the Services or the Further Services, whom the Supplier considers will not transfer under TUPE for any reason whatsoever together with details of their role and a full explanation of why the Supplier thinks such persons will not transfer,

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

- 12.2.2 The Supplier will notify Tfl as soon as practicable and in any event within five (5) days of the Supplier becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.
- 12.2.3 The Supplier warrants to Tfl 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.
- 12.2.4 Subject to **clause 12.2.5**, the Supplier will provide Tfl with a final Staff List (the "**Final Staff List**") and Staffing Information relating to persons on that list not less than twenty-eight (28) days before the Further Transfer Date.
- 12.2.5 If the Agreement is terminated by the Supplier in accordance with **clause 31.5** or by Tfl in accordance with **clauses 6.13, 6.16, 6.19, 31.1, 31.2, 31.3, 31.4 or 31.6**, then the Final Staff List will be provided by the Supplier to Tfl as soon as practicable and no later than fourteen (14) days after the date of termination of the Agreement.
- 12.2.6 The Supplier warrants that as at the Further Transfer Date:

- 12.2.6.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
- 12.2.6.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
- 12.2.6.3 subject to compliance with the Data Protection Legislation, it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to TfL.

12.2.7 During the Relevant Period the Supplier will not and will procure that its Sub-Contractors do not without the prior written consent of TfL (such consent not to be unreasonably withheld or delayed):

- 12.2.7.1 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 TfL is informed promptly of such termination);
- 12.2.7.2 deploy or assign any other person to perform the Services or the Further Services who is not included on the most recent Staff List;
- 12.2.7.3 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;
- 12.2.7.4 increase to any significant degree the proportion of working time spent on the Services or the Further Services by any of the Supplier's Personnel; or
- 12.2.7.5 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.

12.2.8 The Supplier will promptly notify TfL 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 12.2.7** regardless of when such notice takes effect.

12.2.9 The Supplier agrees that TfL will be permitted to disclose any information provided to it under this **clause 12** in anonymised form to any person who has been invited to tender for the provision of the Services (or similar services or the Further Services) and to any third party engaged by TfL to review the delivery of the Services or the Further Services and to any Replacement Supplier.

12.2.10 If TUPE applies on the expiry or termination of the Agreement or the appointment of a Replacement Supplier, the following will apply:

12.2.10.1 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 TfL or Replacement Supplier (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).

12.2.10.2 During the Relevant Period the Supplier will:

- (a) provide TfL or Replacement Supplier (as appropriate) with access to such employment and payroll records as TfL or Replacement Supplier (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 TfL or Replacement Supplier (as appropriate);
- (b) allow TfL or Replacement Supplier (as appropriate) to have copies of any of those employment and payroll records;
- (c) provide all original employment records relating to the Re-Transferring Personnel to TfL or Replacement Supplier (as appropriate); and
- (d) co-operate with TfL and any Replacement Supplier 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 Supplier will procure such Sub-Contractors provide TfL, the Relevant TfL Group Member or Replacement Supplier (as appropriate) with the same level of access, information and cooperation.

12.2.10.3 The Supplier warrants to each of TfL, the Relevant TfL Group Members and the Replacement Supplier that as at the Further Transfer Date no Re-Transferring Personnel (except where the Supplier has notified TfL and/or the Relevant TfL Group Member and the Replacement Supplier (if appointed) in writing to the contrary) to the Supplier's knowledge:

- (a) is under notice of termination;
- (b) is on long-term sick leave;
- (c) is on maternity, parental or adoption leave;

- (d) has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;
- (e) is entitled or subject to any additional terms and conditions of employment other than those disclosed to TfL, the Relevant TfL Group Members or Replacement Supplier (as appropriate);
- (f) is or has been within the previous two (2) years the subject of formal disciplinary proceedings;
- (g) has received a written warning (other than a warning that has lapsed);
- (h) has taken or been the subject of a grievance procedure within the previous two (2) years; or
- (i) has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to TfL, a member of the TfL Group or Replacement Supplier (as appropriate) under TUPE.

12.2.10.4 The Supplier undertakes to each of TfL, each of the TfL Group members and any Replacement Supplier that it will (and will procure that its Sub-Contractors will):

- (a) 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;
- (b) pay to the Re-Transferring Personnel all Employment Costs to which they are entitled from the Supplier or any Sub-Contractor which fall due in the period up to the Further Transfer Date;
- (c) to pay to TfL, the Relevant TfL Group Member or the Replacement Supplier (as appropriate) within seven (7) days of the Further Transfer Date an apportioned sum in respect of Employment Costs as set out in **clause 12.2.10.5**; and
- (d) to comply in all respects with its information and consultation obligations under TUPE and to provide to TfL, the Relevant TfL Group Member or Replacement Supplier (as appropriate) such information as TfL, the Relevant TfL Group Member or Replacement Supplier may request in order to verify such compliance.

12.2.10.5 The parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:

- (a) the Supplier will be responsible for any Employment Costs relating to the period up to and including the Further Transfer Date;
- (b) TfL and/or the Relevant TfL Group Member (as relevant) or (where appointed) any Replacement Supplier 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.

12.2.10.6 The Supplier will indemnify and keep indemnified each of TfL, each Relevant TfL Group Member and any Replacement Supplier from and against all Employment Liabilities which TfL, any Relevant TfL Group Member and/or the Replacement Supplier incurs or suffers arising directly or indirectly out of or in connection with:

- (a) any failure by the Supplier to comply with its obligations under this **clause 12.2.10**;
- (b) any act or omission by or on behalf of the Supplier (or its Sub-Contractors) in respect of the Re-Transferring Personnel whether occurring before on or after the Further Transfer Date;
- (c) any failure by the Supplier (or its Sub-Contractors) to comply with Regulation 13 of TUPE (except to the extent that such failure arises from a failure by TfL, a Relevant TfL Group Member or the Replacement Supplier to comply with Regulation 13 of TUPE);
- (d) 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 Agreement Commencement Date to the Further Transfer Date;
- (e) any claim or demand or other action taken against TfL, a Relevant TfL Group Member or any Replacement Supplier by any person employed or engaged by the Supplier (or its Sub-Contractors) (other than Re-Transferring Personnel included on the Final Staff List) who claims (whether correctly or not) that TfL, a Relevant TfL Group Member or Replacement Supplier has inherited any liability from the Supplier (or its Sub-Contractors) in respect of them by virtue of TUPE.

12.2.11 If TUPE does not apply on the expiry or termination of the Agreement, the Supplier will remain responsible for the Supplier Personnel and will indemnify and keep indemnified TfL and each Relevant TfL Group Member against all Employment Liabilities which TfL incurs or suffers arising directly or indirectly out of or in connection with the employment or termination of employment of any of the Supplier Personnel or former Supplier Personnel.

12.2.12 The Supplier will procure that whenever TfL or a Relevant TfL Group Member so requires on reasonable notice at any time during the continuance in force of this Agreement and for two (2) years following the date of expiry or earlier termination of the Agreement TfL and each Relevant TfL Group Member will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

12.2.12.1 is still an employee or Sub-Contractor of the Supplier or any of the Supplier's associated companies; and

12.2.12.2 was at any time employed or engaged by the Supplier in order to provide the Services or the Further Services to TfL

and/or a Relevant Tfl. Group Member 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 Supplier and/or its employees or Sub-Contractors on such consultation. The Supplier will use all reasonable endeavours to procure that such persons cooperate with Tfl's and/or the Relevant Tfl. Group Member's requests.

12.2.13 Tfl shall, and shall procure that any Replacement Supplier shall, perform and discharge all its obligations in respect of any and all Re-Transferring Personnel on the Final Staff List following the Further Transfer Date. Tfl shall indemnify the Supplier in full for and against all claims, costs, expenses and liabilities whatsoever and howsoever incurred or suffered by the Supplier including without limitation all reasonable legal expenses and other professional fees (together with any non-recoverable VAT thereon) in relation to:

12.2.13.1 any act or omission by Tfl and/or any Replacement Supplier after the Further Transfer Date relating to any Re-Transferring Personnel on the Final Staff List;

12.2.13.2 all and any claims in respect of all emoluments and outgoings in relation to the Re-Transferring Personnel on the Final Staff List (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Further Transfer Date

12.2.13.3 any failure by Tfl and/or any Replacement Supplier to comply with its obligations under regulation 13 of TUPE except to the extent that such failure arises from a failure by the Supplier, any of its Affiliates or any of its Sub-Contractors to comply with its/their own obligations in respect of regulations 11, 13 or 14 of TUPE .

13. TFL'S OBLIGATIONS

13.1 Tfl shall comply with the Tfl Obligations, in accordance with any timescales that are set out in **Schedule 12**. The parties agree that the Tfl Obligations are an exhaustive list based upon the information available to the parties at the commencement of this Agreement and reflect the tasks, actions and other responsibilities of Tfl in respect of this Agreement. For the purposes of this **clause 13.1**, any information that would have been available or made available to the Supplier prior to or at the commencement of this Agreement, had the Supplier made reasonable enquiries in accordance with Good Industry Practice, is deemed to be information available to the parties at the commencement of this Agreement.

13.2 The parties acknowledge that due to the mutual aim to achieve continual improvement in the Services through a collaborative relationship throughout the Term of this Agreement, it may be necessary through use of the Contract Change Control procedure as set out in **Schedule 8** to review and/or amend the Tfl Obligations set out in **Schedule 12**.

13.3 To the extent that the Supplier is unable to comply with any obligation that it has in this Agreement directly and unavoidably as a result of the failure by Tfl to comply with one or more of the Tfl Obligations, then the Supplier shall be temporarily relieved from such

obligation and any deadline(s) and Milestone Date(s) in relation to such obligation will be extended accordingly, but only from such time as:

13.3.1 the Supplier has notified TfL in writing:

- 13.3.1.1 that TfL is not complying with a TfL Obligation;
- 13.3.1.2 that the failure by TfL to comply with a TfL Obligation is causing the Supplier to be unable to fulfil certain obligations under this Agreement;
- 13.3.1.3 which obligations of the Supplier are impacted by the failure by TfL to meet the TfL Obligation; and
- 13.3.1.4 what steps TfL should take (in the Supplier's opinion) in order for the Supplier to not be prevented from meeting its obligations,

and so long as the Supplier continues to use all its reasonable endeavours to continue to meet all of its obligations under the Agreement and can demonstrate to TfL's reasonable satisfaction that the Supplier has been using all such reasonable endeavours at all relevant times.

13.4 Notwithstanding the generality of **clause 13.3**, the Supplier will only be excused for any failure or delay in the Supplier meeting any obligations that it has under this Agreement to the extent reasonable to reflect the failure or delay of TfL to meet the TfL Obligations.

13.5 Where the Supplier is relieved from any obligation that it has in this Agreement in accordance with **clause 13.3**, the Supplier may be entitled to recover its reasonable additional costs (if any) through the Contract Change Control procedure as set out in **Schedule 8** (with any related changes to the Project Plan, the Charges or otherwise to the Agreement also being subject to the Contract Change Control Procedure), providing always that the Supplier:

- 13.5.1 gives TfL as much notice as reasonably practicable of the nature of the potential increased costs and/or Charges relating to the Supplier's fulfilment of its obligations;
- 13.5.2 uses all reasonable endeavours to prevent, mitigate and/or minimise the delay to the fulfilment of its obligations;
- 13.5.3 uses all reasonable endeavours to prevent, mitigate and/or minimise any additional costs and/or increase in the Charges;
- 13.5.4 will only be entitled to increase the costs and/or Charges to the extent that such increase is reasonable and can be demonstrated to be directly caused by TfL's delay or failure to meet the TfL Obligation;
- 13.5.5 provides TfL with all assistance that it reasonably requires in order for TfL to fulfil the relevant TfL Obligation and prevent or minimise any increase in the costs and/or Charges and/or delays to the Supplier's fulfilment of its obligations; and
- 13.5.6 the Supplier may not recover the same costs more than once.

Notwithstanding anything to the contrary in this **clause 13.5**, TfL will have no liability to the Supplier for delays or failure to meet the TfL Obligations and the Supplier will not be entitled to the reliefs stated in this **clause 13**, to the extent that such delay or failure is caused by the Supplier's act or omission, including the Supplier's failure to meet its obligations in accordance with the Project Plan or otherwise under this Agreement.

13.6 Where the Supplier is relieved from any obligation that it has in this Agreement in accordance with **clause 13.3** (the "**Relieved Obligation**"), then to the extent any other Supplier obligation (including an obligation to meet a Milestone or other deadline under the Project Plan) is directly dependent upon the Supplier first meeting that Relieved Obligation, then the deadline(s) (and, if relevant, the Milestone Date(s)) will be extended by a period equivalent to the period of relief granted in accordance with **clause 13.3**.

13.7 Subject to **clause 28.1**, this **clause 13** sets out the aggregate and sole liability of TfL to the Supplier for any failure by TfL to meet any or all of the TfL Obligations and the Supplier has no right to terminate this Agreement due to TfL's failure to fulfil a TfL Obligation.

14. **DOCUMENTATION**

14.1 All Documentation prepared by the Supplier pursuant to this Agreement shall, unless otherwise agreed by the parties, meet the following minimum requirements:

14.1.1 it and all referenced portions of other documents shall be clearly and concisely written; and

14.1.2 where applicable, it shall specify and describe the policy, specification or other subject matter in sufficient detail and in an easy to follow manner, so as to enable TfL and the TfL Group's staff or contractors trained and skilled to the level fairly expected of a person in the relevant position, to make full and efficient use of the Documentation for the purposes for which it was requested and/or written; and

14.1.3 it shall not refer to any document not provided to or already in the possession of TfL; and

14.1.4 unless TfL requests that such Documentation be subject to the relevant Acceptance Tests, it shall be submitted to TfL for approval and be subject to approval by TfL in accordance with **clause 14.2**.

14.2 The Documentation to be submitted to TfL for approval in accordance with **clause 14.1** shall be subject to one (1) draft correction cycle as specified in this **clause 14.2**. Unless agreed otherwise, TfL shall, within ten (10) Business Days of the Supplier submitting the Documentation either notify the Supplier in writing of its approval of the Documentation (as applicable) or provide the Supplier with its reasons in writing why such item(s) (or any part of it) is not approved whereupon the Supplier shall make the required amendments and re-submit the revised Documentation to TfL within ten (10) Business Days of TfL notifying the Supplier of the changes that are required, and the foregoing provisions shall apply. If the revised Documentation is not approved by TfL and/or if the Supplier does not accept TfL's reasoning in relation to such non approval, representatives of the parties will use their respective reasonable endeavours to resolve, in good faith, such non approval/non acceptance (as applicable) within thirty (30) days of TfL submitting its reasons for such non approval or (if later) the Supplier's notification of non-acceptance of TfL's reasons for non-approval (whichever is applicable). If, following the expiration of such period, the Documentation has not been approved by TfL, the matter shall be referred for resolution in accordance with **clause 47**.

15. **PERFORMANCE AND DELAY**

15.1 In respect of each of the design, supply, installation of the New System and the performance of the Services and the Further Services (if any) under this Agreement, the Supplier shall provide or complete the performance of its obligations on or before the applicable date specified in the Project Plan or, in the event no such date is specified, promptly having regard to the nature of the project ("**Milestone**"). Time for shall be of the essence of this Agreement in respect of the Bus Radios that are scheduled to be supplied and installed in accordance with the Project Plan in order to achieve Critical Mass Acceptance and Final Acceptance.

- 15.2 The Supplier shall notify TfL in writing as soon as reasonably practicable after becoming aware of any actual or likely failure to comply with any Milestone. Such written notice shall contain a detailed explanation of the causes of, and responsibility for, the delay, details of actions taken and to be taken by the Supplier (and, to the extent that the Supplier considers that TfL is responsible for such delay, actions it requests be taken by TfL) to remedy such delay and any effects such delay may have on the design, supply, installation of the New System and the performance of the Services and the Further Services (if any) and on the ability to meet the next Milestone or any other applicable Milestone. Without prejudice to any liability of either party, both parties shall use their reasonable endeavours to overcome and/or mitigate any such actual or anticipated delay.
- 15.3 If the Supplier fails (to the extent that such failure was not directly due to any failure by TfL to comply with a TfL Obligation, in accordance with **clauses 13.3 to 13.6**) to provide the Service(s) or provide the Further Service or design, install or implement the New System in accordance with this Agreement by the Milestone then notwithstanding anything else contained in this Agreement the Supplier shall not be entitled to any payment for any additional time spent and materials used by the Supplier in providing the Service(s).
- 15.4 TfL shall be entitled to Liquidated Damages if there is a failure by the Supplier to meet certain Key Milestones on or before the date specified in the Project Plan as further set out in **clause 6**. The parties agree that such Liquidated Damages are a genuine and reasonable pre-estimate of the Direct Loss which TfL would suffer during the period within which Liquidated Damages are paid (the "**Liquidated Damages Period**"), arising from a failure by the Supplier to provide the New System and/or Services (or parts thereof and the Further Services (if any)) as contemplated in this Agreement. The Liquidated Damages shall be TfL's and the Relevant TfL Group Members' only financial remedy for failure to meet the Key Milestones to which Liquidated Damages apply on or before the date specified in the Project Plan during the Liquidated Damages Period, unless the Supplier also fails to provide the undelivered parts of the New System and/or Services and the Further Services (if any) by the end of the Liquidated Damages Period in which case TfL shall be entitled to bring a claim for further damages in respect of Direct Losses suffered during and after such Liquidated Damages Period. The provisions of this **clause 15.4** shall be without prejudice to the TfL Group's other rights and remedies under this Agreement, including TfL's and/or the Relevant TfL Group Member's rights to seek injunctive relief in any court of competent jurisdiction and/or to claim damages.
- 15.5 The Supplier agrees that the New System and Services and the Further Services (if any) shall comply in all respects with the Service Levels, and TfL shall be entitled to the Service Credits in relation to any failure by the System or Supplier to meet such Service Levels. Save where such failure is caused by any omission by TfL, the parties agree that such Service Credits are a genuine and reasonable pre-estimate of the Direct Loss which TfL would suffer during the Service Level Period arising from a failure by the Supplier to provide the Services and the Further Services as contemplated in this **clause 15.5**. The provisions of this **clause 15.5** shall be without prejudice to the TfL Group's other rights and remedies under this Agreement, including TfL's and the Relevant TfL Group Member's rights to terminate and/or seek injunctive relief in any court of competent jurisdiction and/or to claim damages where the Direct Loss suffered exceeds the Service Credits.
- 15.6 The Supplier will not be liable to TfL for any failure to meet the Service Levels if such a failure is the direct result of an act (that is not a TfL Obligation) of TfL or a Third Party (other than the Supplier or a Sub-Contractor to the Supplier) acting under TfL's control .

16. **WARRANTIES AND OBLIGATIONS**

- 16.1 Without prejudice to any other warranties expressed elsewhere in this Agreement or implied by law, each Party warrants, represents and undertakes to the other and, in the case of the Supplier, to TfL and each Relevant TfL Group Member that:

- 16.1.1 it has full capacity and authority and all consents (including, where its' procedures so require, the consent of its Holding Company), if any, to enter into and to perform this Agreement; and
- 16.1.2 there are none of the following that would adversely affect the entry into or performance of their obligations under this Agreement:
 - 16.1.2.1 actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it before any court or administrative body or arbitration tribunal; or
 - 16.1.2.2 investigations by any Regulatory Authority pending or, to its knowledge, threatened against or affecting it.
- 16.2 The Supplier warrants, represents and undertakes to TfL and each Relevant TfL Group Member that:
 - 16.2.1 it owns or is permitted to license all the Intellectual Property Rights in the Software;
 - 16.2.2 it has all necessary licences, permits, permissions and powers to perform this Agreement;
 - 16.2.3 it is aware of the purposes for which the Services and the Further Services (if any) and the New System are required and acknowledges that the TfL Group is reliant upon the Supplier's expertise and knowledge in the implementation of the New System and the provision of the Services and the Further Services (if any);
 - 16.2.4 the Supplier shall, by fulfilling its obligations under the Agreement meet the requirements of TfL, as are described in the VCRM (**Schedule 21**) (once the VCRM has been completed in accordance with **clause 3.21**) and are specifically designated as the responsibility of the Supplier; and
 - 16.2.5 it 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;
 - 16.2.6 this Agreement is executed by a duly authorised representative of the Supplier and once duly executed, this Agreement will constitute its legal, valid and binding obligations;
 - 16.2.7 all materials, equipment and goods recommended, used or supplied by the Supplier in connection with this Agreement shall, for a period of five (5) years from the date of:
 - 16.2.7.1 delivery, in respect of Spares; and
 - 16.2.7.2 the Operational Commencement Date in respect of any materials, Equipment and/or Alternative Equipment and/or goods:
 - (i) be sound and free from defects in design, material and workmanship;
 - (ii) will be fit for the purposes and have the functionality specified in this Agreement and as otherwise identified in any manuals supplied with or technical specification provided by the Supplier to TfL in relation to such materials, equipment and goods; (iii) shall comply with all statutory requirements and regulations relating to their sale and use; and (iv) shall be in conformance in all respects with the requirements of TfL and the Relevant TfL Group Members including the Specification;

- 16.2.8 each piece of Equipment and Alternative Equipment shall, for a period of five (5) years from the Operational Commencement Date in respect of any other materials, Equipment and/or Alternative Equipment and/or goods will meet the requirements of the Equipment Specification or the relevant specification provided by the Supplier to TfL (in respect of the Alternative Equipment) (in terms of functionality and performance);
- 16.2.9 the Spares shall, for a period of five (5) years from the date of delivery, meet with the relevant aspects of the Equipment Specification or the relevant specification provided by the Supplier to TfL (in terms of functionality and performance), and in any event function or perform at least as well as the Equipment that the Spares replace (before such Equipment required replacement);
- 16.2.10 all materials, Equipment and/or Alternative Equipment, Software and goods used or supplied by the Supplier in connection with the Agreement shall comply with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), by-laws, treaties and other regulatory requirements relevant to the Supplier's business and/or the business of the TfL;
- 16.2.11 the possession and use by the Supplier, TfL, any member of the TfL Group or any Replacement Supplier of any documents, drawings, Documentation, Equipment and/or Alternative Equipment, Software and any other work prepared or developed by the Supplier or supplied to TfL under the Agreement shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person;
- 16.2.12 the Supplier owns and shall maintain all necessary consents, licences, approvals, authorisations, permissions or rights (the "**Consents**") required of the Supplier in performing its obligations under this Agreement, and that it is entitled to grant to or procure for TfL all necessary Consents required to enable TfL, any Relevant TfL Group Member and any Replacement Supplier to use the Equipment and/or Alternative Equipment and the Spares (both during and after the term of this Agreement);
- 16.2.13 all Equipment and/or Alternative Equipment shall comply with the Radio Regulations. Where there is any change, amendment or replacement enacted to the Radio Regulations following the date of this Agreement, then the parties shall comply with the Contract Change Control Procedure described in **clause 24** and **Schedule 8** (Contract Change Control Procedure) to identify whether the change, amendment or replacement enacted to the Radio Regulations should result in a change to the Charges. The Supplier shall indemnify TfL and every other Relevant TfL Group Member, from and against any Direct Losses that arise as a result of the Supplier being in breach of this **clause 16.2.13**;
- 16.2.14 the Supplier shall provide the Services and the Further Services (if any):
- 16.2.14.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced companies providing services of a similar scope, type and complexity to the Services and the Further Services (if any) with sufficient resources including project management resources;
- 16.2.14.2 in conformance in all respects with the requirements of TfL and so that they fulfil the purpose indicated by or to be reasonably inferred from such requirements;

- 16.2.14.3 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;
- 16.2.14.4 so that they are properly managed and monitored and shall immediately inform TfL if any aspect of the Agreement is not being or is unable to be performed;
- 16.2.15 each part of the New System will, on the date on which it is supplied in accordance with this Agreement, during the Stability Period, and (as a consequence of the provision of the Maintenance Services) for the remainder of the Term of this Agreement, fulfil the TfL Group's requirements as set out in this Agreement and comply with the Equipment Specification and any specification or functionality as otherwise identified in any manuals supplied with, or technical specification provided by, the Supplier to TfL in relation to the New System;
- 16.2.16 without prejudice to **clause 16.2.15**, the New System (including the Software) (whether supplied or recommended for purchase by the TfL Group in connection with this Agreement) will be fully compatible with TfL and/or the Relevant TfL Group Member's computer and system infrastructures (including its operating environment) as: (i) set out in **Schedule 2** (Service Requirements); and (ii) notified to the Supplier in writing from time to time in accordance with the Contract Change Control Procedure;
- 16.2.17 the Supplier shall fully co-operate with TfL and the agents, representatives, sub-contractors or contractors (including other suppliers of computing and radio products, networks and services) of any member of TfL and/or the Relevant TfL Group Member and supply them with such information, materials and assistance as specified in **Schedule 2** (Service Requirements) and **Schedule 5** (Functional Specification) and as TfL or a Relevant TfL Group Member may reasonably request or authorise from time to time;
- 16.2.18 all of the Supplier's liabilities, responsibilities, and obligations shall be fulfilled in compliance with all applicable laws, enactments, orders, regulations, codes of practice, licences, waivers, consents, registrations, approvals, and other authorisations of competent authorities (including in relation to the provision of electronic communications networks and equipment including any Radio Licences (as may be appropriate)) ("**Applicable Laws**") and that the TfL Group's possession and/or use of the Equipment and/or Alternative Equipment and/or New System and/or its receipt of the benefit of the Network Services and/or Services and the Further Services (if any) will not place the Supplier or any member of the TfL Group in breach of any Applicable Law(s), provided that the Supplier shall have no liability under this **clause 16.2.18** in respect of any breach of such Applicable Law(s) to the extent such breach is caused by the negligent, wilful or fraudulent act and/or omission of TfL or another TfL Group Member. The Contract Change Control Provisions shall apply in the event that a change in law requires changes to the New System to be implemented by the Supplier where the changes are peculiar to the business of TfL or the TfL Group;
- 16.2.19 the Supplier shall:
 - 16.2.19.1 not introduce into any of the TfL Group's network and/or computer systems anything, including any computer program code, Virus, authorisation key, licence control utility or software lock, which is intended by any person to, is likely to, or may:

(a) impair the operation of the New System or any network or computer systems or programs in the possession of the Tfl Group or impair the receipt of the benefit of the Network Services and/or Service(s) and the Further Services (if any); or

(b) cause loss of, or corruption or damage to, any program or data held on the Tfl Group's network or computer systems,

and this **clause 16.2.19.1** shall apply notwithstanding that any such things are purported to be used for the purposes of protecting the Supplier's IPR, Third Party IPR, the Supplier's contractual rights or other rights; or

16.2.19.2 not damage the reputation of Tfl and/or the Tfl Group;

16.2.20 where Software is supplied on any media, only supply Software on media which is free from material defects in materials and workmanship under normal use;

16.2.21 the Supplier shall ensure that the Equipment and/or Alternative Equipment, Software and any software, electronic or magnetic media, hardware or computer system recommended by the Supplier for use in connection with this Agreement shall:

16.2.21.1 not have its functionality or performance affected, or be made inoperable or be more difficult to use by reason of any data related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system; and

16.2.21.2 not cause any damage to, loss of or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of any the Tfl Group Member and/or any third party, on which it is used or with which it interfaces or comes into contact,

16.2.21.3 comply with the Open Standards Principles,

and any variations, enhancements or actions undertaken by the Supplier in respect of such Equipment and/or Alternative Equipment, Software, electronic or magnetic media, hardware or computer system shall not affect the Supplier's compliance with this **clause 16.2.21**.

16.2.22 the Supplier will design, supply, install and implement the New System, perform the Services and perform the Further Services (if any) in accordance with the terms and conditions of this Agreement and in particular in accordance with Good Industry Practice and all applicable KPIs and Service Levels;

16.2.23 that the KPIs and Service Levels are consistent with and are of no lesser quality than would be expected than would be required for services of the same or a similar nature in accordance with Good Industry Practice;

16.2.24 as at the Commencement Date, the Supplier will provide all Services, the Further Services (if any), the New System, the Supplier Equipment and the Alternative Equipment and the Spares and all necessary interfaces in order to meet the requirements of TfL (as are described in the VCRM (**Schedule 21**)) (once the VCRM has been completed in accordance with **clause 3.21**) using its standard or otherwise off-the-shelf or industry standard products and will not (other than in accordance with **clause 16.2.25**), develop or deploy any product (whether software or hardware or otherwise) containing Intellectual Property Rights that has been developed with specific regard to or is bespoke to TfL or any Relevant TfL Group Member or any of their systems; and

16.2.25 subject to **clause 16.2.24**, to the extent (if any) that the Supplier does wish or need to include or incorporate any product which has been developed with specific regard to or is bespoke to TfL or any Relevant TfL Group Member or any of their systems, then the Supplier will only undertake such inclusion or incorporation via, and the ownership of any Intellectual Property in such products will be established under, the Contract Change Control Procedure set out in **Schedule 8** (Contract Change Control Procedure).

Subject to **clause 16.2.18**, in all cases the costs of compliance with this **clause 16.2** shall be borne by the Supplier.

- 16.3 The Supplier acknowledges and agrees that the Supplier has full knowledge and understanding of the Functional Specification and the VCRM and the Supplier warrants on a continuous basis throughout the Term that the provision of the Services and the New System in accordance with the Specification will meet and fulfil the VCRM (once the VCRM has been completed in accordance with **clause 3.21**).
- 16.4 Where the terms of any licence relating to Third Party Software do not prevent it, the Supplier shall ensure that the benefit of any and all warranties and support obligations which it receives in respect of any Third Party Software are passed on to TfL and the Relevant TfL Group Members such that TfL and the Relevant TfL Group Members can enforce those warranties directly against such Third Party Software licensors. Where the Supplier is not permitted to pass such warranties and support obligations on to the Relevant TfL Group Members in such manner, the Supplier will do so to the extent it is able.
- 16.5 Without prejudice to any other rights, powers or remedies TfL may have, in the event of any breach(es) of the warranties set out at **clauses 16.2.7, 16.2.14, 16.2.15, , 16.2.18, 16.2.19, 16.2.20 and 16.2.21** , the Supplier shall promptly (and, if applicable, in accordance with any relevant Service Level) supply such services as are necessary to remedy such breach(es) and to prevent the reoccurrence of such breach(es) in the future. To the extent that any such breach(es) reoccurs (notwithstanding the fact that the relevant Stability Period may have ended) then, subject to the cause of the said reoccurrence being the same or similar to that which caused the initial breach(es), the Supplier shall forthwith supply such further Services as are necessary to remedy such breach(es) and to prevent any further reoccurrence thereof. Any Services required to be performed pursuant to this **clause 16.5** shall be performed at no additional cost to TfL.
- 16.6 Each warranty and obligation in this **clause 16** shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement.
- 16.7 Modifications and/or additions to the Supplier Software and/or Third Party Software and/or Equipment that are not made in accordance with the terms of this Agreement or otherwise authorised by the Supplier and which are not in accordance with Good Industry Practice, may void any warranty given with respect to any function affected by such modification.
- 16.8 The warranties provided by the Supplier in **clauses 16.2.7 to 16.2.9** shall not apply to the extent that any damage, malfunctions or failure to perform is the direct result of: (i)

use of the Network or the Services by Tfl and/or any Third Party acting on behalf of Tfl in a manner that is not in accordance with the terms of this Agreement and not otherwise within the range of use that could be reasonably expected of a user of a network or services similar to the Network or Services, as applicable; (ii) external physical or environmental conditions or interference, but only to the extent that such external physical or environmental conditions or interference is: (a) outside of the control of the Supplier; and (b) materially different to any external physical or environmental conditions or interference that the Supplier could reasonably have expected the relevant materials, Equipment and/or Alternative Equipment and/or Software to encounter during operation and to any external physical or environmental conditions or interference which the Supplier was made aware of by Tfl prior to the Commencement Date; and (c) outside the operating parameters, limitations and specifications included in any manuals supplied with or technical specification provided by the Supplier to Tfl in relation to the relevant materials, Equipment and/or Alternative Equipment and/or Software; or (iii) repair work undertaken by Tfl and/or any Third Party acting on behalf of Tfl in a manner that is not either authorised by the Supplier or is otherwise in accordance with Good Industry Practice. Emergency repair work (excluding normal maintenance) by Tfl and/or any third party will not invalidate the Supplier's warranties as set out above, provided that reasonable care has been taken during such repair and that the Supplier is notified before the repair is carried out or without undue delay thereafter.

- 16.9 Notwithstanding **clauses 16.7 and 16.8**, the Supplier shall upon Tfl's request, propose options to remedy at Tfl's expense any defects, damage, malfunctions or failure of or to perform in relation to the Equipment, the Network and/or the Services or parts thereof which results from any of the circumstances listed in **clauses 16.7 or 16.8**.

17. **CONFLICT OF INTEREST**

- 17.1 The Supplier warrants that it does not have an interest in any matter where there is or is likely to be a conflict of interest with the Agreement or any member of the Tfl Group and that (except as provided below) it shall not act for any person, organisation or company where there is or is likely to be such a conflict of interest. This **clause 17** shall not prevent the Supplier from providing services to an existing client of the Supplier to whom the Supplier is, as at the date of this Agreement, providing services provided that the Supplier shall:

17.1.1 not act for any such client in respect of any transactions between any member of the Tfl Group and such client;

17.1.2 ensure that the personnel acting in any capacity for any such client are different from the personnel involved in performing this Agreement or in any other work which the Supplier carries out in relation to any member of the Tfl Group;

17.1.3 ensure that any personnel acting for any such client do not have access to information held by the Supplier relating to any member of the Tfl Group; and

17.1.4 inform Tfl of all such existing clients where there could be a conflict of interest and the steps that it is taking to ensure compliance with **clauses 17.1.1 to 17.1.3** inclusive.

- 17.2 The Supplier shall undertake ongoing and regular conflict of interest checks throughout the duration of the Agreement and shall notify Tfl in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or the Further Services and shall work with Tfl or any member of the Tfl Group to do whatever is necessary to manage such conflict to the Tfl Group Member's satisfaction.

- 17.3 If the Supplier is in breach of **clause 17.1** or if Tfl is not satisfied on the issue of any conflict of interest in accordance with **clause 17.2**, Tfl may terminate this Agreement and any other contracts between the Supplier and any member of the Tfl Group immediately.

18. **ACCESS TO TfL AND THIRD PARTY PREMISES**

- 18.1 Any access to any TfL Premises, TfL Mast Locations or Third Party Premises made available to the Supplier in connection with the proper performance of this Agreement shall be free of charge and shall be used by the Supplier solely for the purpose of installing the Equipment and/or Alternative Equipment and/or performing the Services and the Further Services (if any) (as relevant) during the term of this Agreement in accordance with this Agreement provided, for the avoidance of doubt, that the Supplier shall be responsible for its own costs of travel including any congestion charging and/or low emission zone charging. The Supplier shall:
- 18.1.1 have the use of such TfL Premises, TfL Mast Locations and Third Party Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such TfL Premises;
 - 18.1.2 vacate such TfL Premises, TfL Mast Locations and Third Party Premises upon the termination of this Agreement or at such earlier date as TfL may determine, and in any occasion, where the Supplier is only installing Equipment and/or Alternative Equipment, the Supplier shall vacate immediately once the installation is complete. If the Supplier is asked to vacate TfL Premises, TfL Mast Locations and/or Third Party Premises before the termination of this Agreement, the Supplier shall not be liable for any delay in the supply of the New System or the performance of the Services and the Further Services to the extent so caused by the request to vacate (provided such request is not due to the Supplier's breach or default);
 - 18.1.3 not exercise or purport to exercise any rights in respect of any TfL Premises, TfL Mast Locations or Third Party Premises in excess of those granted under this **clause 18**;
 - 18.1.4 ensure that the Supplier's Personnel carry any identity passes issued to them by TfL or any relevant third party if at Third Party Premises or an TfL Mast Location at all relevant times; and
 - 18.1.5 not damage TfL Premises, TfL Mast Locations, Third Party Premises or any assets of the TfL Group or any third party.
- 18.2 Nothing in this **clause 18** shall create or be deemed to create the relationship of landlord and tenant in respect of any of TfL Premises, TfL Mast Locations or Third Party Premises between the Supplier and any TfL Group Member or any third party (as relevant).
- 18.3 Unless agreed otherwise in writing between the parties (referencing this Agreement), TfL shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Supplier.
- 18.4 The Supplier shall, while on TfL Premises, TfL Mast Locations or Third Party Premises, comply with all of the TfL Group's or the relevant third party's security procedures, all relevant health and safety and other requirements notified to it from time to time, including the Security Policy, and shall ensure that all of the Supplier's Personnel comply with all such procedures and requirements.
- 18.5 TfL reserves the right, acting reasonably:
- 18.5.1 to refuse to admit to any of TfL Premises, TfL Mast Locations or Third Party Premises any of the Supplier's Personnel who fail to comply with any of the TfL Group's or third party's procedures, requirements, policies and standards referred to in **clause 19**;
 - 18.5.2 to instruct any of the Supplier's Personnel to leave any of TfL Premises, TfL Mast Locations or Third Party Premises at any time and such Supplier's Personnel shall comply with such instructions immediately.

18.6 The Supplier shall promptly notify the Supplier's Personnel and TfL and any member of the TfL Group of any health and safety hazards that exist or may arise in connection with the design, installation and/or implementation of the New System, the performance of the Services and the performance of the Further Services.

18.7 The Supplier will fully indemnify on demand and hold TfL harmless for any Direct Losses arising from or in connection with any claims made against TfL for damage caused by Supplier, the Supplier's agents and the Supplier's Sub-Contractors, to Third Party Premises, any TfL Mast Location or equipment owned by any third party.

19. COMPLIANCE WITH POLICIES AND LAW

19.1 The Supplier, at no additional cost to the TfL Group:

19.1.1 undertakes to procure that all of the Supplier's Personnel comply with all of the TfL Group's policies and standards that are relevant to the performance of the Services and the Further Services (if any) (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) or which is available on request from TfL)), including the provisions set out in **Schedule 16** and those relating to safety, security, business ethics, drugs and alcohol, the Security Policy, and any other on-site regulations specified by TfL for personnel working at TfL Premises, being granted access to the Sites in accordance with **clause 18** or accessing TfL's computer systems. The Supplier shall comply with the TfL Agreed Equality Policy, set out in **Schedule 17**, as updated from time to time. TfL shall provide the Supplier with copies of such policies and standards on request;

19.1.2 shall provide the Services and any Further Services (if any) in compliance with and shall ensure that the Supplier's Personnel comply with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to either or both of the Supplier's or TfL's business, from time to time in force which are or may become applicable to the Services or any Further Services (if any). The Supplier shall promptly notify TfL if the Supplier is required to make any change to the Services or Further Services (if any) for the purposes of complying with its obligations under this **clause 19.1.2**;

19.1.3 without limiting the generality of **clause 19.1.2**, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

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

19.1.5 where possible, shall provide the Services and the Further Services (if any) in such a manner as to:

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

19.1.5.2 eliminate unlawful discrimination; and

- 19.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation;
 - 19.1.6 shall promptly notify the Supplier's Personnel and TfL of any health and safety hazards that exist or may arise in connection with the performance of the Services or Further Services (if any);
 - 19.1.7 without limiting the generality of **clause 19.1.2**, shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it; and
 - 19.1.8 where applicable to the Supplier and without limiting the generality of **clause 19.1.2**, shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it.
- In all cases, the costs of compliance with this **clause 19.1** shall be borne by the Supplier.
- 19.2 The TfL Group's workplace harassment policy as set out in **clause 19.1 ("Policy")** requires the TfL Group's own staff and those of its contractors to comply fully with the Policy to eradicate harassment in the workplace. The Supplier shall:
 - 19.2.1 ensure that its staff, and those of its Sub-Contractors, working on TfL Premises are fully conversant with the requirements of the Policy;
 - 19.2.2 fully investigate allegations of workplace harassment in accordance with the Policy; and
 - 19.2.3 ensure that appropriate, effective action is taken where harassment is found to have occurred.
 - 19.3 TfL is committed to the improvement of business performance and the minimisation of risks and disruption to the TfL Group's and the Supplier's respective employees, agents and Sub-Contractors and customers of the TfL Group and those interfacing with the TfL Group transport networks through the effective management of health, safety and environmental issues and the Supplier shall demonstrate its support for such commitment by:
 - 19.3.1 providing a health, safety and environmental management plan to TfL, for approval within six (6) months of the Commencement Date; and
 - 19.3.2 implementing the agreed health, safety and environmental management system within two (2) months of it being approved by TfL; and
 - 19.3.3 maximising opportunities for environmentally responsible procurement and maximising environmental opportunities and minimising environmental risks.
 - 19.4 Without prejudice to **clauses 19.1.4** and **19.1.5**, the Supplier shall:
 - 19.4.1 comply with policies developed by TfL with regard to compliance with TfL's duties referred to in **clause 19.1** as are relevant to the Agreement and the Supplier's activities;
 - 19.4.2 obey directions from TfL with regard to the conduct of designing, supplying, installing and implementing the New System and in providing the Services and the Further Services (if any) in accordance with the duties referred to in **clauses 19.1.4** and **19.1.5**;
 - 19.4.3 assist, and consult and liaise with, TfL with regard to any assessment of the impact on and relevance to this Agreement of the duties referred to in **clauses 19.1.4** and **19.1.5**;

- 19.4.4 on entering into any contract with a Sub-Contractor in relation to this Agreement, impose obligations upon the Sub-Contractor to comply with this **clause 19.4** as if the Sub-Contractor were in the position of the Supplier; and
- 19.4.5 provide to TfL, upon request, such evidence as TfL may require for the purposes of determining whether the Supplier has complied with this **clause 19.4**. In particular, the Supplier shall provide any evidence requested within such timescale as TfL may require, and co-operate fully with TfL during the course of TfL's investigation of the Supplier's compliance with its duties under this **clause 19.4**.
- 19.5 If, pursuant to or in consequence of performing its obligations under this Agreement, the Supplier gains access to any computer system of any TfL Group Member including any software, hardware, network, firmware, database, data or files, whether directly or remotely:
- 19.5.1 all access shall be strictly limited to that part of the computer software, hardware, network, firmware, database, data or files (as the case may be) as is required for proper performance of its obligations under this Agreement;
- 19.5.2 the Supplier shall comply with all reasonable security audit and other procedures and requirements of any TfL Group Member in relation to access; and
- 19.5.3 the Supplier shall ensure that only the Supplier's Personnel shall be permitted access and such access shall be to the extent strictly necessary for the proper performance of their duties in relation to the obligations of the Supplier pursuant to this Agreement.
- 19.6 In providing the Services and the Further Services (if any), the Supplier 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 Supplier's activities may impact on the environment) to the need to:
- 19.6.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
- 19.6.2 enhance the environment and have regard to the desirability of achieving sustainable development;
- 19.6.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
- 19.6.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

Work Related Road Risk ("WRRR")

- 19.7 For the purposes of **Clauses 19.8 to 19.17** (inclusive) of this Agreement, the following expressions shall have the following meanings:

"Approved Progressive Training" an ongoing programme of personal development that uses a combination of theoretical, e-learning, practical and on the job training to ensure Drivers have the knowledge, skills and attitude to operate safely on urban roads and shall include:

- 19.7.1 Safe Urban Driving (SUD) training to be undertaken every five years; or
- 19.7.2 A training course, which in the reasonable opinion of TfL is an acceptable substitute

to SUD; and

19.7.3 One safety related FORS e-learning module to be undertaken every twelve (12) months;

"Bronze Accreditation"	the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk
"Category N2 Lorry"	means a vehicle designed and constructed for the carriage of goods having a MAM exceeding 3,500 kilograms but not exceeding 12,000 kilograms;
"Category N3 Lorry"	means a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms
"Car-derived Van"	a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;
"Collision Report"	a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;
"Delivery and Servicing Vehicle"	a Lorry, a Van or a Car-derived Van;
"Driver"	any employee of the Supplier (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while delivering the Services;
"DVLA"	Driver and Vehicle Licensing Agency;
"Direct Vision Standard" or "DVS"	Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 Lorry cab in relation to other road users. Further information can be found at: www.tfl.gov.uk ;
"FORS"	the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
"FORS Standard"	the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk
"Front Underrun Protection"	devices that are fitted at the front of Lorries and which comply with EC Directive 2000/40/EEC and the Road Vehicles (Construction and Use) Regulations 1986
"Gold Accreditation"	the highest level of accreditation within the FORS Standard, the requirements of which are more

particularly described at: www.fors-online.org.uk

"Lorry"

a vehicle with an MAM exceeding 3,500 kilograms;

"MAM"

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

"Side Underrun Protection"

devices that are fitted between the front and rear axles of Lorries and which comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;

"Silver Accreditation"

the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk

"Van"

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

Fleet Operator Recognition Scheme Accreditation

19.8 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, it shall within 90 days of the Commencement Date:

19.8.1 (unless already registered) register for FORS or a scheme, which in the reasonable opinion of TfL, is an acceptable substitute to FORS (the "**Alternative Scheme**"); and

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

Safety Features on Lorries (WRRR)

19.9 The Supplier shall ensure that every Lorry, which it uses to provide the Services, shall have:

19.9.1 Side Underrun Protection fitted at a height not exceeding 550mm from the ground, unless the Supplier can demonstrate to the reasonable satisfaction of TfL that the Lorry will not perform the function for which it was built if the Side Underrun Protection is fitted;

19.9.2 Front Underrun Protection fitted at a height not exceeding 400mm from the ground, unless the Supplier can demonstrate to the reasonable satisfaction of TfL that the Lorry will not perform the function for which it was built if the Front Underrun Protection is fitted;

19.9.3 equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre;

19.9.4 prominent signage on the Lorry to warn cyclists and other road users of the dangers of the Lorry's near side blind spot and of getting too close to the Lorry; and

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

Direct Vision Standard (WRRR)

19.10 To the extent that Supplier or any Sub-contractor to the Supplier directly operates one or more Category N3 Lorries in relation to the provision of the New System, Services or Further Services (if any) or in order to otherwise fulfil the Supplier's obligations under the Agreement, the Supplier shall and shall procure that any relevant Sub-contractor shall comply with the Heavy Goods Vehicle Direct Vision Standard Schedule set out at **Schedule 22**, to this Agreement.

19.11 Where applicable, the Supplier shall ensure that:

19.11.1 from and including 1 October 2018, all Category N3 Lorries used in the provision of the Services achieve a minimum of a one (1) star Direct Vision Standard rating;

19.11.2 from and including 1 April 2020 all Category N3 Lorries used in the provision of the Services achieve a minimum of three (3) star Direct Vision Standard rating; and

19.11.3 so far as reasonably practicable, the conditions at all sites and locations within the control of the Supplier where:

19.11.3.1 the Services are being delivered, or

19.11.3.2 in connection with the performance of the Services, any waste is being disposed of or supplies are being delivered to or from,

are appropriate for each Category N2 Lorry and Category N3 Lorry being used in the provisions of the Services. The Supplier shall not incur any costs or make any changes to the site(s) without the prior written consent of TfL.

Driver Licence Checks (WRRR)

19.12 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier shall ensure that:

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

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

19.12.2.1 0 – 5 points on the driving licence – six monthly checks;

19.12.2.2 6 – 8 points on the driving licence – quarterly checks; or

19.12.2.3 9 or more points on the driving licence – monthly checks.

Driver Training (WRRR)

- 19.13 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier shall ensure that each of its Drivers attend Approved Progressive Training throughout the Term of the Agreement.

Collision Reporting (WRRR)

- 19.14 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, the Supplier shall:
- 19.14.1 ensure that it has a system in place to capture, investigate and analyse road traffic collisions that result in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
 - 19.14.2 within 15 days of the Commencement Date, provide to TfL a Collision Report. The Supplier shall provide to TfL an updated Collision Report within five working days of a written request from TfL at any time.

Self-Certification of Compliance

- 19.15 Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, within 90 days of the Commencement Date, the Supplier shall make a written report to the Authority detailing its compliance with **Clauses 19.8, 19.9, 19.10, 19.12, 19.13, 19.14, 19.15, 19.16** and **19.17** of this Agreement (the "**WRRR Self-Certification Report**"). The Supplier shall provide updates of the WRRR Self-Certification Report to TfL on each three month anniversary of its submission of the initial WRRR Self-Certification Report.

Obligations of the Supplier Regarding Subcontractors

- 19.16 The Supplier shall ensure that those of its sub-contractors who operate Category N2 Lorries, Category N3 Lorries, Vans and/or Car-derived Vans to provide the Services shall comply with the corresponding provisions of this Agreement:
- 19.16.1 **Clause 19.8;**
 - 19.16.2 for Category N2 Lorries – **Clauses 19.9, 19.12, 19.13, 19.14** and **19.15;**
 - 19.16.3 for Category N3 Lorries – **Clauses 19.9, 19.10, 19.12, 19.13** and, where applicable, the appropriate provisions of the Heavy Goods Vehicle Direct Vision Standard Schedule; and
 - 19.16.4 for Vans and Car-Derived Vans – **Clauses 19.13, 19.14** and **19.15**

as if those sub-contractors were a party to this Agreement.

Failure to Comply

- 19.17 Without limiting the effect of any other clause of this Agreement relating to termination, if the Supplier fails to comply with **Clauses 19.8, 19.9, 19.10** (where applicable), **19.12, 19.13, 19.14, 19.15, 19.16** and **19.17:**
- 19.17.1 the Supplier has committed a material breach of this Agreement; and
 - 19.17.2 TfL may refuse the Supplier, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by TfL for any purpose (including but not limited to deliveries).

Responsible Procurement

- 19.18 The Supplier shall comply with the requirements set out in **Schedule 15** (Responsible Procurement).

Strategic Labour Needs and Training Supporting Requirements

- 19.19 The Supplier shall comply with the requirements set out in **Schedule 19** (Strategic Labour Needs and Training Supporting Requirements).

20. CORRUPT GIFTS AND PAYMENT OF COMMISSION

The Supplier shall not, and shall ensure that its employees, agents and Sub-Contractors do not, pay any commission or fees or grant any rebates to any employee, officer or agent of any TfL Group Member nor favour any employee, officer or agent of any TfL Group Member with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of any TfL Group Member other than as a representative of TfL, without the TfL Group's prior written approval.

21. SUPPLIER EQUIPMENT AND THE ELECTRONIC COMMUNICATIONS CODE

- 21.1 The Supplier shall ensure that all of the Supplier's Equipment and all Materials meet all minimum safety standards required from time to time by law.

- 21.2 The Parties acknowledge and agree that this Agreement does not constitute an agreement to confer code rights under paragraph 9 of the Electronic Communications Code (a "**Code Agreement**") and any provisions of the Electronic Communications Code that are relevant to Code Agreements do not apply to this Agreement.

- 21.3 On the expiry or termination of this Agreement, (for whatever cause) and where requested by TfL, the Supplier undertakes to power down, cease to use, and to disconnect any of the Supplier Equipment, and to remove or cause to be removed any of the Supplier Equipment from the Sites and Third Party Premises (if applicable) within twenty-eight (28) days thereafter or within such other timetable as may be agreed between the parties taking into account the circumstances and the Exit Plan. The Supplier will make good any damage caused to the Sites (or to any Third Party Premises) caused by the removal of the Supplier Equipment to the reasonable satisfaction of TfL.

- 21.4 If the Supplier fails to remove the Supplier Equipment from the Sites and Third Party Premises (if applicable) within the twenty-eight (28) days or other timetable agreed by the parties under **clause 21.3**, TfL may itself remove the Supplier Equipment, and the parties agree that:

21.4.1 TfL will use competent contractors for any such removal work; and

21.4.2 Supplier will reimburse TfL in respect of the reasonable and proper costs of the removal, and any associated storage and disposal costs incurred.

- 21.5 If TfL removes or arranges the removal of all or any part of the Supplier Equipment, TfL will arrange to store the same and to make the same available for collection on reasonable prior notice by the Supplier for a period of one (1) month. If at the expiry of one (1) month the Supplier Equipment has not been collected by the Supplier, the Supplier shall have no further title or other rights in connection with that equipment, and TfL shall be free to dispose of such equipment as it sees fit.

- 21.6 This **clause 21** will remain in full force and effect notwithstanding termination of this Agreement.

22. QUALITY AND BEST VALUE

The Supplier acknowledges that the TfL Group is a best value authority for the purposes of the Local Government Act 1999 and, as such, TfL is required to make arrangements to secure continuous improvement in the way it exercises its functions (having regard to a

combination of economy, efficiency and effectiveness) and as such, the Supplier shall, where reasonably requested by TfL, participate in any relevant best value review and shall maintain an effective and economical programme for quality management, planned and developed in conjunction with any other functions of the Supplier necessary to satisfy the requirement contemplated in this Agreement.

23. RECORDS, AUDIT AND INSPECTION

23.1 The Supplier shall, and shall procure that its Sub-Contractors shall:

23.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Further Services (if any) and the Supplier's obligations under this Agreement and all transactions entered into by the Supplier for the purposes of this Agreement (including time-sheets for the Supplier's Personnel where such records are material to the calculation of any sums due under this Agreement) ("**Records**"); and

23.1.2 retain all Records during the term of this Agreement and for a period of not less than six (6) years (or such longer period as may be required by law) except Records containing Agreement Personal Data which shall only be retained for as long as necessary, following termination of this Agreement ("**Retention Period**").

23.2 TfL and any person nominated by TfL has the right to audit any and all Records at any time during the Retention Period on giving to the Supplier what TfL considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Supplier's performance of the Services and the Further Services (if any) (including compliance with **clause 19**) with the Supplier's reasonable costs of assisting with such an audit to be at TfL's cost and expense. TfL shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Supplier is not, without due cause, disrupted or delayed in the performance of its obligations under this Agreement.

23.3 The Supplier grants to TfL and its agents the right, at any time, on four (4) Business Days' notice, to audit and/or test the security and robustness of the New System and/or the Supplier's compliance with the TfL Group's requirements on security, data integrity and protection against breach of confidentiality in accordance with the scope agreed in the Security Management Plan ("**SMP**") (as such SMP is described in **Schedule 9** (Cyber Security Management)). Such audits and tests may include non-destructive penetration testing and ethical hacking of applications under its control (solely with regard to the New System and the Supplier's connectivity into TfL's systems (if any) and not more broadly to any of the Supplier's systems or business that have no connection into the New System, the Services, the Further Services and TfL's systems) and the Supplier grants consent for such tests and audits to be performed notwithstanding any provisions contained within the Computer Misuse Act 1990 or the Police and Justice Act 2006 and the scope is agreed, including the period of testing, in accordance with the SMP. In view of the fact that such audits and testing may be intended to simulate a criminal attack, the Supplier agrees not to take any action against the TfL Group or its agents performing the audits or tests and that the TfL Group and their agents shall not be responsible or liable for any Direct Loss, damage, expenses or claims incurred by the Supplier as a result of such tests or audits, including any loss or damage caused to the Supplier's systems or the Supplier's business or any third party claims brought against the Supplier relating to or arising out of such tests or audits except to the extent that it would be unlawful for TfL not to be responsible or liable. Providing TfL or its agents follow the scope and processes of the SMP, the CREST / CHECK ethical hacking guidance, and the hosted services rules regarding penetration testing, the Supplier agrees to indemnify TfL and/or the TfL Group and its agents against any Direct Losses that TfL and/or the TfL Group or its agents may incur by reason of claims, actions, demands or proceedings brought against TfL and/or the TfL Group or its agents by third parties, including the Supplier's suppliers, arising out of or in connection with such audits or tests.

- 23.4 For the purposes of exercising its rights under **clauses 23.2** and **23.3**, the Supplier shall provide TfL and/or any person nominated by TfL with all reasonable co-operation including:
- 23.4.1 granting access to any premises, equipment, plant, machinery or systems used in the Supplier's performance of this Agreement, and where such premises, equipment, plant, machinery or systems are not the Supplier's own, using all reasonable endeavours to procure such access;
 - 23.4.2 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to any Records;
 - 23.4.3 making all Records available for inspection and providing copies of any Records if requested; and
 - 23.4.4 making the Supplier's Personnel available for discussion with TfL.
- 23.5 Any audit, inspection and/or testing by TfL pursuant to **clause 23.3** shall not relieve the Supplier or any of its Sub-Contractors from any obligation under this Agreement or prejudice any of the TfL Group's rights, powers or remedies against the Supplier.
- 23.6 The Supplier shall promptly, to the extent reasonably possible in each particular circumstance, comply with TfL and/or the TfL Group's reasonable requests for access to senior personnel engaged in the Supplier's performance of its obligations under this Agreement.
- 23.7 This **clause 23** shall survive termination of this Agreement.

24. **CONTRACT MANAGEMENT, REPORTING AND CHANGE CONTROL**

- 24.1 The Supplier shall provide TfL with a written report for each TfL Period in respect of the Equipment and/or Alternative Equipment Installed, Equipment and Alternative Equipment ordered and the Services and the Further Services (if any) performed (the "**Service and Maintenance Reports**") in the preceding TfL Period or at the intervals set out in **Schedule 11** (Governance, Contract Management and Reporting), if different. Such reports shall be provided within ten (10) Business Days of the end of the relevant calendar month or interval set out in **Schedule 11** (Governance, Contract Management and Reporting). Unless agreed otherwise in writing, a review meeting shall be held within ten (10) Business Days thereafter between representatives of the parties to discuss such report and any other matters relating to the status and performance of this Agreement generally.
- 24.2 The Supplier shall also provide TfL with the reports, plans and other documentation specified at in **Schedule 11** (Governance, Contract Management and Reporting).
- 24.3 Any reports to be provided to TfL under **clause 24.1** will contain at least the following and any other agreed items:
- 24.3.1 written status summary;
 - 24.3.2 requests for action from TfL;
 - 24.3.3 activities completed during the period;
 - 24.3.4 activities to be completed in the next period and by whom;
 - 24.3.5 perceived risk factors and the strategies being used to minimise them; and
 - 24.3.6 where applicable to the New System and relevant Service(s) being provided, measurement of the Supplier's performance against the Service Levels and details of any Service Credits accrued,

in a form to be agreed between TfL and the Supplier.

- 24.4 Both parties shall comply with their respective obligations set out in **Schedule 11** (Governance, Contract Management and Reporting) up to and until the expiry or termination of this Agreement.
- 24.5 Any and all changes to: (i) Milestone Dates which are specified in the Project Plan; (ii) Equipment and/or Alternative Equipment, Services, and the Further Services (if any) and the New System to be supplied; and/or (iii) where in any part of this Agreement it has been set out that the Contract Change Control Process shall be used in relation to such changes, shall be made in accordance with the Contract Change Control Procedure set out in **Schedule 8** (Contract Change Control Procedure).

25. **INSURANCE**

25.1 The Supplier shall at its sole cost obtain and maintain the Insurances.

25.2 The Supplier shall:

- 25.2.1 procure that its public liability insurance extends to indemnify TfL as principal;
- 25.2.2 procure that TfL's interest is noted on each and every policy or that its public liability insurance, employer's liability insurance and product liability insurance includes an 'indemnity to principal' clause;
- 25.2.3 provide evidence satisfactory to TfL prior to the Commencement Date and at least five (5) Business Days prior to each anniversary of the Commencement Date that the Insurances have been effected and are in force. Where any Insurance is due for renewal during the term of this Agreement, the Supplier shall within five (5) Business Days after the date of renewal also provide TfL with satisfactory evidence that such Insurance has been renewed;
- 25.2.4 where the Insurances contain a care, custody or control exclusion, procure that the relevant policy is endorsed so as to delete the exclusion in respect of any of TfL Premises (including contents) that are occupied by the Supplier for the purpose of performing its obligations under this Agreement;
- 25.2.5 if required by TfL, procure that prior to cancelling or changing any term of any Insurances, such that it no longer meets the requirements set out in this Agreement, the insurer or insurers under such Insurances give TfL not less than thirty (30) days' notice of intention to cancel or make such change;
- 25.2.6 bear the cost of all or any excesses under the Insurances;
- 25.2.7 notify TfL as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any Insurance lapsing or being terminated or the cover under it being reduced or modified;
- 25.2.8 notify TfL as soon as reasonably practicable in writing upon becoming aware of any claim, event or circumstance which is likely to give rise to any claim or claims in aggregate in respect of the Services and/or the Further Services in excess of one hundred thousand pounds sterling (£100,000) on any Insurance and, if requested by TfL and where not otherwise subject to an obligation of confidentiality, provide full details of such claim, event or circumstance (and such other relevant information as TfL may reasonably require) within three (3) Business Days of TfL's and/or the Relevant TfL Group Member's request;
- 25.2.9 promptly and diligently deal with all claims under the Insurances (or any of them) relating to the Services and/or the Further Services and in accordance with all insurer requirements and recommendations; and

- 25.2.10 in relation to any claim settled under the Insurances in respect of the design supply, installation and implementation of the New System and the performance of the Services and/or the Further Services and to the extent that the proceeds of such claim are payable to the Supplier, pay the proceeds to the person who suffered the loss or damage that gave rise to the claim (whether TfL, a TfL Group Member or any third party).
- 25.3 If the Supplier is in breach of **clause 25.2** and does not remedy such breach within thirty (30) days of notice from TfL to do so, then without prejudice to any of its other rights, powers or remedies, TfL may pay any premiums required to keep any of the Insurances in force or itself procure such Insurances. In either case, TfL may recover such premiums from the Supplier, together with all expenses incurred in procuring such Insurances as a debt.
- 25.4 The Supplier warrants and represents that nothing has or will be done or be omitted to be done which may result in any of the Insurances being or becoming void, voidable or unenforceable.
- 25.5 In relation to Insurances which must be held for a period which extends beyond termination, this **clause 25** shall survive termination of this Agreement.

26. **THE TfL GROUP'S DATA**

- 26.1 The Supplier hereby assigns (including by way of future assignment in the case of copyright) with full title guarantee to TfL all worldwide rights, title and interest (whether present, future, vested or contingent), including all Intellectual Property Rights in any TfL Data. Such assignment shall take effect from the date of creation of such TfL Data. The Supplier shall, and shall procure that all Supplier Personnel shall, execute all such documents and undertake any and all such acts as TfL may from time to time require or consider necessary or desirable in order to vest the rights assigned pursuant to this **clause 26.1** properly in TfL. For the purposes of this **clause 26.1**, "TfL Data" shall mean all data or other information that is generated by using the New System and/or Interfacing Systems and/or Interfaces and all other outputs from the New System and/or Interfacing Systems (which shall also include any further data that is derived by either party from any such data, information and outputs from time to time). Without prejudice to the above, the Supplier acknowledges the TfL Group's ownership of Intellectual Property Rights which may subsist in the TfL Group's data. The Supplier shall not delete or remove any copyright notices contained within or relating to TfL's and/or TfL Group's data.
- 26.2 TfL hereby grants to the Supplier until the expiry or termination of this Agreement (whichever occurs first) a non-assignable, non exclusive, world-wide licence to use the TfL Data solely in connection with the performance of, and to the extent necessary for the Supplier to provide the Services under this Agreement.
- 26.3 The Supplier shall, at any time when any of the TfL Group's data is in its control or possession, preserve the integrity of such TfL and/or TfL Group's data and prevent any corruption or loss of TfL Group's data.

27. **INTELLECTUAL PROPERTY RIGHTS**

- 27.1 Title in the Supplier Software, Supplier's IPR and Third Party Software shall remain with the Supplier or the Third Party licensor, as applicable, at all times.
- 27.2 Without prejudice to **clause 26.1**, as between the parties, the Intellectual Property Rights in all the Interfacing Systems, TfL Equipment, TfL Data and TfL Software shall remain the property of TfL and/or member of the TfL Group and nothing in this Agreement shall constitute any form of transfer or assignment of such Intellectual Property Rights. The Interfacing Systems shall be used by the Supplier solely for the purposes of the Supplier performing its obligations under this Agreement.

- 27.3 Notwithstanding the expiry of this Agreement or its termination (other than termination by the Supplier in accordance with **clause 31.5**) the Supplier grants Tfl and each member of the Tfl Group and its/their authorised agents a perpetual, royalty-free, worldwide licence to use Intellectual Property Rights in the Supplier's IPR and the Supplier Software solely to the extent necessary for Tfl, the Tfl Group any Successor Authority to: (i) receive and benefit from their respective rights under this Agreement for the purpose specified in this Agreement; (ii) interface and interoperate with the software and/or systems identified by Tfl in this Agreement; and (iii) otherwise operate their respective businesses from time to time. Tfl and each member of the Tfl Group shall be entitled to sub-licence its rights in respect of the Supplier's IPR and the Supplier Software to any service provider or contractor who is engaged by, or who contracts with Tfl and/or a member of the Tfl Group to provide, operate or otherwise manage services for the benefit of Tfl and/or any member of the Tfl Group. The licence granted under this **clause 27.3** shall also permit Third Party Users to access the Supplier Software, the Information and the Interfacing Systems.
- 27.4 The Supplier shall only incorporate any software in respect of which the Supplier does not own the Intellectual Property Rights, where that software is clearly identified as Third Party Software or Open Source Software in **Schedule 1** (Key Contract Information) and/or **Schedule 20** (Third Party Software). The Supplier shall obtain the licence(s) necessary to use such Third Party Software and Open Source Software. Unless otherwise agreed in writing, the Supplier shall be responsible for obtaining any licences required for Third Party Software and the Open Source Software on the same terms that apply to the Supplier Software in **clause 27.3**, so that the relevant Third Party Software and Open Source Software may be used by Tfl and/or any relevant member of the Tfl Group as an embedded part of the Supplier Software without Tfl or any relevant member of the Tfl Group having to obtain licences in respect of the Third Party Software or the Open Source Software either during the Term of the Agreement or following the Agreement's expiry or termination. Tfl shall not directly access or use any embedded Third Party Software or Open Source Software independently of the Supplier Software unless Tfl obtains appropriate licenses.
- 27.5 Risk in the media on which any Software is recorded shall pass to Tfl on delivery of such media to Tfl or the Acceptance of the Software in respect of the relevant Milestone (whichever is the latter).
- 27.6 At all times without prejudice to **clause 26.1**, nothing in this **clause 27** shall prevent the Supplier from using data processing techniques, ideas and know how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not constitute or relate to a disclosure of Confidential Information, or an infringement by the Supplier of any Intellectual Property Right.
- 27.7 Tfl acknowledges that the Software may include third party software code that conforms with either (a) the then current open source definition laid down by the Open Source Initiative; or (b) any generally accepted replacement for or alternative to such Open Source definition at the relevant time ("**Open Source Software**"). Notwithstanding the foregoing, the Supplier may not use or include Open Source Software in any Software where the result of implementation or use by the Supplier or Tfl of Open Source Software in connection with this Agreement is that Tfl may be required to provide a free or compulsory licence to any person to all or any part of the Interfacing Systems and/or any other Software. Where the Supplier does elect to use Open Source Software in compliance with this **clause 27.7** then it shall do so at its own risk and shall not be entitled to increase the Charges or otherwise amend the terms of this Agreement where the terms under which such Open Source Software is made available are varied or there is any other change made to that Open Source Software, from time to time.
- 27.8 To the extent that any Tfl Group Member provides the Supplier for the purpose of or in connection with designing supplying, installing and implementing of the New System and/or Equipment and/or Alternative Equipment and/or providing the Services and the Further Services (if any) with any materials in which Tfl and/or any Tfl Group Member owns (or is licensed by a third party to use) the Intellectual Property Rights, the Supplier acknowledges and agrees that nothing in this Agreement grants to the Supplier

any right, title or interest in such materials other than a limited non-exclusive right to use those materials solely for the purposes of designing supplying, installing and implementing of the New System and/or Equipment and/or Alternative Equipment and/or providing the Services and the Further Services. All Intellectual Property Rights in such materials are and shall remain the exclusive property of the Tfl Group Member or (if applicable) its third party licensors.

27.9 The Supplier warrants and shall ensure that the possession and/or use by Tfl and the Relevant Tfl Group Members of the Equipment and/or Alternative Equipment, the New System, and the performance by the Supplier of the Services and the Further Services (if any) shall not constitute any infringement or misappropriation of any Intellectual Property Rights or any other legal or equitable right of any person and that the Supplier owns or has obtained valid licences to or of all such Intellectual Property Rights and other rights which are necessary for the performance of its obligations under this Agreement.

27.10 If any third party claims that the possession and/or use of the Equipment and/or Alternative Equipment and/or the New System and/or the receipt of the Services and the Further Services (if any) ("**Indemnified Deliverables**") by any Relevant Tfl Group Member and/or the provision by the Supplier of any Indemnified Deliverable under or in connection with this Agreement constitutes an infringement or misappropriation of any Intellectual Property Rights or other right of that third party ("**IPR Claim**"), the Supplier shall, subject always to **Clause 27.11**, on demand indemnify, keep indemnified and hold harmless Tfl and/or any Relevant Tfl Group Member (including their respective employees, sub-contractors and agents) from and against all Direct Losses arising from, in connection with or incurred by reason of any such IPR Claim (including the defence and any settlement of such IPR Claim).

27.11 In the event of a claim pursuant to **clause 27.10**:

27.11.1 Tfl shall promptly notify the Supplier of the claim;

27.11.2 the Supplier shall, at its own cost and expense, control the defence of such IPR Claim and any related proceedings or settlement negotiations, except that Tfl shall be entitled to take any action which it deems necessary if the Supplier fails to take action, or (in Tfl's and/or any Relevant Tfl Group Member's reasonable opinion) delays taking action, in defending or settling any such IPR Claim and such failure or delay may, in the reasonable opinion of Tfl, prejudice the interests of the Tfl Group; and

27.11.3 at the cost and expense of the Supplier, Tfl shall take all reasonable steps to co-operate with the Supplier in the defence or settlement of such IPR Claim.

27.12 If any Indemnified Deliverable becomes the subject of any IPR Claim and, as a result of such IPR Claim, a court of competent jurisdiction grants an injunction preventing the use by the Supplier or any Relevant Tfl Group Member of any of such Indemnified Deliverable or there is substantial risk of such Injunction being granted or the IPR Claim is settled on the basis that the Indemnified Deliverable cannot be used, the Supplier shall at its expense as soon as possible following (and in any event within thirty (30) days of) such event occurring:

27.12.1 obtain for Tfl and each Relevant Tfl Group Member the right to continue to possess, use and/or receive the benefit of the relevant Indemnified Deliverable(s); or

27.12.2 replace or modify the relevant Indemnified Deliverable(s) so that it becomes non infringing without detracting from the functionality or performance of the Equipment and/or Alternative Equipment, the overall New System or Services and provided that any such replacement or modification shall not prevent the Supplier's compliance with the warranties contained at **clause 16** and elsewhere in this Agreement.

- 27.13 The Supplier shall have no liability under or in connection with this Agreement and the indemnity given in **clause 27.10** shall not apply to the extent that any infringement is caused solely and directly by:
- 27.13.1 the combination of the relevant Indemnified Deliverable with other products, data or information not supplied by the Supplier unless the combination was made or approved by the Supplier;
 - 27.13.2 the addition to or modification of the Indemnified Deliverable unless the addition to or modification was made or approved by the Supplier;
 - 27.13.3 the supply by or on behalf of TfL of any of the materials specified at **clause 27.8**; or
 - 27.13.4 breach by TfL of any of the terms of this Agreement and/or any licence terms in respect of the Indemnified Deliverable to which TfL is subject pursuant to the terms of this Agreement; or
 - 27.13.5 the use by TfL or a Relevant TfL Group Member of an Indemnified Deliverable in a manner that is in breach of the terms of this Agreement and which also: (i) does not accord with any common or industry use of such Indemnified Deliverable or items reasonably similar to the Indemnified Deliverable; or (ii) is not a reasonable use of such Indemnified Deliverable, taking into account the uses which are suggested by any Supplier manuals in relation to such Indemnified Deliverables; or (iii) was not reasonably foreseeable by the Supplier following negotiations with TfL prior to the date of this Agreement.
- 27.14 If any third party claims that the possession and/or use by the Supplier of any of the materials provided to the Supplier as contemplated in **clause 27.8** (the "**TfL Deliverables**") constitutes an infringement or misappropriation of any Intellectual Property Rights or other right of that third party, TfL shall indemnify, keep indemnified and hold harmless the Supplier (including their respective employees, Sub-Contractors and agents) from and against all Direct Losses arising from, in connection with or incurred by reason of any such IPR Claim (including legal costs and disbursements on a full indemnity basis) and damages awarded by a court of competent jurisdiction or agreed to be paid by way of settlement of such claim provided that:
- 27.14.1 the Supplier promptly notifies TfL of such claim;
 - 27.14.2 TfL shall, at its own cost and expense, be entitled to control the defence of such claim and any related proceedings or settlement negotiations; and
 - 27.14.3 at the cost and expense of TfL, the Supplier takes all reasonable steps to co-operate with TfL in the defence or settlement of such claim.
- 27.15 TfL shall not be liable under **clause 27.14** or otherwise for any infringement:
- 27.15.1 caused by the combination of the relevant TfL Deliverables with other products, data, or information not supplied by TfL;
 - 27.15.2 caused by any use by the Supplier of any of TfL Deliverables other than strictly for the purpose of the Supplier performing its obligations under this Agreement; or
 - 27.15.3 caused by a breach by the Supplier of any of the terms of this Agreement and/or any licence terms in respect of the Indemnified Deliverable to which the Supplier is subject pursuant to the terms of this Agreement.
- 27.16 If any of TfL Deliverables become the subject of any claim as described in **clause 27.14** and, as a result of such claim, a court of competent jurisdiction grants an injunction preventing TfL and/or any Relevant TfL Group Member's and/or the Supplier's use of any such of TfL Deliverables or there is substantial risk of such injunction being granted

or the claim is settled on the basis that Tfl Deliverables cannot be used, Tfl shall at its expense as soon as possible following (and in any event within thirty (30) days of) such event occurring:

- 27.16.1 obtain for the Supplier the right to continue to possess and/or use the relevant Tfl Deliverables;
 - 27.16.2 with all such assistance from the Supplier (including the provision of Further Services as may be agreed in accordance with **clause 8**), replace or modify the relevant Tfl Deliverables so that it becomes non infringing without detracting from the functionality or performance of Tfl Deliverables so as to prevent the Supplier from complying with its obligations under this Agreement; or
 - 27.16.3 if it is not commercially reasonable to perform either of the above options, Tfl and the Supplier shall cease use of the infringing Tfl Deliverables in which case the parties' representatives shall meet and, in good faith, explore all possible amendments to the Services and the Further Services which are required as a result of such cessation of use. Any such amendments shall be considered and (where applicable) agreed in accordance with **clause 40**.
- 27.17 The Supplier shall ensure that all royalties, licence fees or similar expenses in respect of all Third Party IPR used in connection with this Agreement have been paid and no such amounts shall be payable by Tfl or any member of the Tfl Group except to the extent such amounts are included within the Charges.

27.18 This **clause 27** shall survive termination of this Agreement.

28. GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY

28.1 Neither party excludes or limits its liability to the other party in respect of:

- 28.1.1 the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- 28.1.2 to the extent applicable, liability under Part 1 of the Consumer Protection Act 1987 for defects within the meaning of that Act;
- 28.1.3 **clause 37** (Confidentiality and Transparency);
- 28.1.4 fraud (including fraudulent misrepresentation); or
- 28.1.5 for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in section 1(1) of the Unfair Contract Terms Act 1977) or any other liability which, by law, it cannot exclude or limit,

but nothing in this **clause 28** confers any right or remedy upon a party to which it would not otherwise be entitled.

28.2 The Supplier does not exclude or limit its liability to Tfl under or in connection with this Agreement:

- 28.2.1 for breach of Intellectual Property Rights (whether pursuant to **clause 27** (Intellectual Property Rights) or otherwise);
- 28.2.2 in respect of liability pursuant to **clause 18** (Access to Tfl Premises);
- 28.2.3 in respect of liability pursuant to **clauses 38** and **39** (Freedom of Information and Data Protection);

- 28.2.4 in respect of any fines or other penalties incurred by Tfl and/or any Relevant Tfl Group Member and any associated costs relating to the imposition of such fines or penalties due to Tfl and/or any Relevant Tfl Group Member being in breach of any Applicable Law (including breaches of Radio Regulations and any other relevant telecoms laws and regulations and breaches of Data Protection Legislation) due to the Supplier's breach;
- 28.2.5 in respect of liability pursuant to **clause 30** (Loss of Software and Data Security);
- 28.2.6 in respect of the Supplier's liability for Service Credits; or
- 28.2.7 in respect of the payment of any Liquidated Damages,

and any liability of a party which falls within **clauses 28.1** and **28.2** will not be taken into account in assessing whether the financial limits in **clauses 28.4** and **28.5** have been reached.

28.3 Subject to **clauses 28.1** and **28.2**, **clauses 28.4** to **28.11** set out the entire liability of each party (including liability for the acts or omissions of its employees, agents or sub-contractors and, in relation to Tfl, the acts or omissions of the Tfl Group) to the other party in respect of:

- 28.3.1 any breach of its contractual obligations arising under or in connection with this Agreement;
- 28.3.2 any representation, statement, negligence, breach of statutory duty or other tortious act or omission arising under or in connection with this Agreement; and
- 28.3.3 any damage to property.

28.4 Except as provided in **clauses 28.1** and **28.2**, the Supplier's maximum liability under this Agreement, whether in contract or tort (including negligence) for breach of statutory duty, or otherwise, shall not exceed:

- 28.4.1 in relation to loss of or damage to tangible property during the period up to and including the date of Final Acceptance, five million pounds sterling (£5,000,000) per incident but subject to a maximum liability of ten million pounds sterling (£10,000,000) in the aggregate for the period up to and including the date of Final Acceptance;
- 28.4.2 in relation to loss of or damage to tangible property during the period following the date of Final Acceptance, three million pounds sterling (£3,000,000) in the aggregate in any period of 12 months;
- 28.4.3 in relation to all other Direct Losses:

- 28.4.3.1 subject to the aggregate limit of liability specified at **clause 28.4.3.3**, where a claim arises during the first twelve (12) months of the Term, then the limit of liability in relation to each such claim will be one hundred and fifty percent (150%) of the aggregate of all amounts paid and/or payable by or on behalf of Tfl to the Supplier under this Agreement in the first twelve (12) months of the Term;

- 28.4.3.2 subject to the aggregate limit of liability specified at **clause 28.4.3.3**, in relation to each claim occurring after the first twelve

(12) months of the Term, an amount equal to one hundred and fifty percent (150%) of the aggregate of all amounts paid and/or payable (to the extent any sums remain outstanding or are subject to a purchase order) by or on behalf of TfL to the Supplier under this Agreement, in the twelve (12) months preceding the claim; and

28.4.3.3 fifteen million pounds (£15,000,000) in the aggregate for the duration of the Term.

- 28.5 Except as provided in **clauses 28.1**, and subject always to TfL's obligation to pay pursuant to **clause 5**, the entire liability of TfL and the TfL Group (together) under or in connection with this Agreement will not exceed one hundred (100%) of the amount TfL is due to pay each year.
- 28.6 In the event that a Relevant TfL Group Member suffers Direct Losses in circumstances where TfL would be able to recover such Direct Losses from the Supplier had such Direct Losses been suffered by TfL, such person may recover from the Supplier an amount equal to the amount that TfL would have been able to recover had the Direct Losses been suffered by TfL rather than the Relevant TfL Group Member, subject always to the limitations and exclusions of liability contained in this Agreement. In the alternative, the Supplier agrees that any Direct Losses suffered or incurred by any Relevant TfL Group Member arising under or in connection with this Agreement (in this **clause 28.6** collectively "**Group Member Direct Losses**"): (i) will be deemed to have been incurred by TfL; and (ii) will be recoverable by TfL from the Supplier as if they were Direct Losses or incurred directly by TfL but always subject to the limitations and exclusions of liability set out in this Agreement. For the purposes of this **clause 28.6**, any Group Member Direct Losses shall not be deemed to be consequential or indirect or special merely as a result of not being suffered directly by TfL. For the avoidance of doubt, the Supplier shall still be entitled, in the case of a remediable breach, to remedy such breach in accordance with the terms of this Agreement.
- 28.7 In the event that the Supplier is defined under this Agreement to include more than one person, then each such person shall be jointly and severally liable for all obligations of the Supplier under this Agreement.
- 28.8 The exclusions from and limitations of liability set out in this **clause 28** shall be considered severably. The validity or unenforceability of any one **clause**, sub-clause, paragraph or sub-paragraph of this **clause 28** shall not affect the validity or enforceability of any other **clause**, sub-clause, paragraph or sub-paragraph of this **clause 28**.
- 28.9 Subject to **clauses 28.1** and **28.10** but notwithstanding anything else in this Agreement, neither the Supplier, nor any Sub-Contractor of Supplier, nor TfL nor any member of the TfL Group shall be liable under or in relation to this Agreement (whether the liability arises for breach of contract, negligence, under an indemnity, obligation to refund, under any other theory of law or for any other reason) for any: (i) loss of profits; (ii) loss of turnover; (iii) loss of or damage to goodwill or reputation; or (iv) indirect, special or consequential loss or damage. For the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.
- 28.10 Notwithstanding the provisions of **clause 28.9** the parties acknowledge that (without limitation) the following types of losses shall be regarded as Direct Losses and not consequential, indirect or special losses for the purposes of this Agreement:
- 28.10.1 direct Losses which TfL or a Relevant TfL Group Member may suffer as a result of having to reinstate and/or rectify the Operating Environment, which arise as a result of the Supplier's negligence and/or as a result of any breach by the Supplier of the terms of this Agreement;

28.10.2 reasonable and documented direct costs of internal and external staff necessitated as a result of the Supplier's default (including but not limited to costs of staff performing or re-performing functions which the Supplier, if properly performing of its obligations in accordance with this Agreement, should have performed or provided); and

28.10.3 in the case of termination of the Agreement by TfL under the provisions of **clause 31.1**, the reasonable direct costs of selecting and negotiating with a Replacement Supplier to replace the Supplier,

and the parties agree that this **clause 28.10** shall not operate to exclude any liability of the Supplier that would not be excluded, other than as a result of this **clause 28.10**, provided always that **clause 28.4** will apply to such sums and that TfL has a duty to mitigate such amounts.

28.11 The Supplier is not responsible for and shall not indemnify TfL for any Direct Losses to the extent that such Direct Losses are caused by any breach or negligent performance of any of TfL's obligations under this Agreement by TfL and/or any Relevant TfL Group Member.

28.12 The provisions of this **clause 28** shall survive the termination of the whole or a part of this Agreement.

29. **FORCE MAJEURE**

29.1 Subject to **clauses 29.4** and **45**, neither party shall be liable for any delay in performing or for failure to perform any of its obligations under this Agreement due to a Force Majeure Event.

29.2 Subject to **clause 45**, if either party is prevented from performing any of its obligations due to a Force Majeure Event it shall promptly notify the other party in writing of the circumstances of the Force Majeure Event and the other party shall grant a reasonable extension for the performance of the impacted obligations under this Agreement. The other party shall in no circumstances be obligated to give an extension which is of a period longer than the Force Majeure Period. TfL may terminate this Agreement on immediate notice in writing if a Force Majeure Event affecting the Supplier continues for more than the Force Majeure Period.

29.3 Subject to **clause 45**, it is expressly agreed that any failure by the Supplier to perform, or any delay by the Supplier in performing, its liabilities, obligations or responsibilities under this Agreement which results from any failure or delay in the performance of its obligations by any person with which the Supplier shall have entered into any contract, supply arrangement, sub contract or otherwise, shall be regarded as a failure or delay due to a Force Majeure Event only in the event that such person shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement, sub contract or otherwise as a result of circumstances of a Force Majeure Event.

29.4 In the case of a Force Majeure Event that prevents the Supplier from performing any of its obligations in relation to the Services, the Further Services, Equipment and/or Alternative Equipment or parts of the New System which are for business critical or safety critical parts of TfL and/or any Relevant TfL Group Member, its estate or services or which otherwise require continuous uninterrupted service, as indicated by TfL in **Schedule 1** (Key Contract Information), the Supplier shall use all reasonable endeavours to restore the relevant Services, Further Services and provision of Equipment and/or Alternative Equipment (including taking such steps as may be reasonably required by TfL) and otherwise fulfil its relevant obligations as soon as is reasonably practicable, including by the implementation of its Disaster Recovery Plan.

30. **LOSS OF SOFTWARE AND DATA SECURITY**

30.1 Without prejudice to its other obligations under this Agreement, the Supplier shall, during the term of this Agreement and in the course of designing supplying, installing and implementing of the Interfaces and/or the New System and/or Equipment and/or Alternative Equipment and/or performing the Services and/or the Further Services (if any):

30.1.1 adhere to the terms of **Schedule 9** (Cyber Security Management); and

30.1.2 in relation to the Supplier's:

30.1.2.1 provision and/or use of the Interfaces, the Services, the Further Services, the New System, the Equipment and/or the Alternative Equipment; and/or

30.1.2.2 procurement on behalf of Tfl or any Relevant Tfl Group Member or directly provides the Network (in whole or in part) or the Network Services,

provide all measures necessary in respect of the prevention of unauthorised access to Tfl's and any Relevant Tfl Group Member's computer systems (including Interfacing Systems), networks, software and data, the prevention of the introduction of known Viruses and shall provide the capability to restore the systems, software, networks and data in the event that the loss of the systems, software networks or data arises directly or indirectly from any act or omission of the Supplier (including the Supplier's Personnel) or whilst such systems, software, networks or data is in the custody, control or otherwise interfaced with or accessed by the Supplier.

30.2 The Supplier shall not, without the consent of Tfl, be entitled to delete any software or data belonging to Tfl and/or any member of the Tfl Group to which the Supplier has access in performance of its obligations under this Agreement.

30.3 Upon receipt or creation by the Supplier of Tfl's and/or any member of the Tfl Group's data and during any collection, processing, storage and transmission by the Supplier of Tfl's and/or any member of the Tfl Group's software or data the Supplier shall take all necessary precautions to preserve the integrity of such software and data and to prevent any corruption or loss thereof including such precautions as are specified by Tfl from time to time.

30.4 To the extent that Tfl's and/or any member of the Tfl Group's software or data is corrupted or lost or so degraded as to be unusable due to any act or omission of the Supplier after its receipt or creation by the Supplier or during any collection, processing, storage or transmission by the Supplier of Tfl's and/or any member of the Tfl Group's software or data or otherwise as a result of any default by the Supplier then, in addition to any other remedies that may be available to Tfl and/or any member of the Tfl Group under this Agreement or otherwise:

30.4.1 the Supplier shall promptly, at the Supplier's expense, restore or procure the restoration of Tfl's and/or any member of the Tfl Group's software and data to Tfl's and/or any member of the Tfl Group's reasonable satisfaction, as notified in writing, such that the Supplier has made good the corruption, loss or degradation of the software and data; and

30.4.2 in the event that Tfl itself has to restore or procure the restoration of the Supplier's software or data, then Tfl shall require the Supplier to repay Tfl's reasonable costs and expenses incurred in carrying out such restoration.

30.5 To the extent that any of Tfl's and/or any member of the Tfl Group's software or data is corrupted or lost or sufficiently degraded as to be unusable otherwise than due to a

default by the Supplier, the Supplier shall nevertheless carry out such remedial actions to restore TfL's and/or any member of the TfL Group's software and data or such other actions as may be necessary to restore TfL's and/or any member of the TfL Group's software and data as TfL may request in writing and the reasonable agreed cost of the remedial actions or such other actions shall be borne by TfL.

30.6 Without prejudice to the generality of **clauses 30.1** and **30.3**, the Supplier shall:

30.6.1 before performing any actions in respect of TfL's and/or any member of the TfL Group's software or data, ensure that it has performed back-ups of such software or data as set out in **Schedule 9** (Cyber Security Management) or agreed in writing from time to time or, where none are agreed, as are reasonable in the circumstances; and

30.6.2 perform its obligations in conformance with the Security Policy.

Nothing in this Agreement shall relieve the Supplier's obligations in this regard.

30.7 Subject to the limitations set forth in **clause 28.4** (Liability), the Supplier shall fully indemnify TfL and each member of the TfL Group for any and all Direct Losses incurred or suffered by TfL and/or any member of the TfL Group which results from a breach by the Supplier of its obligations under this **clause 30**.

30.8 This **clause 30** shall survive termination of this Agreement.

31. **TERMINATION**

31.1 Without prejudice to TfL's right to terminate at common law, TfL may terminate this Agreement immediately (or on such later date as it shall specify in writing and in whole or in part) upon giving notice to the Supplier if:

31.1.1 in addition and without prejudice to **clauses 34.1.2** to **34.1.5** (inclusive), the Supplier has committed any material breach of this Agreement and in the case of such a breach that is capable of remedy fails to remedy that breach within twenty (20) Business Days from the date of written notice to the Supplier giving details of the breach and requiring it to be remedied;

31.1.2 the Supplier is subject to an Insolvency Event;

31.1.3 there is a Change of Control or of management personnel of the type referred to in **clause 36.6**;

31.1.4 TfL is not satisfied on the issue of any conflict of interest in accordance with **clause 17**;

31.1.5 the Supplier commits any of the money laundering offences under the Money Laundering Regulations 2003;

31.1.6 the Supplier or any of its officers, employees, Sub-Contractors or agents commits any act of bribery described in the Bribery Act 2010; or

31.1.7 the Supplier commits a Persistent Breach;

31.1.8 the Supplier breaches the provisions of **clause 25** (Insurance);

31.1.9 the Supplier's liability in terms of sums paid or payable by the Supplier to TfL and/or any Relevant TfL Group Member in relation to losses suffered by TfL and/or any Relevant TfL Group Member pursuant to **clauses 28.4.1**, **28.4.2** and/or **28.4.3** is equal to or greater than ninety percent (90%) of the limits of liability specified in each of those clauses during the relevant period.

- 31.1.10 a termination circumstance as referred to in **clauses 6.19 or 29.2** or at **paragraph 16 of Schedule 15** (Responsible Procurement) applies.
- 31.2 Without prejudice to Tfl's right to terminate this Agreement under **clause 31.1** and/or **31.3** or to terminate at common law, Tfl may terminate this Agreement and/or the Maintenance Services and/or the Further Services (if any) in whole or in part with such termination to take effect on the fifth (5th) anniversary of the Operational Commencement Date, without cause and with no obligation to pay termination or breakage charges), subject to Tfl giving the Supplier not less than ninety (90) days' written notice.
- 31.3 Without prejudice to Tfl's right to terminate this Agreement under **clauses 31.1** and/or **31.2** or to terminate at common law, Tfl may terminate this Agreement and/or the Maintenance Services and/or the Further Services in whole or in part with such termination to take effect at any point after the fifth (5th) anniversary of the Operational Commencement Date, without cause, subject to Tfl giving the Supplier not less than ninety (90) days' notice and Tfl's obligation to pay termination charges (if any) as specified under **paragraph 8 of Schedule 3**.
- 31.4 To the extent that Tfl has a right to terminate this Agreement under this **clause 31** then, as an alternative to terminating this Agreement in full, Tfl may terminate this Agreement in part (including by terminating part of the Services and/or the Further Services or part of the supply, installation or implementation of the New System or Equipment and/or Alternative Equipment), whereupon the definition of "the Services" and/or "the Further Services" (as applicable) shall be deemed amended accordingly. The Charges will also be adjusted proportionately or, if in the Tfl Group's opinion a proportionate adjustment would not be reasonable, in such manner as Tfl may reasonably determine.
- 31.5 Subject to **clause 5.7**, the Supplier may terminate this Agreement for non-payment by Tfl. Termination may only occur after a failure to remedy by Tfl within sixty (60) Business Days from the date of written notice by the Supplier provided that the Supplier also provides a written notice to Tfl thirty (30) Business Days after the first written notice is served of its intention to terminate if payment is not made within the next thirty (30) Business Days.
- 31.6 Without prejudice to Tfl's right to terminate the Agreement under **clauses 31.1, 31.2** or **31.3** or at common law, Tfl may terminate the Agreement at any time following a Declaration of Ineffectiveness in accordance with the provisions of **clause 33**.
32. **CONSEQUENCES OF TERMINATION/EXIT**
- 32.1 Except in the case of termination for breach, the Supplier shall provide Tfl with a statement of account of monies owing to it (if any) for agreement with Tfl. The statement will not include monies withheld under **clause 5.6** or **5.7**.
- 32.2 On termination of this Agreement, howsoever caused, clauses and Schedules in this Agreement which expressly or impliedly have effect after termination shall remain in effect including **clause 12** (TUPE), **clause 23** (Records, Audit and Inspection), **clause 25** (Insurance), **clause 27** (Intellectual Property Rights), **clause 28** (General Exclusions and Limitations of Liability), **clause 30** (Loss of Software and Data Security), **clause 32** (Consequences of Termination/Exit), **clause 37** (Confidentiality and Transparency), **clause 38** (Freedom of Information and Transparency), **clause 39** (Privacy and Data Protection), **clause 41** (Employees), **clause 42** (Non solicitation), **clause 47** (Law and Dispute Resolution) and **Schedule 10** (Exit Management).
- 32.3 The termination 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.
- 32.4 Upon termination of this Agreement (howsoever caused) the parties shall perform their respective obligations under **Schedule 10** (Exit Management) and the Exit Plan and the licences granted by the Supplier to Tfl under **clause 27.3** shall continue to apply.

- 32.5 Notwithstanding the provisions of the Exit Plan and **Schedule 10** (Exit Management), whenever TfL chooses to put out to tender for a replacement service provider for some or all of the Services, and the Further Services, Equipment and/or Alternative Equipment or the New System, the Supplier shall disclose to tenderers such information concerning the Services, and the Further Services, Equipment and/or Alternative Equipment and the New System as TfL may require for the purposes of such tender. The Supplier may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 32.6 TfL shall, within thirty (30) days of the statement of accounts being agreed under **clause 32.1**, pay the Supplier any charges remaining due in relation to any Services and Further Services properly performed, Equipment and/or Alternative Equipment provided and/or the New System properly delivered in accordance with this Agreement up to the date of termination.
- 32.7 If TfL terminates this Agreement prior to Final Acceptance, then TfL may, without prejudice to its other rights under this Agreement itself complete the supply of the Equipment and/or Alternative Equipment, the New System and/or the Services and Further Services, or enter into a contract with a third party to effect such completion and, for the avoidance of doubt, such completion shall be taken to include the creation or procurement of any software. Without prejudice to its other obligations under this **clause 32** or **Schedule 10** (Exit Management), the Supplier will:
- 32.7.1 provide such information as TfL or the relevant third party may reasonably require; and
- 32.7.2 grant at a reasonable cost such additional licences and/or rights and/or permissions (solely to the extent such additional licences and/or rights and/or permissions are necessary),
- in order for TfL or the relevant third party to be able to complete the supply of the Equipment and/or Alternative Equipment, the New System and/or the Services and Further Services, including in relation to any Interfaces and/or Interfacing Systems.
- 32.8 If TfL terminates this Agreement after Final Acceptance, then without prejudice to its other obligations under this **clause 32** or **Schedule 10** (Exit Management), the Supplier will:
- 32.8.1 provide such information as TfL or the relevant third party may reasonably require; and
- 32.8.2 grant at a reasonable cost such additional licences and/or rights and/or permissions (solely to the extent such additional licences and/or rights and/or permissions are necessary), in order for TfL or the relevant third party to support and maintain the Equipment and/or Alternative Equipment, the New System and/or the Services and/or Further Services and the Interfaces, including in relation to any Interfacing Systems which are implemented by TfL or a Relevant TfL Group Member as a replacement for any Interfacing System which was in place or otherwise in scope of this Agreement as at the Commencement Date.
- 32.9 If TfL terminates this Agreement in accordance with **clause 31.1.2**, then the Supplier shall, as of the date of termination of this Agreement, assign to TfL and each Relevant TfL Group Member with full title guarantee, all Intellectual Property Rights in the Services, and the Further Services (if any), Equipment and/or Alternative Equipment, and the New System which were due to be transferred to TfL should the Insolvency Event have not occurred and which are in existence and capable of assignment as of the date of termination.
- 32.10 Upon termination of all or any part of this Agreement (howsoever caused) or a cessation of any Services or Further Services or part thereof, TfL may enter into any agreement with any third party or parties as TfL thinks fit to provide the design, supply, installation and implementation of the New System and/or Equipment and/or Alternative Equipment

and/or any or all of the Services and/or Further Services and, save in the case of a termination by TfL pursuant to **clause 31.2** or **31.3**, the Supplier shall be liable for: (i) all additional expenditure reasonably incurred by TfL in having such services carried out (including the costs incurred by TfL in relation to undertaking a further procurement exercise); and (ii) all other costs and damages reasonably incurred by TfL in consequence of such termination. TfL may deduct such costs from the charges or any other sums due to the Supplier or otherwise recover such costs from the Supplier as a debt.

33. DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT

33.1 In the event that a court makes a Declaration of Ineffectiveness, TfL shall promptly notify the Supplier. The parties agree that the provisions of **clause 32** and this **clause 33** shall apply as from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of **clause 32** and this **clause 33** or the Cessation Plan, the provisions of this **clause 33** and the Cessation Plan shall prevail.

33.2 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.

33.3 As from the date of receipt by the Supplier of the notification of the Declaration of Ineffectiveness, the parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, TfL shall reasonably determine an appropriate Cessation Plan with the object of achieving:

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

33.3.2 minimal disruption or inconvenience to TfL or to public passenger transport services or facilities,

in accordance with the provisions of this **clause 33** and to give effect to the terms of the Declaration of Ineffectiveness.

33.4 Upon agreement, or determination by TfL, of the Cessation Plan the parties will comply with their respective obligations under the Cessation Plan.

33.5 TfL shall pay the Supplier's reasonable costs in assisting TfL 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 TfL. Provided that TfL shall not be liable to the Supplier for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to this **clause 33**.

33.6 Without prejudice to TfL's rights of termination implied into the Agreement by regulation 73(3) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25, in the event of a Public Procurement Termination Event, TfL shall promptly notify the Supplier and the parties agree that the provisions of **clause 32** and these **clauses 33.6** to **33.10** (inclusive) shall apply as from the date of receipt by the Supplier of the notification of the Public Procurement Termination Event. If there is any conflict or discrepancy between the provisions of **clause 32** and these **clauses 33.6** to **33.10** or the Cessation Plan, the provisions of these **clauses 33.6** to **33.10** and the Cessation Plan shall prevail.

33.7 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.

33.8 As from the date of receipt by the Supplier 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, TfL shall reasonably determine an appropriate Cessation Plan with the object of achieving:

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

33.8.2 minimal disruption or inconvenience to TfL or to public passenger transport services or facilities,

in accordance with the provisions of these **clauses 33.6 to 33.10** (inclusive) and to give effect to the terms of the Public Procurement Termination Event.

33.9 Upon agreement, or determination by TfL, of the Cessation Plan the parties will comply with their respective obligations under the Cessation Plan.

33.10 TfL shall pay the Supplier's reasonable costs in assisting TfL 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 TfL, provided that TfL shall not be liable to the Supplier for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to these **clauses 33.6 to 33.10** (inclusive).

34. **STEP IN RIGHTS**

34.1 If TfL reasonably believes that it needs to take action in connection with part or all of the supply of Equipment and/or Alternative Equipment, the design, supply, installation or implementation of the New System or the Services and/or Further Services:

34.1.1 because of a serious risk to the health or safety of persons or property or to the environment;

34.1.2 to discharge a statutory duty;

34.1.3 because the provision or installation of the Equipment and/or Alternative Equipment, the operation of the New System or the Services and/or Further Services are not being performed to at least the Service Levels or relevant KPIs and Supplier has failed to rectify such performance after TfL has raised a Dispute and provisions of **clause 47** (Law and Dispute Resolution) have been followed;

34.1.4 because the provision or installation of the Equipment and/or Alternative Equipment, the implementation of the New System or the Services and/or Further Services are not being performed when due to be performed and Supplier has failed to rectify such performance after TfL has raised a Dispute and provisions of **clause 47** (Law and Dispute Resolution) have been followed; and/or

34.1.5 because the provision or installation of the Equipment and/or Alternative Equipment, the implementation of the New System or the Services and/or Further Services are not being performed in accordance with the terms of this Agreement and Supplier has failed to rectify such performance after TfL has raised a Dispute and provisions of **clause 47** (Law and Dispute Resolution) have been followed,

then, save where such failure to perform is due to the acts or omissions of TfL or any Relevant TfL Group Member and without prejudice to any other rights of TfL, the provisions set out in this **clause 34** shall apply.

- 34.2 TfL shall notify the Supplier in writing of the following:
 - 34.2.1 the action it wishes to take, which may include stepping-in to provide the affected services by TfL or any member of the TfL Group or via a third party;
 - 34.2.2 the reason for such action;
 - 34.2.3 the date it wishes to commence such action;
 - 34.2.4 the time period which it believes will be necessary for such action; and
 - 34.2.5 to the extent practicable, the effect on the Supplier and its obligations to provide the Services and/or Further Services and install the Equipment and/or Alternative Equipment or design, supply install or implement the New System during the period such action is being taken.
- 34.3 Following service of such notice, TfL or a third party appointed by TfL for the purpose shall take such action as is notified under **clause 34.2** and any consequential additional action as TfL reasonably believes is necessary (the "**Required Action**") and the Supplier shall give all reasonable assistance at no additional cost to TfL or such third party while it is taking such the Required Action.
- 34.4 Without prejudice to the generality of **clause 34.3**, the Supplier will co-operate fully with and provide all reasonable assistance to TfL and/or third party performing the Required Action ("**Step-In Provider**"), including allowing:
 - 34.4.1 the Step-In Provider to use all or any part of the New System and/or provide such access to the Supplier's premises as may be reasonably required to assist in the performance of the relevant obligations;
 - 34.4.2 the Step-In Provider reasonable access to such management records, software, documentation and equipment which relate to the Services and/or Further Services as is reasonably necessary to enable the performance of the relevant obligations; and
 - 34.4.3 the Step-In Provider to manage the Supplier's business and contractual relationships with Sub-Contractors, agents and/or third party providers where relevant to the continuing provision of the relevant obligations.
- 34.5 The Step-In Provider will cease to fulfil the relevant Supplier obligations and the Supplier will resume its obligations under this Agreement when the Supplier can demonstrate to the reasonable satisfaction of TfL that the Supplier has rectified the breach that led to the appointment of the Step-In Provider or TfL confirms it wishes to cease providing the Required Action.
- 34.6 For so long as and to the extent that the Required Action is taken and this prevents the Supplier from fulfilling any part of its obligations under this Agreement, the Supplier shall be relieved from such relevant obligations and TfL shall not be liable to pay the Charges in relation to such relevant obligations.
- 34.7 The Supplier will bear all of the reasonable costs and expenses of TfL and any third party (including, amongst other things, staff costs) in taking the Required Action and any actions required to be taken by TfL or such third party to re-transfer the obligation to provide the Services and/or Further Services to the Supplier.

35. **SEVERABILITY**

If any provision of this Agreement (in whole or in part) is held to be 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 TfL Group's reasonable opinion such a

provision is so fundamental as to prevent the accomplishment of the purpose of this Agreement, TfL and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

36. ASSIGNMENT/SUB-CONTRACTING/CHANGE OF OWNERSHIP

- 36.1 The Supplier shall not assign or sub-contract all or any part of its obligations under this Agreement without the prior written consent of TfL, identifying the relevant sub-contractor which may, subject to **clause 36.2**, be refused or granted subject to such conditions as TfL sees fit. The Supplier shall, when requesting the consent of TfL to use a new sub-contractor: (i) identify, and provide in writing to TfL, a list of all new risks that it has identified as resulting from using the new sub-contractor in respect of this project, a proposal for how each risk can be mitigated and managed, and a mechanism for how that mitigation and management will take place in practice if TfL consents to that new sub-contractor being used (together the "**Risk Mitigation Plan**"); (ii) state clearly which obligations it wants to sub-contract to the new-subcontractor; (iii) identify why it wants to use the new sub-contractor; and (iv) provide detailed references supporting its request to use the new sub-contractor. If TfL grants its consent to the Supplier, authorising the Supplier to use the new sub-contractor, then (without prejudice to **clause 36.3**) the Supplier shall comply with the terms of the Risk Mitigation Plan prepared for that new sub-contractor and shall, if requested by TfL, demonstrate to the reasonable satisfaction of TfL how it is complying with the terms of that Risk Mitigation Plan.
- 36.2 The Supplier shall, at all times subject to **clause 36.3**, be entitled to appoint the Sub-Contractors, but only to carry out the specific roles allocated to each Permitted Sub-Contractor in **Schedule 14** (Permitted Sub-Contractors).
- 36.3 Where the Supplier sub-contracts all or any part of its obligations under this Agreement to any person, the Supplier shall:
- 36.3.1 ensure that such person is obliged to comply with all of the obligations and duties of the Supplier under the Agreement insofar as they relate to the obligations or part of them (as the case may be) which that Sub-Contractor is required to provide;
 - 36.3.2 be responsible for payments to that person; and
 - 36.3.3 remain solely responsible and liable to TfL for any breach of the Agreement or any performance, non-performance, part-performance or delay in performance of any of the Supplier's obligations 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 Supplier.
- 36.4 The Supplier shall procure that its contracts with all Permitted Sub-Contractors are capable of being assigned or novated forthwith on TfL's request from time to time to TfL or to any member of the TfL Group or a nominee of TfL (including the Replacement Supplier) on the termination or expiry of the Agreement, without the consent of the Permitted Sub-contractor and free of charge.
- 36.5 Without prejudice to the above provisions of this **clause 36**, the Supplier agrees to provide all information reasonably requested by TfL or a Relevant TfL Group Member from time to time in respect of where and by whom the Equipment and/or Alternative Equipment is and has been manufactured.
- 36.6 The Supplier shall give notice to TfL within ten (10) Business Days in the event that there is:
- 36.6.1 any change in the control of the Supplier or a Permitted Sub-contractor where such change relates to fifty percent (50%) or more of the issued share capital of the Supplier or the Permitted Sub-contractor (as applicable); or

- 36.6.2 any change in the control of the Holding Company of the Supplier where such change relates to fifty percent (50%) or more of the issued share capital of the Holding Company of the Supplier; or
- 36.6.3 in the case of an unincorporated Supplier, any change in the management personnel of the Supplier which alone or taken with any other change in management personnel not previously notified to Tfl, equates to a change in the identity of fifty percent (50%) or more of the management personnel of the Supplier,

such notice to be given:

- 36.6.4 as soon as reasonably possible upon the Supplier becoming aware the change of control or of management personnel is going to take place (taking into account any restrictions placed on giving such notice by any recognised stock exchange); and
 - 36.6.5 within ten (10) Business Days of the date on which such change takes effect.
- 36.7 Tfl may novate or otherwise transfer this Agreement (in whole or in part). Within ten (10) Business Days of a written request from Tfl, the Supplier shall, at its own expense, execute such agreement as Tfl may reasonably require to give effect to any such transfer of all or part of its rights and obligations under this Agreement to one or more persons nominated by Tfl.

37. **CONFIDENTIALITY AND TRANSPARENCY**

37.1 Ownership of any Confidential Information disclosed hereunder shall remain the property of the party providing the Confidential Information (the "**Disclosing Party**"). Subject to **clauses 37.2** and **37.3**, each party agrees in respect of Confidential Information disclosed pursuant to this Agreement or discovered further to the operation of this Agreement:

- 37.1.1 to keep the Confidential Information in strict confidence and secrecy;
- 37.1.2 not to use the Confidential Information save for complying with its obligations and exercising its rights under this Agreement;
- 37.1.3 subject to **clause 37.1.4**, not to disclose the Confidential Information to a Third Party without prior written consent of the Disclosing Party (save that the Supplier may disclose Confidential Information to any Sub-Contractors it appoints pursuant to **clause 36** who of necessity need the same in the performance of this Agreement subject to such Sub-Contractor providing Tfl with an undertaking to keep the Confidential Information disclosed to it confidential in similar terms to the provisions of this **clause 37**); and
- 37.1.4 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees, Affiliates, agents, professional advisors and Sub-Contractors (including persons who are appointed from time to time by Tfl to maintain the New System) who of necessity need the same in the performance of this Agreement and in such circumstances to ensure that such employees, agents and Sub-Contractors are aware of the confidential nature of the Confidential Information subject to any such agents and Sub-Contractors providing the Supplier or Tfl, as applicable, with an undertaking to keep the Confidential Information disclosed to it confidential in similar terms to the provisions of this **clause 37**.

37.2 Tfl may disclose the Supplier's Confidential Information to those of the members of the Tfl Group and their employees, Affiliates, agents, professional advisors and Sub-Contractors who need access to that Confidential Information in order for any member of the Tfl Group's obligations under this Agreement to be performed and/or for or any member of the Tfl Group's rights under this Agreement to be exercised. Tfl will take all

necessary steps to procure that each person to whom TfL discloses Confidential Information pursuant to this **clause 37.2** will not do or omit to do anything which if done or omitted to be done by the Recipient would constitute a breach of this **clause 37.2**.

37.3 The obligations set out in **clause 37.1** shall not apply to any Confidential Information which:

37.3.1 the party receiving the Confidential Information ("**Receiving Party**") can show by documentary evidence was already in its lawful possession and at its free disposal otherwise than directly or indirectly from the Disclosing Party;

37.3.2 is lawfully disclosed to the Receiving Party without any obligations of confidence, by any person who has not derived it directly or indirectly from TfL or any other member of the TfL Group or the Supplier;

37.3.3 is or has come into the public domain through no fault of the Receiving Party or its personnel;

37.3.4 is required by law or by order of a court of competent jurisdiction to be disclosed but only to the extent required by such law or order;

37.3.5 is disclosed with the prior written consent of the Disclosing Party; or

37.3.6 is disclosed by a member of the TfL Group pursuant to **clause 38**.

37.4 The parties acknowledge that damages would not be an adequate remedy for any breach of this **clause 37** and that (without prejudice to all other rights, powers and remedies which TfL or the Supplier, as applicable, may be entitled to as a matter of law) TfL or the Supplier, as applicable, shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this **clause 37** and no proof of special damages shall be necessary for the enforcement of the provisions of this **clause 37**.

37.5 The obligations of confidentiality in this **clause 37** shall survive the termination of this Agreement.

37.6 For the avoidance of doubt, **clause 38** shall take precedence over this **clause 37** to the extent of any inconsistency.

37.7 This **clause 37** is without prejudice to **clause 39** as regards Agreement Personal Data.

38. **FREEDOM OF INFORMATION AND TRANSPARENCY**

38.1 The Supplier acknowledges that TfL and the members of the TfL Group:

38.1.1 are subject to the FOI Legislation and agrees to assist and co-operate with TfL and/ any Relevant TfL Group Member to enable TfL and/ any Relevant TfL Group Member to comply with its obligations under the FOI Legislation; and

38.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Supplier and, subject to the provisions of this **clause 38**, may ultimately at its discretion disclose such Information.

38.2 Without prejudice to the generality of **clause 38.1**, the Supplier shall and shall procure that its Sub-Contractors (if any) shall:

38.2.1 transfer to TfL each Information Request relevant to this Agreement, the Services and/or Further Services, the Equipment and/or Alternative Equipment, the New System or any member of the TfL Group that it or they

(as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Request; and

- 38.2.2 in relation to Information held by the Supplier on behalf of TfL, provide TfL with details about and/or copies of all such Information that TfL requests and such details and/or copies shall be provided within five (5) Business Days of a request from TfL (or such other period as TfL may reasonably specify) and in such forms as TfL may reasonably specify.
- 38.3 TfL 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.
- 38.4 The Supplier shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by TfL.
- 38.5 The Supplier acknowledges that TfL and members of the TfL Group are subject to the Transparency Commitment. Accordingly, notwithstanding **clause 37.1**, the Supplier hereby gives its consent for TfL to publish the Contract Information to the general public.
- 38.6 TfL 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 TfL may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 38.7 TfL may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to **clause 38.5**. TfL shall make the final decision regarding both publication and redaction of the Contract Information.
- 38.8 This **clause 38** shall survive termination of this Agreement.

39. **PRIVACY AND DATA PROTECTION**

- 39.1 To the extent that Agreement Personal Data is Processed by the Supplier (or any Sub-Contractor) pursuant to this Agreement, the parties agree that TfL is the Data Controller and that TfL hereby authorises the Supplier to Process the Agreement Personal Data on behalf of TfL, as its Data Processor, and the Supplier shall (and shall procure that any Sub-Contractor shall):
- 39.1.1 Process the Agreement Personal Data only on behalf of TfL or relevant Data Client as a Data Processor, only for the purposes of providing the Services and/or Further Services, Equipment and/or Alternative Equipment, and the New System, and at all times only in accordance with the documented instructions of TfL, which shall include the terms of this Agreement and in accordance with any other obligations imposed under the Agreement and any other documented instructions from TfL as may be specified from time to time;
- 39.1.2 comply with all of its obligations under the Data Protection Legislation;
- 39.1.3 not perform its obligations under this Agreement in such a way as to cause TfL (or any Data Client) to breach any of its obligations under the Data Protection Legislation;
- 39.1.4 immediately inform TfL prior to performing any Processing of Agreement Personal Data if in its opinion an instruction given by TfL infringes or would be likely to constitute an infringement of the Data Protection Legislation;
- 39.1.5 implement and maintain appropriate technical and organisational measures to protect the Agreement Personal Data, including ensuring that:

39.1.5.1 there is a level of security appropriate to the risk of unauthorised or unlawful processing of Agreement Personal Data and accidental loss, destruction, damage, alteration or disclosure of Agreement Personal Data, having regard to the nature of the Agreement Personal Data which is to be protected and the harm which might result;

39.1.5.2 encryption and pseudonymisation of Agreement Personal Data is employed as appropriate;

39.1.5.3 regular testing and evaluation of the effectiveness of the technical and organisational measures is undertaken;

39.1.5.4 availability and access to Agreement Personal Data can be restored in a timely manner in the event of a physical or technical issue impacting upon the technical and organisational measures in place;

39.1.5.5 only those Supplier personnel who need access to the Agreement Personal Data in order for the Supplier to comply with its obligations under this Agreement, have such access; and

39.1.5.6 all Supplier personnel required to access the Agreement Personal Data are informed of the confidential nature of the Agreement Personal Data, have committed themselves to protect the confidentiality of the Agreement Personal Data including by way of an appropriate obligation of confidentiality (whether by written contract or otherwise) in respect of the Agreement Personal Data;

39.1.6 without prejudice to **clause 39.1.5**,

39.1.6.1 hold all Agreement Personal Data physically and electronically separate from any other data held by the Supplier and ensure all Agreement Personal Data is readily identifiable; and

39.1.6.2 wherever the Supplier uses any mobile or portable device for the transmission or storage of Agreement Personal Data, ensure that such device encrypts Personal Data;

39.1.7 without undue delay and in any event within 24 hours following awareness, give notice to TFL of any actual or suspected Data Security Incident or other breach of **clause 39.1.5**, including in relation to any Sub-Contractor or other identified or unidentified third party (a "**Security Breach**") and, together with such notice (or without undue delay there following), provide;

39.1.7.1 all information in its possession or control concerning any Security Breach (including as a minimum a description of the nature of the Security Breach; the categories and approximate number of Data Subjects

concerned and the records of Agreement Personal Data affected; the name and contact details of any data protection officer or other contact point from whom further information can be obtained; a description of the likely consequences of the Security Breach; and a description of the measures taken or proposed to be taken by it to address the Security Breach; and

- 39.1.7.2 all assistance and cooperation as is necessary in order for TfL (or the relevant Data Client) to seek to mitigate the effects of the Security Breach and comply with its own obligations under the Data Protection Legislation in respect of the Security Breach (including its obligation to notify the same to the ICO and to communicate details of the same to affected Data Subjects, as relevant);
- 39.1.8 not make or authorise or cause or permit any announcement, other communication or notice about a Security Breach or publish or otherwise authorise any broadcast of any notice or information about a Security Breach (including the giving of a report or notice about a Security Breach to the ICO or any other data protection regulator or any Data Subject) (a "**Security Breach Notice**") without the prior written consent of TfL, which may be given subject to certain conditions, including as to the content, media and timing of the Security Breach Notice;
- 39.1.9 subject to **clause 39.2** and **39.3**, not transfer, disclose or otherwise permit the processing of Agreement Personal Data by any Sub-Contractor or other third party, without the prior written consent of TfL, and, if such consent is given, the Supplier shall:
 - 39.1.9.1 only transfer, disclosure or otherwise permit the processing of Agreement Personal Data where it is necessary for the provision of the Services and/or Further Services; and
 - 39.1.9.2 the Supplier will remain responsible and liable to TfL for all acts and omissions of all such third parties and Sub-Contractors, as if they were its own.
- 39.1.10 subject to **clauses 39.1.9, 39.2** and **39.3**, not cause or permit the Processing or transfer of any Agreement Personal Data in or to any country outside the EEA (an "**International Transfer**") without the prior written consent of TfL and, in the event that such consent is obtained, prior to making the International Transfer, the Supplier shall will demonstrate or implement, to TfL's satisfaction, appropriate safeguards for that International Transfer in accordance with Data Protection Legislation and will ensure that enforceable rights and effective legal remedies for Data Subjects are available. Such appropriate safeguards may include that:
 - 39.1.10.1 there is in force a European Commission decision that the country or territory to which the International Transfer is to be made ensures an adequate level of protection for Processing of Personal Data; or

- 39.1.10.2 the relevant Data Processor enters into an agreement with Tfl in the form of the relevant standard contractual clauses approved by the European Commission decision for the transfer of Personal Data to processors established in third countries from time to time, completed with such information as Tfl may reasonably require;
- 39.1.11 notify Tfl and any Relevant Tfl Group Member as soon as reasonably practicable (and in any event within 2 (two) Business Days) if it receives:
 - 39.1.11.1 from a Data Subject (or third party on their behalf) a request from a Data Subject to have access to that person's Agreement Personal Data; a request to rectify, block or erase any Agreement Personal Data; or any other communication, complaint or request relating to Tfl's obligations under the Data Protection Legislation;
 - 39.1.11.2 any communication from the ICO or any other Regulatory Authority in connection with the Agreement Personal Data; or
 - 39.1.11.3 a request from any third party for disclosure of Agreement Personal Data;
- 39.1.12 in relation to the communications referred to in **clause 39.1.11**, provide Tfl with full cooperation and assistance in relation to any communications, complaint or request made, including by:
 - 39.1.12.1 providing Tfl with full details of the communication, complaint or request;
 - 39.1.12.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with Tfl's instructions;
 - 39.1.12.3 providing Tfl with any Agreement Personal Data it holds in relation to a Data Subject (within the timescales required by Tfl) and in such format required by Tfl;
 - 39.1.12.4 providing Tfl with any information requested by Tfl; and
 - 39.1.12.5 not responding to any such request without the prior written instruction of Tfl;
- 39.1.13 make available to Tfl all information necessary to demonstrate compliance with the obligations set out in this clause 39;
- 39.1.14 allow for and contribute to audits, including without limitation inspections, conducted by Tfl or a Tfl representative (subject to reasonable and appropriate confidentiality undertakings), in relation to the Supplier's data Processing activities (and/or those of its Sub-Contractors) and comply with all reasonable requests or directions by Tfl to enable Tfl to:
 - 39.1.14.1 conduct data protection impact assessments pertaining to relevant

aspect(s) of the processing of Agreement Personal Data, where relevant and having regard to the Data Protection Legislation, including in order that TfL may prior consult with the ICO in respect of the same; and

39.1.14.2 cooperate and consult with the ICO on any and all matters relevant to the processing of the Agreement Personal Data and within timeframes specified by the ICO and/or in the Data Protection Legislation (including in respect of auditing and reporting obligations, in respect of maintaining a written record of processing activities and providing information as necessary to the ICO in respect of the same); and

39.1.15 prepare and maintain a written record to be agreed with TfL, including in electronic form, of all categories of Processing activities carried out on behalf of TfL in relation to the Agreement Personal Data, including as a minimum:

39.1.15.1 the purposes of the Processing in accordance with this Agreement;

39.1.15.2 a description of the categories of Data Subjects and of the categories of Agreement Personal Data which are processed in accordance with this Agreement;

39.1.15.3 the categories of recipients to whom the Agreement Personal Data is disclosed in accordance with this Agreement, including in which jurisdictions relevant recipients are located; and

39.1.15.4 time limits for erasure of the different categories of the Agreement Personal Data.

39.2 Prior to disclosing any of the Agreement Personal Data to any third party in accordance with this Agreement (including to any Sub-Contractor, as permitted), or causing or permitting any of the Agreement Personal Data to be processed by any such third party, the Supplier shall enter into a written agreement with the third party containing obligations that are the same as those set out in this **clause 39**, and the Supplier shall, upon request, promptly (and in any event within two (2) business days) provide a copy of the relevant agreement(s) or document(s) entered into with the third party, demonstrating compliance with this **clause 39.2** and that the Processing by the third party is otherwise in compliance with the Data Protection Legislation.

39.3 The Supplier will not use (or permit such use by any Sub-Contractor) any form of cloud technology to process the Agreement Personal Data, without the prior written consent of TfL, which if given, may be only given subject to certain further conditions to ensure such processing is compliant with the Data Protection Legislation.

39.4 The Supplier acknowledges (and shall procure that all sub-contractors to the Supplier acknowledge):

39.4.1 the loss and damage TfL and/or each member of the TfL Group is likely to suffer in the event of a breach of this Agreement or negligence in relation to Agreement Personal Data;

- 39.4.2 any breach of any obligation in relation to Agreement Personal Data and/or negligence in relation to performance or non-performance of such obligation shall be deemed a material breach of this Agreement;
- 39.4.3 if the Supplier has committed a material breach under **clause 39.4.2** on two or more separate occasions, TfL may at its option:
- 39.4.3.1 exercise its step-in rights pursuant to **clause 34**;
 - 39.4.3.2 withdraw authorisation for Processing by a specific Sub-Contractor by immediate written notice; or
 - 39.4.3.3 terminate this Agreement in whole or part with immediate written notice to the Supplier.
- 39.5 Compliance by the Supplier with this **clause 39** shall be without additional charge to TfL.
- 39.6 The Supplier shall indemnify TfL and each relevant Data Client for all Direct Losses incurred or suffered by them as a result of a breach of this **clause 39**.
- 39.7 In the event of termination of this Agreement or (if sooner) after the end of the provision of Services relating to Processing or at any time upon request, the Supplier will (and will procure that any Sub-Contractor will):
- 39.7.1 cease Processing Agreement Personal Data; and
 - 39.7.2 at the option of TfL, delete/destroy or return all the Agreement Personal Data held pursuant to this Agreement to TfL and permanently delete all electronic copies of such Agreement Personal Data from its computer systems (including without limitation servers, hardware and mobile devices) and from digital media in its possession or control (including without limitation DVDs, CDs and USBs); and
 - 39.7.3 where requested by TfL, certify in writing that this **clause 39.7** has been complied with.
- 39.8 This **clause 39** shall survive termination of this Agreement.

40. **AMENDMENT AND WAIVER**

- 40.1 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 TfL may require and which may be substantially in the form set out in **Schedule 8** (Contract Change Control Procedure) and shall not be binding upon the parties unless completed in accordance with such form of variation.
- 40.2 Any waiver of a breach of any of the terms of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the other terms of this Agreement.

41. **EMPLOYEES**

- 41.1 Nothing in this Agreement will render the Supplier's Personnel an employee, agent or partner of TfL or of any member of the TfL Group by virtue of the supply and installation of the Equipment and/or Alternative Equipment, the design, supply, installation, or implementation of the New System and/or the provision of the Services and/or Further Services by the Supplier under this Agreement and the Supplier shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Supplier's Personnel.

41.2 Notwithstanding **clause 41.1**, the Supplier shall indemnify, keep indemnified and hold harmless TfL and each Relevant TfL Group Member from and against Direct Losses which TfL or any Relevant TfL Group Member incurs or suffers whenever arising or brought by the Supplier's Personnel or any person who may allege to be the same.

41.3 The Supplier shall pay to the Supplier's Personnel not less than the amounts declared to TfL (if any) as part of the tender process for this Agreement and not less than the amounts to which the Supplier's Personnel are contractually entitled.

42. **NON-SOLICITATION**

42.1 Subject to **clause 42.2**, neither the Supplier nor TfL shall, whether directly or indirectly and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, contractor or otherwise:

42.1.1 at any time during the Term solicit, induce or entice away or endeavour to solicit, induce or entice away from the other party any person employed by or contracted to that party in a senior and/or skilled capacity where such person is engaged at any time during the term in the performance of this Agreement whether or not such person would commit any breach of his or her contract of employment or engagement by leaving the employment or engagement of the other party;

42.1.2 at any time during the Term employ, engage or appoint any person employed by the other party in any senior and/or skilled capacity where such person is engaged at any time during the term in the performance of this Agreement and where such person would commit a breach of his or her contract of employment by leaving the employment of the other party;

42.1.3 at any time during the period of twelve (12) months following the end of the Term, solicit, induce or entice away or endeavour to solicit, induce or entice away, from the other party any person employed by or contracted to the other party in a senior and/or skilled capacity where such person was engaged at any time during the final three (3) months of the term in the performance of this Agreement (including employees whose employment has transferred to TfL or a new service provider pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 after the end of the Term) whether or not such person would commit any breach of his or her contract of employment or engagement by leaving the employment or engagement of the other party; or

42.1.4 at any time during the period of twelve (12) months following the end of the Term employ, engage or appoint any person employed by the other party in a senior and/or skilled capacity where such person was engaged at any time during the final three (3) months of the term of this Agreement in the performance of this Agreement and where such person would commit a breach of his or her contract of employment by leaving the employment of the other party.

42.2 This **clause 42** shall not prevent employment resulting from general recruitment advertising which shall not constitute a breach of **clause 42**.

42.3 This **clause 42** shall survive termination of this Agreement.

43. **NOTICES**

43.1 Any notice or demand and any other specific category of communication agreed in writing between the parties in connection with this Agreement will be in writing and may be delivered by hand or prepaid recorded delivery first class post addressed to the addressee at the address stated in **Schedule 1** (Key Contract Information) (or in the absence of such address being set out, the recipient's registered office), or any other address notified to the other party in writing in accordance with this **clause 43.1** as an

address to which notices or demands may be sent. The notice or demand will be deemed to have been duly served:

43.1.1 if delivered by hand, at the commencement of the following Business Day after the day on which such delivery took place; or

43.1.2 if delivered by post, seventy-two (72) hours after being posted or, in the case of airmail, ten (10) Business Days after being posted.

43.2 The date of deemed service as set out in **clause 43.1** shall apply in relation to notices or demands sent to the first address listed for each party in **Schedule 1** regardless of when and if a copy is also sent to the address for copies (if any) specified.

44. **PUBLICITY**

44.1 No announcement, circular, advertisement or other publicity (including any communication with representatives of the general or technical press, radio, television or other communications media) in connection with this Agreement, its subject matter or any ancillary matter will be made or issued by or on behalf of the Supplier without the prior written consent of TfL. TfL shall have the right to approve any such announcement, circular, advertisement or other publicity before it is made.

44.2 The Supplier agrees and shall ensure that TfL has the right to control and to supervise all dealings with the press and any other media in relation to any incident, event, claim or action arising in connection with this Agreement but where reasonably practicable TfL shall notify Supplier of such dealing and allow the Supplier a reasonable opportunity to review any material relating to its products or services or which refer to the Supplier or its subcontractors.

45. **DISASTER RECOVERY**

45.1 The Supplier will ensure at all times it has in place a Disaster Recovery Plan which includes the provision of agreed back-ups set out in **Schedule 1** (Key Contract Information) and that, subject to **clause 29**, the Disaster Recovery Plan is robust and shall negate or minimise (in accordance with **clauses 45.3.1** and **45.3.2** the effect of any Disaster for TfL and each Relevant TfL Group Member and ensures (as far as reasonably possible) unbroken service and continued availability of the New System, Services and Further Services (if any) to TfL.

45.2 When requested by TfL, the Supplier will provide to TfL a copy of the Disaster Recovery Plan within five (5) Business Days of the request.

45.3 Unless the Disaster constitutes a Force Majeure Event, the Supplier's liability to pay the Service Credits will continue to accrue until such time as the relevant obligations are fulfilled by the Supplier in accordance with the provisions of this Agreement and the Service Levels and/or KPIs. Without prejudice to the generality of the foregoing:

45.3.1 the Disaster Recovery Plan will negate the impact of incidents involving fire, interruption in power supply, act of terrorism, threat of act of terrorism, earthquake, extraordinary storm, flood or abnormal weather conditions to the extent that such events do not constitute Force Majeure Events; and

45.3.2 the Disaster Recovery Plan will mitigate the impact of incidents involving fire, interruption in power supply, act of terrorism, threat of act of terrorism, earthquake, extraordinary storm, flood or abnormal weather conditions to the extent that such events constitute Force Majeure Events.

45.4 In the event of a Disaster, the Supplier will immediately implement the Disaster Recovery Plan and will continue to design, install and implement the New System, provide those Services and provide those Further Services (if any) which are not affected by the Disaster in accordance with the provisions of this Agreement. In respect of any part of the design, installation and implementation of the New System, the

Services and/or the Further Services which are affected by the Disaster, the Supplier will comply with the Disaster Recovery Plan, the rest of this **clause 45** and this Agreement.

46. **INDEMNITY - CONDUCT OF CLAIMS**

46.1 In respect of any claim arising under any indemnity contained in this Agreement, the party indemnified ("**indemnified party**") will:

46.1.1 as soon as possible give to the party giving the indemnity ("**indemnifying party**") written notice of the claim, circumstance or matter against which that party is claiming to be indemnified, and all details of the claim from time to time in the knowledge or possession of that party;

46.1.2 where the claim relates to a claim by any third party against that party, not without the prior written consent of the other party (which will not be unreasonably withheld or delayed) admit liability or make any offer, promise, compromise, settlement or communication with the third party in respect of the claim; and

46.1.3 where the claim is by a third party against the indemnified party,

46.1.3.1 at the request of the indemnifying party; and

46.1.3.2 provided at all times that the indemnifying party provides to the reasonable satisfaction of the indemnified party security for all costs, charges and expenses,

surrender to the indemnifying party or its insurers the conduct, in the indemnified party's name, of the defence, settlement and/or counterclaim to the third party's claim (provided that the indemnified party will be kept fully informed as to the conduct of such defence, settlement and/or counterclaim); and

46.1.4 take reasonable steps to mitigate its loss, providing that the indemnifying party will reimburse to the indemnified party any additional costs (if any) that are reasonably and properly incurred by the indemnified party in complying with its obligations under this **clause 46.1.4** and which reduce the indemnifying party's overall liability, notwithstanding such additional costs.

47. **LAW AND DISPUTE RESOLUTION**

47.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement as well as any non-contractual obligations arising out of or in connection with it shall be governed by English law. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement. The parties agree irrevocably to submit to that jurisdiction.

47.2 TFL and the Supplier shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Agreement ("**Dispute**") before resorting to litigation.

47.3 If the Dispute is not settled through discussion between the Project Managers within a period of seven (7) Business Days from the date on which the Dispute arose, the parties may escalate the Dispute in writing in accordance with **paragraph 7 of Schedule 11** (Governance, Contract Management and Reporting) for resolution.

- 47.4 If the Dispute is not resolved following escalation in accordance with paragraphs **7.3** to **7.5** of **Schedule 11**, either Party may require by notice to the other Party ("**Notice**") that a structured mediation or negotiation be entered into with the assistance of a mediator.
- 47.5 If the parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within twenty-eight (28) Business Days of the service of the Notice, either 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.
- 47.6 Where a dispute is referred to mediation under **clause 47.3**, 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.
- 47.7 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.
- 47.8 If either Party refuses at any time to participate in the mediation or negotiation procedure and in any event if the parties fail to reach agreement on the Dispute within forty (40) Business Days of the service of the notice either Party may commence proceedings in accordance with **clause 47.1**.
- 47.9 For the avoidance of doubt, the parties shall continue to comply with their obligations under the Agreement and without delay or disruption while the Dispute is being resolved pursuant to this **clause 47** and/or **Schedule 11**.
- 47.10 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief, or issuing a notice to cure a breach or a notice of termination, as a result of the provisions of this **clause 47** and this **clause 47** shall not apply in respect of any circumstances where such remedies are sought.
48. **RIGHTS OF THIRD PARTIES**
- 48.1 Subject to **clause 48.3** and save that any Relevant TfL Group Member has the right to enforce the terms of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**"), the parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Third Party Act by any person not a party to it.
- 48.2 Notwithstanding **clause 48.1**, the parties are entitled to waive time, vary or rescind this Agreement in accordance with its terms without the consent of any Relevant TfL Group Member.
- 48.3 The benefits conferred on the Replacement Supplier and/or its Sub-Contractors under **clause 12.2** shall be enforceable by the Replacement Supplier and/or its Sub-Contractors.
49. **ENTIRE AGREEMENT/RELIANCE ON REPRESENTATIONS**
- 49.1 This Agreement and the documents and Schedules and Annexes which are incorporated into and form part of this Agreement contain all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersede any prior written or oral agreements, representations or understandings between the parties in relation to such subject matter.
- 49.2 The Supplier acknowledges that this Agreement has not been entered into wholly or partly in reliance on, nor has the Supplier been given, any warranty, statement, promise or representation made by or on behalf of TfL other than as expressly set out in this Agreement. To the extent that any such warranties, statements, promises or

representations have been given the Supplier unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

49.3 Nothing in this **clause 49** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

50. **GENERAL**

50.1 Nothing contained in this Agreement, and no action taken by the parties pursuant to this Agreement, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

50.2 The failure or delay by either party to this Agreement in exercising any right, power or remedy of that party under this Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party to this Agreement 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 right, power or remedy.

50.3 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.

SCHEDULE 1

Key Contract Information