

Best Value

- 16.10 The Concessionaire acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TTL 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. The Concessionaire shall assist TTL and/or TfL to discharge its duty where possible, and in doing so, shall carry out any review of Services reasonably requested by TTL from time to time. The Concessionaire shall negotiate in good faith (acting reasonably) with TTL any changes to this Agreement in order for TTL to achieve best value.

Retention of Legal Obligations

- 16.11 Notwithstanding the Concessionaire's right to sub-contract pursuant to this Clause 16 (Supply Chain Rights and Protections), the Concessionaire shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

Exclusion of Sub-contractors

- 16.12 Where TTL considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 38(8), (9), or (10) of the Concessions Contracts Regulations 2016, then:
- (a) if TTL finds there are compulsory grounds for exclusion, the Concessionaire shall replace or shall not appoint the Sub-contractor; or
 - (b) if TTL finds there are non-compulsory grounds for exclusion, TTL may require the Concessionaire to replace or not to appoint the Sub-contractor and the Concessionaire shall comply with such a requirement.

ESN Coverage Supplier Agreement

- 16.13 Where the Concessionaire enters into an agreement with any ESN Coverage Supplier for service management services in respect of ESN, the Concessionaire shall ensure that such agreement contains provisions substantially similar to those specified in Paragraph 6.1 of Part B of Schedule 7.1 (Fees and Charges).
- 16.14 The Concessionaire shall ensure that the provisions referred to in Clause 16.13 (ESN Coverage Supplier Agreement) have the effect of ensuring that there is a proportional reduction in the element of the services charges relating to areas in which both ESN Coverage and Commercial Mobile Services coverage are provided for each Mobile Network Operator that enters into an MNO Commercial Agreement such that when there are four (4) Mobile Network Operators, the charge shall be zero.
- 16.15 Any breach of Clauses 16.13 and 16.14 (ESN Coverage Supplier Agreement) shall be resolved in accordance with the Dispute Resolution Procedure and TTL reserves the right to assign conduct of such Dispute in full or in part to the Secretary of State for the Home Department.

Third Party Contracts

- 16.16 Without prejudice to Clause 16.4 (Appointment of Sub-contractors), the Concessionaire shall update Schedule 4.4 (Third Party Contracts) to record any Third Party Contracts entered into by the Concessionaire after the Effective Date.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

17 INTELLECTUAL PROPERTY RIGHTS

17.1 Except as expressly set out in this Agreement:

- (a) TTL shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Concessionaire or its licensors, namely:
 - (i) the Concessionaire Software specified in Schedule 5 (Intellectual Property Rights and Software);
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Concessionaire Background IPRs;
- (b) the Concessionaire shall not acquire any right, title or interest in or to the Intellectual Property Rights of TTL or any other member of the TfL Group their licensors, including:
 - (i) TTL Software;
 - (ii) TTL Data; and
 - (iii) TTL Background IPRs; and
- (c) the Concessionaire shall not create any Specially Written Software (except for any know-how, trade secrets or Confidential Information contained therein) unless agreed via the Change Control Procedure. In the absence of any agreement to the contrary agreed via the Change Control Procedure, Specially Written Software (except for any know-how, trade secrets or Confidential Information contained therein) shall be the property of TTL.

17.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 17.1 (Intellectual Property Rights), it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

17.3 Any assignment of Intellectual Property Rights pursuant to this Agreement shall be with full title guarantee, free from encumbrances and shall include the right to take action for any past, present and future damages and other remedies in respect of any infringement.

17.4 Neither Party shall have any right to use any of the other Party's (and in the case of the Concessionaire, any of any other member of the TfL Group's) names, logos or trade marks on any of its products or services without the other Party's prior written consent.

17.5 The Concessionaire shall comply with the provisions of Schedule 5 (Intellectual Property Rights and Software) and shall (without prejudice to Clause 17.6 (Intellectual Property Rights)) produce, keep up-to-date and provide to TTL for Assurance, at least thirty (30) Working Days prior to the date of each Annual Strategic Meeting (and at such other times as TTL may request in writing), a table in the format set out in Schedule 5 (Intellectual Property Rights and Software) which sets out all:

- (a) Concessionaire Software;
- (b) Third Party Software;
- (c) Concessionaire Background IPR;
- (d) Third Party IPR and details of any associated licensing arrangements;
- (e) Specially Written Software; and
- (f) Project Specific IPR.

- 17.6 Each time the Concessionaire updates the table in Schedule 5 (Intellectual Property Rights and Software) as referred to in Clause 17.5 (Intellectual Property Rights), the Concessionaire shall provide a copy of the updated table to TTL for Assurance.
- 17.7 In the event of any inconsistency between a table in Schedule 5 (Intellectual Property Rights and Software) and the provisions of this Clause 17 (Intellectual Property Rights) to Clause 19 (Licences Granted by TTL), the latter shall prevail (irrespective of whether or not TTL has Assured such table).
- 17.8 To the extent permitted by applicable Law, the Concessionaire hereby waives and confirms it has obtained all necessary waivers in relation to all Moral Rights comprised in any rights assigned to TTL pursuant to this Agreement.

18 TRANSFER AND LICENCES GRANTED BY THE CONCESSIONAIRE

Project Specific IPRs

- 18.1 The Concessionaire assigns to TTL, with full title guarantee, title to and all present and future rights and interests in the Project Specific IPRs, or shall procure that the first owner of the Project Specific IPRs assigns them to TTL on the same basis.
- 18.2 The Concessionaire shall execute all documents and do all such acts as TTL may require to perfect the assignment under Clause 18.1 (Project Specific IPRs), or shall procure that the first owner of the Project Specific IPRs does the same.

Concessionaire Software, Concessionaire Background IPRs and Project Specific IPRs

- 18.3 The Concessionaire hereby grants to TTL:
- (a) without prejudice to Clauses 18.3(b) and 18.3(c) (Concessionaire Software, Concessionaire Background IPRs and Project Specific IPRs), a royalty-free, non-exclusive licence during the Term and any Termination Assistance Period to use Concessionaire Software, Concessionaire Background IPRs and Concessionaire Data solely to the extent necessary for accessing and monitoring the Services in accordance with this Agreement or as otherwise expressly permitted under this Agreement;
 - (b) a perpetual royalty-free non-exclusive licence to use without limitation any:
 - (i) know-how, trade secrets, Confidential Information; or

- (ii) Concessionaire Background IPRs not detailed in Schedule 5 (Intellectual Property Rights and Software) and provided to TTL in accordance with Clause 17.5 (Intellectual Property Rights),

contained within the Project Specific IPRs; and

- (c) a perpetual royalty-free non-exclusive licence to use only for purposes relating to the Services (or substantially equivalent services) any Concessionaire Background IPRs detailed in Schedule 5 (Intellectual Property Rights and Software) and provided to TTL in accordance with Clause 17.5 (Intellectual Property Rights) contained within the Project Specific IPR.

TTL's Right to Sub-licence

18.4 TTL may sub-licence the rights granted under Clause 18.3 (Concessionaire Software, Concessionaire Background IPRs and Project Specific IPRs) to other members of the Tfl Group, a third party (including for the avoidance of doubt or any Replacement Concessionaire) provided that:

- (a) the sub-licence is on terms no broader than those granted to TTL;
- (b) the sub-licence authorises the third party to use the rights licensed in Clause 18.3(a) and 18.3(b) (Concessionaire Software, Concessionaire Background IPRs and Project Specific IPRs) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of TTL's business or function as otherwise expressly permitted under this Agreement; and
- (c) the sub-licence authorises the third party to use the rights licensed in Clause 18.3(c) (Concessionaire Software, Concessionaire Background IPRs and Project Specific IPRs) only for purposes relating to the Services (or substantially equivalent services).

19 LICENCES GRANTED BY TTL

19.1 TTL hereby grants to the Concessionaire a royalty-free, non-exclusive, non-transferable licence during the Term to use TTL Software, TTL Background IPRs, the Project Specific IPRs and TTL Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Concessionaire on the same terms as set out in Clause 22 (Confidentiality); and
- (b) the Concessionaire shall not, without TTL's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than TTL.

19.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 19.1 (Licences Granted By TTL) and any sub-licence granted by the Concessionaire in accordance with Clause 19.1 (Licences Granted By TTL) shall terminate automatically on the date of such termination or expiry and the Concessionaire shall:

- (a) immediately cease all use of TTL Software, TTL Background IPRs and TTL Data (as the case may be);

- (b) at the discretion of TTL, return or destroy documents and other tangible materials that contain any of TTL Software, TTL Background IPRs and TTL Data, provided that if TTL has not made an election within six (6) months of the termination of the licence, the Concessionaire must destroy the documents and other tangible materials that contain any of TTL Software, TTL Background IPRs and TTL Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any TTL Software, TTL Background IPRs and TTL Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Concessionaire computer, word processor, voicemail system or any other Concessionaire device containing such TTL Software, TTL Background IPRs and/or TTL Data.

20 IPRs INDEMNITY

- 20.1 The Concessionaire shall at all times, during and after the Term, on written demand indemnify TTL and each other IPR Indemnified Person, and keep TTL and each other IPR Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an IPR Indemnified Person arising from an IPRs Claim.
- 20.2 If an IPRs Claim is made, or the Concessionaire anticipates that an IPRs Claim might be made, the Concessionaire may, at its own expense and sole option, either:
- (a) procure for TTL or other relevant IPR Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the Telecommunications Infrastructure or the TTL IT System;
 - (iii) there is no additional cost to TTL or relevant IPR Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 20.3 If the Concessionaire elects to procure a licence in accordance with Clause 20.2(a) (IPRs Indemnity) or to modify or replace an item pursuant to Clause 20.2(b) (IPRs Indemnity), but this has not avoided or resolved the IPRs Claim, then:
- (a) TTL may terminate this Agreement (if subsisting) with immediate effect by written notice to the Concessionaire; and
 - (b) without prejudice to the indemnity set out in Clause 20.1 (IPRs Indemnity), the Concessionaire shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

21 DATA AND SECURITY REQUIREMENTS

TTL Data and Security Requirements

- 21.1 The Concessionaire shall not delete or remove any proprietary notices contained within or relating to TTL Data.
- 21.2 The Concessionaire shall not store, copy, disclose, or use TTL Data except as necessary for the performance by the Concessionaire of its obligations under this Agreement or as otherwise expressly authorised in writing by TTL.
- 21.3 To the extent that TTL Data is held and/or processed by the Concessionaire, the Concessionaire shall supply that TTL Data to TTL as requested by TTL in the format specified by TTL.
- 21.4 The Concessionaire shall preserve the integrity of TTL Data and prevent the corruption or loss of TTL Data at all times that the relevant TTL Data is under its control or the control of any Sub-contractor.
- 21.5 The Concessionaire shall perform secure back-ups of all TTL Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Concessionaire shall ensure that such back-ups are available to TTL (or to such other person as TTL may direct) at all times upon request and are delivered to TTL at intervals of no less than six (6) months (or such other intervals as may be agreed in writing between the Parties).
- 21.6 The Concessionaire shall ensure that any system on which the Concessionaire holds any TTL Data, including back-up data, is a secure system that complies with the security requirements of Schedule 2.3 (Standards) and Schedule 2.4 (Security Management).
- 21.7 The Concessionaire shall comply with the security requirements of Schedule 2.3 (Standards) and Schedule 2.4 (Security Management). Without prejudice to TTL's rights and remedies under this Agreement or at law if at any time the Concessionaire suspects or has reason to believe that data or TTL Data has or may become accessed by any unauthorised third party, in any way for any reason, then the Concessionaire shall notify TTL immediately and inform TTL of the remedial action the Concessionaire proposes to take.
- 21.8 Without prejudice to the provisions of Clause 24 (Protection of Personal Data), the Concessionaire shall not store, process or manage any TTL Data in a Restricted Country without the prior written consent of TTL.
- 21.9 The Concessionaire shall:
 - (a) ensure that nothing in a Customer Contract shall prevent the Concessionaire from notifying TTL in the event of the Concessionaire's breach of any provisions in a Customer Contract relating to Data Protection Legislation; and
 - (b) promptly notify TTL if such a breach occurs.

Malicious Software

- 21.10 The Concessionaire shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software on the Telecommunications

Infrastructure and the TTL IT System (or as otherwise agreed by the Parties). Notwithstanding this Clause 21.10 (Malicious Software), if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of TTL Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

- 21.11 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 21.10 (Malicious Software) shall be borne by the Concessionaire where the Malicious Software originates from the Concessionaire Software, the Third Party Software supplied by the Concessionaire or TTL Data (whilst TTL Data was under the control of the Concessionaire) unless the Concessionaire can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by TTL when provided to the Concessionaire.

Concessionaire Data and Security Requirements

- 21.12 TTL shall not delete or remove any proprietary notices contained within or relating to Concessionaire Data.
- 21.13 TTL shall not store, copy, disclose, or use Concessionaire Data except as necessary for the performance by TTL of its obligations under this Agreement or as otherwise expressly authorised in writing by the Concessionaire.

22 CONFIDENTIALITY

- 22.1 For the purposes of this Clause 22 (Confidentiality), the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 22.2 Except to the extent set out in this Clause 22 (Confidentiality) or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 22.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 23 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against TTL arising out of or in connection with this Agreement;
 - (ii) the purpose of the examination and certification of TTL's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness of this Agreement;
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
 - (d) the Recipient is required to disclose the Confidential Information to the Secretary of State or the Government Department responsible for public transport in London (for the time being) the Office of Rail and Road, or any person or body who has statutory responsibilities in relation to transport in London including their employees, agents and sub-contractors; and
 - (e) TTL is the Recipient and such disclosure is made to a Replacement Concessionaire or potential Replacement Concessionaire in accordance with Paragraph 5.1 of Schedule 8.5 (Exit Management).
- 22.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 22.5 The Concessionaire may disclose the Confidential Information of TTL or other members of the TfL Group on a confidential basis only to:
- (a) Concessionaire Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Concessionaire's obligations under this Agreement;
 - (b) its auditors; and
 - (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.
- If the Concessionaire discloses Confidential Information of TTL or other members of the TfL Group pursuant to this Clause 22.5 (Confidentiality), it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 22.6 TTL may disclose the Confidential Information of the Concessionaire:
- (a) TfL or other members of the TfL Group;

- (b) on a confidential basis to the Secretary of State for the Home Department as such information reasonably relates to ESN;
- (c) on a confidential basis to the DCMS as such information reasonably relates to the Works Funded by Grants Services funded by DCMS grant;
- (d) on a confidential basis to any London Borough or member of the GLA Group that has or wishes to provide GLA Group And London Borough Assets as such information reasonably relates to Fibre Services or Streetscape Services;
- (e) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (f) to the extent that TTL (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (g) on a confidential basis to a professional adviser, consultant, Concessionaire or other person engaged by any of the entities described in Clauses 22.6(a) and 22.6(d) (Confidentiality) for any purpose relating to or connected with this Agreement;
- (h) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 33 (Step-In Rights), its rights to appoint a Remedial Adviser pursuant to Clause 32 (Remedial Adviser) and Exit Management rights; or
- (i) on a confidential basis to a proposed successor body to TTL in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on TTL under this Clause 22 (Confidentiality).

22.7 Nothing in this Clause 22 (Confidentiality) shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

22.8 Notwithstanding Clause 23 (Transparency and Freedom of Information), TTL shall have the same obligations as those imposed on the Concessionaire under this Clause 22 (Confidentiality) in respect of the Commercially Sensitive Information set out in Schedule 4.2 (Commercially Sensitive Information), that TTL may:

- (a) disclose the Commercially Sensitive Information where TTL considers that it is obliged to do so under the any of the legislation referred to in this Clause 22 (Confidentiality);
- (b) use the Commercially Sensitive Information to the extent necessary to obtain the benefit of the Concessionaire's performance under this Agreement (subject to Paragraph 4.2 of Schedule 8.5 (Exit Management));
- (c) disclose the Commercially Sensitive Information to any other member of the TfL Group (and in such circumstances TTL shall remain responsible at all times for compliance with the confidentiality agreements set out in this Clause 22.8

(Confidentiality) by the other members of the TfL Group to whom such disclosure has been made); and

- (d) disclose such Commercially Sensitive Information as may be required to be published in the Official Journal of the European Union.

23 TRANSPARENCY AND FREEDOM OF INFORMATION

23.1 The Concessionaire acknowledges that TTL:

- (a) is subject to the FOIA and agrees to assist and co-operate with TTL to enable TTL to comply with its obligations under the FOIA; and
- (b) may be obliged under the FOIA to disclose information without consulting or obtaining consent from the Concessionaire which may include the disclosure of Commercially Sensitive Information pursuant to Clause 22 (Confidentiality).

23.2 Without prejudice to the generality of Clause 22 (Confidentiality), the Concessionaire shall and shall procure that its Sub-contractors (if any) shall:

- (a) transfer to the TTL Representative (or such other person as may be notified by TTL to the Concessionaire) each Information Access Request relevant to this Agreement, the Services or any other member of the TfL Group, Home Office, DCMS, GLA that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Working Days of receiving such Information Access Request; and
- (b) in relation to information held by the Concessionaire on behalf of TTL, provide TTL with details about and/or copies of all such information that TTL requests and such details and/or copies shall be provided within five (5) Working Days of a request from TTL (or such other period as TTL may reasonably specify), and in such forms as TTL may reasonably specify.

23.3 TTL shall use reasonable endeavours to consult with the Concessionaire prior to disclosing any Commercially Sensitive Information in response to a disclosure request under the FOIA.

23.4 The Concessionaire acknowledges that TTL is subject to the Transparency Commitment. Accordingly, notwithstanding the Concessionaire's confidentiality obligations set out in Clause 22 (Confidentiality), the Concessionaire hereby gives its consent for TTL to publish the Agreement Information.

23.5 TTL may in its absolute discretion redact all or part of the Agreement Information prior to publication. In so doing and in its absolute discretion TTL may take account of the exemptions/exceptions that would be available in relation to information requested under the FOIA. TTL may in its absolute discretion consult with the Concessionaire regarding any redactions to the Agreement Information to be published pursuant to Clause 23.4 (Transparency and Freedom of Information). TTL shall make the final decision regarding publication and/or redaction of this Agreement.

24 PROTECTION OF PERSONAL DATA

24.1 The Concessionaire shall comply with all of its obligations under Data Protection Legislation, including with regards to the provision of sufficient privacy notices to any relevant Data Subjects required in connection with the Processing of Personal Data as anticipated in

accordance with this Agreement, and shall only carry out such Processing, acting, subject to Clause 24.11 (Protection of Personal Data) as Data Controller, for the purposes of providing the Services and otherwise in accordance with this Clause 24 (Protection of Personal Data).

24.2 The Concessionaire shall only share Personal Data with any Sub-contractor to the extent the Concessionaire is permitted to sub-contract any obligations in accordance with the provisions of this Agreement and only where there is a written contract in place between the Concessionaire and the Sub-contractor which requires the Sub-contractor to comply with the same obligations which the Concessionaire is required to comply with under this Clause 24 (Protection of Personal Data) and otherwise as set out in Clauses 38 (Compliance) and 42 (Prevention of Fraud and Bribery), 13 (Records, Reports and Audits), 21 (Data and Security Requirements) and 22 (Confidentiality). The Concessionaire shall remain fully liable to TTL for the compliance of any Sub-contractors with any of the obligations required to be imposed on the Sub-contractor pursuant to this Clause 24.2 (Protection of Personal Data).

24.3 The Concessionaire shall, and shall procure that any Sub-contractor shall:

- (a) only Process Personal Data as reasonably necessary to perform this Agreement in accordance with its terms;
- (b) not Process Personal Data for any other purposes (in whole or part) and specifically, but without limitation, reproduce or refer to it in training materials, training courses, commercial discussions and negotiations with third parties or in relation to proposals or tenders with TTL;
- (c) not Process Personal Data in such a way as to:
 - (i) place TTL in breach of Data Protection Legislation;
 - (ii) expose TTL to the risk of actual or potential liability to the Information Commissioner or Data Subjects; or
 - (iii) expose TTL to reputational damage including adverse publicity;
- (d) not allow Concessionaire Personnel to access Personal Data unless such access is necessary in connection with the provision of the Services;
- (e) take all reasonable steps to ensure the reliability and integrity of all Concessionaire Personnel who can access Personal Data;
- (f) ensure that all Concessionaire Personnel who can access Personal Data:
 - (i) are informed of its confidential nature;
 - (ii) are made subject to an explicit duty of confidence;
 - (iii) understand and comply with any relevant obligations created by either this Agreement or Data Protection Legislation; and
 - (iv) receive adequate training in relation to the use, care, protection and handling of Personal Data on an annual basis;
- (g) not disclose or transfer Personal Data to any third party without the Concessionaire having obtained the prior written consent of TTL (save where such disclosure or

transfer is specifically authorised under this Agreement or solely to the extent that the Concessionaire (or relevant Sub-contractor) is required to make such disclosure in accordance with applicable Law);

- (h) without prejudice to any cyber security and/or PCI DSS obligations in this Agreement:
 - (i) take and maintain appropriate technical and organisational security measures which are appropriate to protect against unauthorised or unlawful Processing of Personal Data (including unauthorised or unlawful disclosure of, access to and/or alteration of Personal Data) and against accidental loss, destruction of, or damage to such Personal Data; and
 - (ii) provide TTL with such information and assistance as TTL may from time to time require to satisfy itself of compliance by the Concessionaire (and/or any authorised Sub-contractor) with its obligations under this Clause 24 (Protection of Personal Data), including protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this shall include a full report recording the results of any privacy or security audit carried out at the request of the Concessionaire itself or TTL;
- (i) without prejudice to Clause 24.3(h) (Protection of Personal Data), wherever the Concessionaire uses any mobile or portable device for the transmission or storage of Personal Data, ensure that each such device encrypts Personal Data;
- (j) comply during the course of this Agreement with any written retention and/or deletion policy or schedule provided by TTL to the Concessionaire from time to time;
- (k) maintain documentation which describes the Processing operations for which it is responsible under this Agreement and make available to TTL, to the extent that TTL reasonably requires such documentation or information to comply with its own obligations under Data Protection Legislation, on its request such documentation including the following details:
 - (i) the purposes for which Personal Data is Processed;
 - (ii) the types of Personal Data and categories of Data Subject involved;
 - (iii) the source(s) of the Personal Data;
 - (iv) any recipients of the Personal Data;
 - (v) the location(s) of any overseas Processing of Personal Data;
 - (vi) retention periods for different types of Personal Data; and
 - (vii) where possible a general description of the security measures in place to protect Personal Data;
- (l) notify TTL within two (2) Working Days if it, or any Sub-contractor, receives:
 - (i) any request, complaint or communication relating to TTL's obligations under Data Protection Legislation;

- (ii) any communication from the Information Commissioner or any other regulatory authority in connection with TTL Personal Data; or
- (iii) a request from any third party for disclosure of TTL Personal Data where compliance with such request is required or purported to be required by law;
- (m) if required to do so by Data Protection Legislation, appoint a designated data protection officer; and
- (n) assist TTL by providing TTL with such information reasonably within the Concessionaire's possession relating to the processing of the Personal Data as may be required by TTL to enable TTL to respond, in accordance with its obligations under Data Protection Legislation, to any request, complaint or other communication from a Data Subject or supervisory authority that relates to the Processing of Personal Data.

24.4 The Concessionaire shall:

- (a) notify TTL without undue delay, and in any event within twenty-four (24) hours, by written notice with all relevant details reasonably available of any actual or suspected breach of this Clause 24 (Protection of Personal Data) and/or Clause 21 (Data and Security Requirements), including the unauthorised or unlawful Processing of Personal Data, or its accidental loss, destruction or damage;
- (b) having notified TTL of a breach in accordance with Clause 24.4(a) (Protection of Personal Data), keep TTL properly and regularly informed in writing and the information shall include at least:
 - (i) the nature of the breach, the categories and approximate numbers of data subjects concerned, the categories and approximate number of Personal Data records concerned; and
 - (ii) describe the likely consequences of the breach and the measures taken or proposed to be taken to address the breach, including, where appropriate, measures taken to mitigate its possible adverse effects,

until the breach has been resolved to the satisfaction of TTL;

- (c) having notified TTL of a breach in accordance with Clause 24.4(a) (Protection of Personal Data), Concessionaire will investigate the breach, take necessary steps to eliminate or contain the impact of the breach;
- (d) only make any statement or notification to any Data Subject, supervisory authority or otherwise relating to such breach with the prior written consent of TTL, other than to the extent strictly necessary to comply with the Concessionaire's obligations under Data Protection Legislation (and in any event, shall not name TTL in any such statement or notification without the prior written consent of TTL);
- (e) fully co-operate as TTL requires with any investigation or audit in relation to Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to this Agreement, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by TTL (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any

other statutory law enforcement agency, and shall do so both during this Agreement and after its termination or expiry (for so long as the Party concerned retains and/or Processes Personal Data). The Concessionaire shall not, and shall procure that any Sub-contractor shall not, Process or otherwise transfer any Personal Data in or to any Restricted Countries without prior written consent from TTL (which consent may be subject to additional conditions imposed by TTL).

- 24.5 If, after the Effective Date, the Concessionaire or any Sub-contractor wishes to Process any Personal Data in and/or transfer any Personal Data in or to any Restricted Country (or Restricted Countries), the following provisions shall apply:
- (a) the Concessionaire shall submit a written request to TTL setting out details of the following:
 - (i) Personal Data which will be transferred to and/or Processed in any Restricted Country (or Restricted Countries);
 - (ii) the Restricted Country (or Restricted Countries) which Personal Data will be transferred to and/or Processed in; and
 - (iii) ~~How~~ the Concessionaire shall ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to a Restricted Country (or Restricted Countries) so as to ensure TTL and the Concessionaire's compliance with Data Protection Legislation;
 - (b) the Concessionaire shall comply with any reasonable instructions and shall carry out such actions as TTL may notify in writing when providing its consent to such Processing or transfers.
- 24.6 The Concessionaire and any Sub-contractor (if any) acknowledge:
- (a) the importance to Data Subjects and TTL of safeguarding Personal Data and Processing it only in accordance with this Agreement;
 - (b) the loss and damage TTL or other members of the TfL Group is likely to suffer in the event of a breach of this Agreement or negligence in relation to Personal Data;
 - (c) any breach of any obligation in relation to Personal Data and/or negligence in relation to performance or non-performance of such obligation shall be deemed a material Default of this Agreement; and
 - (d) notwithstanding Clauses 36.1 to 36.3 (Termination by TTL) inclusive, if a Sub-contractor has caused the Concessionaire to commit a material Default as referred to in Clause 24.6(c) (Protection of Personal Data), TTL may withdraw authorisation for Processing by a specific Sub-contractor by immediate written notice.
- 24.7 Compliance by the Concessionaire with this Clause 24 (Protection of Personal Data) shall be without additional charge to TTL.
- 24.8 Following termination or expiry of this Agreement, howsoever arising for Personal Data Processed by the Concessionaire which is not subject to Schedule 15 (Data Processor Obligations), the Concessionaire:

- (a) may retain Personal Data only for so long and to the extent as is necessary to fulfil its obligations under this Agreement, for the establishment and defence of the Concessionaire's legal claims, or as it is otherwise permitted by Data Protection Legislation (subject always to the restrictions on its use of the Personal Data as set out in this Clause 24 (Protection of Personal Data));
 - (b) shall retain Personal Data as set out in Clause 24.8(a) (Protection of Personal Data) in accordance with Concessionaire's retention policies and schedules; and
 - (c) shall continue to hold such Personal Data consistent with the terms of this Agreement.
- 24.9 Personal Data may not be Processed following termination or expiry of this Agreement save as permitted by Clause 24.8 (Protection of Personal Data).
- 24.10 For the avoidance of doubt, and without prejudice to Clause 24.8 (Protection of Personal Data), the obligations in this Clause 24 (Protection of Personal Data) shall apply following termination or expiry of this Agreement to the extent the Party concerned retains or Processes Personal Data.
- 24.11 If the Parties agree any Change as a consequence of which the Concessionaire will, in providing the Services following such Change, act as a Data Processor on behalf of TTL to any extent, the Parties shall in agreeing such Change:
- (a) complete Part A of Schedule 15 (Data Processor Obligations) setting out the details of the TTL Personal Data which the Concessionaire shall Process as Data Processor, in accordance with the Change Control Procedure; and
 - (b) amend the terms of the Agreement to include the provisions set out in Part B of Schedule 15 (Data Processor Obligations) as obligations that the Parties shall comply with from the date of such Change.

Data Protection Indemnity

- 24.12 The Concessionaire shall immediately on demand indemnify each Indemnified Party from and against all Losses incurred by each Indemnified Party (including its respective employees, sub-contractors and agents) arising out of or in connection with any failure of the Concessionaire or any third party appointed by the Concessionaire to comply with the provisions of this Clause 24 (Protection of Personal Data), Schedule 15 (Data Processor Obligations) and/or Data Protection Legislation in respect of its processing of Personal Data.

25 PUBLICITY AND BRANDING

- 25.1 Subject to Clause 25.2 (Publicity and Branding), and whether or not any restriction contained in Clause 22 (Confidentiality) is disapplied pursuant to Clause 25.1 (Publicity and Branding), the Concessionaire shall and shall procure that Concessionaire Personnel and Sub-contractors do not make any announcements (including any communication to the public, to any clients or suppliers of either Party or to all or any of the employees of either Party or to representatives of the press, television, radio or other media) concerning the existence, provisions or subject matter of this Agreement or containing any information about TTL or other members of the TfL Group (including Confidential Information) without the prior written consent of TTL, at its absolute discretion acting reasonably.

- 25.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Concessionaire IT System and TTL IT System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 25.3 Clause 25.1 (Publicity and Branding) shall not apply if and to the extent that such announcement is required by Law or by any securities exchange or regulatory of government body having jurisdiction over either Party (including but not limited to the Financial Conduct Authority, the London Stock Exchange, the Panel of Takeovers and Mergers and the Serious Fraud Office) and whether or not the requirement has the force of law and provided that (unless prohibited by Law) that such announcement will be made only after the consultation with the other Party.
- 25.4 The obligations and restrictions contained in this Clause 25 (Publicity and Branding) will survive termination of this Agreement and continue without limit of time.

Branding

- 25.5 No Intellectual Property Rights in the trademarks or brands of TTL or other members of the TfL Group shall be used by the Concessionaire without TTL's prior written consent.

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

26 LIMITATIONS ON LIABILITY

TTL Loss

- 26.1 The Concessionaire acknowledges that, subject to the remainder of this Clause 26 (Limitation of Liability), any Losses suffered by any member of the TfL Group other than TTL that are caused by a Default of the Concessionaire shall be deemed to be Losses that have been suffered by, and which are recoverable by, TTL.

Unlimited Liability

- 26.2 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
 - (b) fraud or fraudulent misrepresentation by it or its employees;
 - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - (d) any liability to the extent it cannot be limited or excluded by Law; or
 - (e) any liability in respect of any breach of Clause 24 (Protection of Personal Data) insofar as such breach relate to fines, court awards, settlements and legal costs.
- 26.3 The Concessionaire's liability in respect of:
- (a) the indemnities in Clause 11.6 (VAT), Clause 15.6 (Employment Indemnity), Clause 15.7 (Income Tax and National Insurance Contributions), Clause 20 (IPRs

Indemnity), Clause 24.12 (Data Protection Indemnity), Schedule 2.3 (Standards) and Schedule 9.1 (Staff Transfer) shall be unlimited; and

- (b) breaches by the Concessionaire of Clause 22 (Confidentiality), Clause 23 (Transparency and Freedom of Information) and Clause 25 (Publicity and Branding) shall be unlimited.

26.4 TTL's liability in respect of the indemnity in Clause 15.6 (Employment Indemnity) shall be unlimited.

Concessionaire Financial and Other Limits

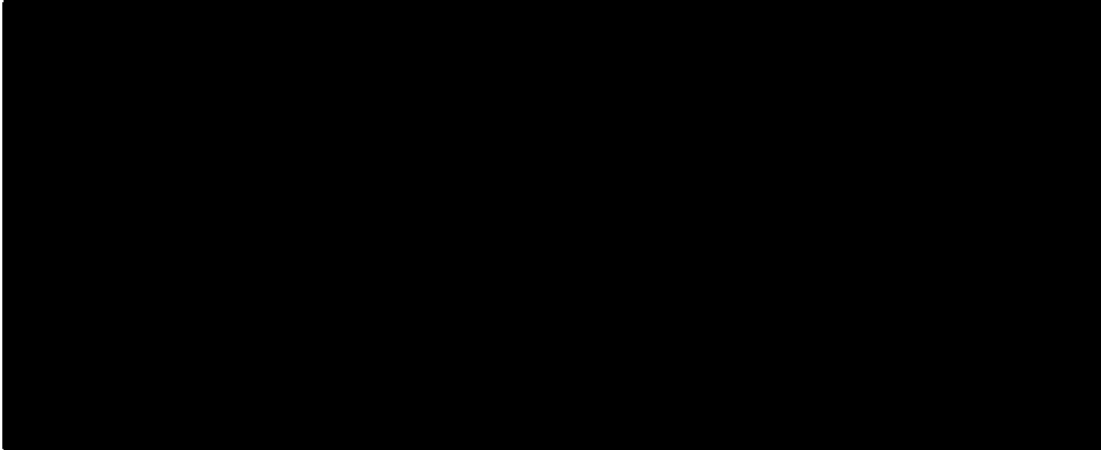
26.5 Subject to Clauses 26.2 and 26.3 (Unlimited Liability), Clause 26.7 (Wilful Default), Clause 26.8 (Aggregate Liability) and Clauses 26.10 and 26.11 (Consequential Losses):

- (a) the Concessionaire's aggregate liability in respect of a Capital Investment Commitment Failure shall in no event exceed the Capital Investment Commitment minus the actual Capital Investment (the actual Capital Investment being measured by reference to the actual Capital Investment evidenced in the most recent Monthly Financial Report (FIN1) provided to TTL prior to the Default);
- (b) the Concessionaire's aggregate liability in respect of loss or damage to TTL Assets within the London Underground, Third Party Assets within the London Underground or other property or assets of London Underground Limited (including technical infrastructure, assets or equipment but excluding any loss or damage to TTL Data) that is caused by Defaults of the Concessionaire shall in no event exceed [REDACTED] per incident (or series of incidents arising out of one (1) event);
- (c) the Concessionaire's aggregate liability in respect of loss of or damage to TTL Assets or other property or assets of TTL or any member of the TfL Group (including technical infrastructure, assets or equipment but excluding any loss or damage to TTL's Data or any other data) that is caused by Defaults of the Concessionaire occurring during the Term shall in no event exceed [REDACTED] per incident (or series of incidents arising out of one (1) event);
- (d) the Concessionaire's aggregate liability in respect of Losses within the scope of the Insurance maintained by the Concessionaire pursuant to Annex 1 (Required Insurances) Part B of Schedule 2.5 (Insurance Requirements) (Third Party Public And Product Liability Insurance) shall not exceed the level of the insurance cover required to be taken out in respect of public and product liability per incident (or series of incidents arising out of one (1) event);
- (e) the Concessionaire's aggregate liability in respect of Losses incurred within the scope of the Insurance maintained pursuant to Annex 1 (Required Insurances) Part C of Schedule 2.5 (Insurance Requirements) (Professional Indemnity Insurance) shall not exceed the level of the insurance cover required to be taken out in respect of professional indemnity per incident and in the aggregate per annum; and
- (f) the Concessionaire's aggregate liability in respect of all other Losses incurred by TTL under or in connection with this Agreement as a result of Defaults by the Concessionaire shall in no event exceed [REDACTED]

- 26.6 Where more than one (1) of the financial caps described in Clause 26.5 (Concessionaire Financial and Other Limits) could apply to a single incident, the higher of those caps shall always apply.

Wilful Default

- 26.7 Subject to Clauses 26.2 and 26.3 (Unlimited Liability), the Concessionaire's liability in respect of wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach shall in no event exceed the greater of A or B where:



Aggregate Liability

- 26.8 Subject to Clauses 26.2 and 26.3 (Unlimited Liability), Clause 26.7 (Wilful Default) and Clauses 26.10 and 26.11 (Consequential Losses), the total aggregate liability of the Concessionaire under or in connection with this Agreement shall in no event exceed the greater of A or B where:

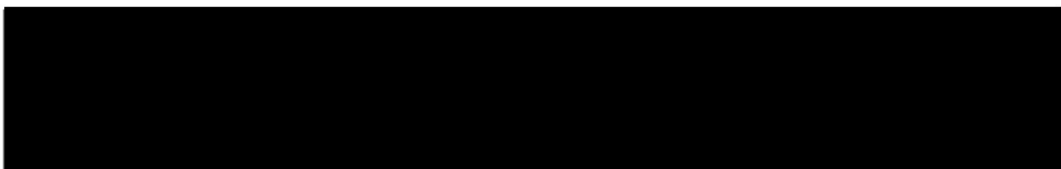
A = the sum equal to:

- (i) the Capital Investment Commitment minus the actual Capital Investment (the actual Capital Investment being measured by reference to the actual Capital Investment evidenced in the most recent Monthly Financial Report (FIN1) provided to TTL prior to the Default); or
- (ii) the Capital Investment Commitment (where no Monthly Financial Report (FIN1) has been provided to TTL);

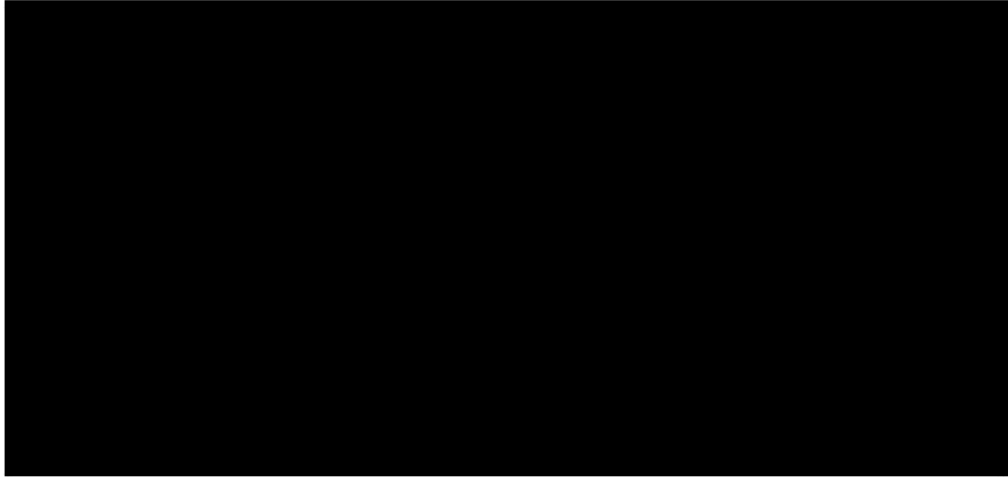


TTL Financial and Other Limits

- 26.9 Subject to Clauses 26.2 and 26.4 (Unlimited Liability) and Clause 26.10 (Consequential Losses) and without prejudice to TTL's obligation to pay the Charges as and when they fall due for payment, TTL's aggregate liability:



- (b) in respect of all other Losses incurred by the Concessionaire under or in connection with this Agreement as a result of Defaults of TTL shall in no event exceed:



Consequential Losses

26.10 Subject to Clauses 26.2, 26.3 and 26.4 (Unlimited Liability) and Clause 26.11 (Consequential Losses), neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential Loss; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

26.11 Notwithstanding Clause 26.10 (Consequential Losses) but subject to Clause 26.5 (Concessionaire Financial and Other Limits), Clause 26.7 (Wilful Default) and Clause 26.8 (Aggregate Liability), the Concessionaire acknowledges that TTL may, amongst other things, recover from the Concessionaire the following Losses incurred by TTL or other members of the TfL Group to the extent that they arise as a result of a Default by the Concessionaire:

- (a) any additional operational and/or administrative costs and expenses incurred by TTL, including costs relating to time spent by or on behalf of TTL in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Telecommunications Infrastructure and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Telecommunications Infrastructure and/or replacement Deliverables above those which would have been payable under this Agreement;
- (d) any compensation or interest paid to a third party by TTL or other members of the TfL Group;
- (e) any fine or penalty incurred by TTL or other members of the TfL Group pursuant to Law and any costs incurred by TTL or other members of the TfL Group in defending any proceedings which result in such fine or penalty;

- (f) the losses (excluding indirect, special or consequential losses of the same nature as those referred to in Clause 26.10 (Consequential Losses)) of any sub-contractors engaged by TTL or other members of the TfL Group sustained as a result of the Concessionaire's breach of this Agreement;
- (g) any losses arising directly from any infringement of third party Intellectual Property Rights or breach of any obligations under this Agreement relating to intellectual property, confidentiality, security, or pursuant to an indemnity (without prejudice to any such indemnities given);
- (h) any Fixed Concession Fee due to TTL up to and including the date of expiry of the Initial Term (or the Extension Period if this Agreement has been extended in accordance with Clause 4.2 (Term)) which has not been paid to TTL; and
- (i) any Revenue Share Fee which has not been paid to TTL in respect of any Gross Revenue either earned, receivable or accountable up to and including the date of the relevant Default.

Conduct of indemnity claims

- 26.12 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of Part B of Schedule 8.3 (Dispute Resolution Procedure & Conduct of Claims) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

- 26.13 Each Party shall (and TTL shall procure that the TfL Group shall) use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

Indexation

- 26.14 On 1 April 2022 and on the first day of April in each subsequent year, the financial limits described in Clauses 26.5(b), 26.5(c), 26.5(f) (Concessionaire Financial and Other Limits) and 26.9 (TTL Financial and Other Limits) will be multiplied by the Indexation Factor.
- 26.15 On the first day of April in each subsequent year, the then-current financial limits described in Clause 26.14 (Indexation), will be multiplied by the Indexation Factor.

27 GENERAL INDEMNITY

- 27.1 Subject to Clause 26 (Limitations on Liability), the Concessionaire shall indemnify, keep indemnified and hold harmless each Indemnified Party from and against all Losses which each Indemnified Party (including its respective employees, sub-contractors and agents) reasonably and properly incurs arising out of or in connection with any of the following events:
- (a) personal injury to or death to any person arising as a result of an act or omission of the Concessionaire under or in connection with this Agreement;
 - (b) loss of or damage to TTL Assets or TTL Effects arising as a direct result of a negligent act or omission of the Concessionaire under or in connection with this Agreement;

- (c) any claim, demand or action by any third party arising out of or in connection with the Services as a result of a Default by the Concessionaire;
- (d) any nuisance in or interference with TTL Assets (including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interferences with the rights of adjoining or neighbouring landowners, tenants or occupiers or statutory undertakers) which could not have been avoided by the Concessionaire using all reasonable and practical means;
- (e) any fraud by or on behalf of the Concessionaire (or any Concessionaire Personnel); and
- (f) any breach of statutory duty, misrepresentation or misstatement by the Concessionaire (or any of its employees, agents or Sub-contractors).

28 INSURANCE

- 28.1 The Parties shall comply with the provisions of Schedule 2.5 (Insurance Requirements) in relation to obtaining and maintaining insurance. The levels of insurance shall not be subject to indexation. The Parties shall review the suitability of the levels of insurance every five (5) years from the Effective Date with any required changes being made in accordance with the Change Control Procedure.

SECTION H – REMEDIES AND RELIEF

29 RECTIFICATION PLAN PROCESS

- 29.1 In the event that:

- (a) subject to Clause 29.2 (Notification), there is, or is reasonably likely to be, a Delay;
- (b) in any Measurement Period there has been a KPI Failure;
- (c) a Capital Investment Commitment Failure has occurred;
- (d) the Concessionaire fails to comply with its obligations under Clause 6.7(a) or Clause 6.7(b) (Concessionaire Covenants) within the specified or agreed timeframe;
- (e) a Rectification Plan is agreed in accordance with Paragraph 6.7 of Schedule 6.1 (Implementation Plans);
- (f) one (1) or more Material Test Issue occurs in accordance with Paragraph 6.6 of Schedule 6.1 (Implementation Plans);
- (g) the Concessionaire fails to satisfy the Test Success Criteria in accordance with Paragraph 12.2 of Schedule 6.2 (Testing and Assurance); or
- (h) the Concessionaire commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a **"Notifiable Default"**), the Concessionaire shall notify TTL of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Concessionaire Termination Event, TTL may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

29.2 If:

- (a) the Concessionaire notifies TTL pursuant to this Clause 29 (Rectification Plan Process) that a Notifiable Default has occurred; or
- (b) TTL notifies the Concessionaire that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Concessionaire has to rectify),

then, unless:

- (c) the Notifiable Default also constitutes a Concessionaire Termination Event and TTL serves a Termination Notice; or
- (d) TTL waives the requirement to follow the Rectification Plan Process,

the Concessionaire shall comply with the Rectification Plan Process.

29.3 Where the Concessionaire disputes that there has been a Notifiable Default, the Parties shall refer this to the Dispute Resolution Procedure, but shall continue to follow the Rectification Plan Process against the Notifiable Default as set out by TTL, notwithstanding the Dispute.

29.4 The Rectification Plan Process shall be as set out in Clauses 29.5 (Submission of the Draft Rectification Plan) to 29.10 (Agreement of the Rectification Plan).

Submission of the Draft Rectification Plan

29.5 The Concessionaire shall submit a draft Rectification Plan to TTL for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 29.2 (Notification). The Concessionaire shall submit a draft Rectification Plan even if the Concessionaire disputes that it is responsible for the Notifiable Default.

29.6 The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the Notifiable Default; and
- (c) the steps which the Concessionaire proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

- 29.7 The Concessionaire shall promptly provide to TTL any further documentation that TTL reasonably requires to assess the Concessionaire's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with the Dispute Resolution Procedure.

Agreement of the Rectification Plan

- 29.8 TTL may reject the draft Rectification Plan by notice to the Concessionaire if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Notifiable Default; and/or
 - (d) will rectify the Notifiable Default but in a manner which is unacceptable to TTL.
- 29.9 TTL shall notify the Concessionaire whether it consents to the draft Rectification Plan as soon as reasonably practicable. If TTL rejects the draft Rectification Plan, TTL shall give reasons for its decision and the Concessionaire shall take the reasons into account in the preparation of a revised Rectification Plan. The Concessionaire shall submit the revised draft of the Rectification Plan to TTL for review within five (5) Working Days (or such other period as agreed between the Parties) of TTL's notice rejecting the first draft.
- 29.10 If TTL consents to the Rectification Plan:
- (a) the Concessionaire shall immediately start work on the actions set out in the Rectification Plan; and
 - (b) TTL may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default.

30 ENGINEERING OVERRUN PAYMENTS

- 30.1 Subject to Clause 30.3 (Engineering Overrun Payments), if there is an Engineering Overrun, the Concessionaire shall pay to TTL by way of liquidated and ascertained damages the Engineering Overrun Payment.
- 30.2 The Engineering Overrun Payment shall be TTL's sole remedy for an Engineering Overrun, provided that there are no more than three (3) Engineering Overruns during the Term.
- 30.3 On the occurrence of a fourth (4th) Engineering Overrun:
- (a) no Engineering Overrun Payment will be payable by the Concessionaire to TTL;
 - (b) TTL may exercise any right or remedy it has under this Agreement; and
 - (c) the Concessionaire will be refused access to Tunnels, Track Sections, Stations, Emergency Intervention Points or other relevant TTL Assets until TTL is satisfied that the Concessionaire has rectified the cause of the Engineering Overruns.

- 30.4 For the purposes of Clauses 30.2 and 30.3 (Engineering Overrun Payments), TTL may, in its sole discretion, elect to increase the number of Engineering Overruns for which the Engineering Overrun Payment will be the sole remedy.
- 30.5 On 1 April 2022 and on the first day of April in each subsequent year, the Engineering Overrun Payment will be multiplied by the Indexation Factor.
- 30.6 Any Engineering Overrun Payments payable by the Concessionaire to TTL will not count towards any of the liability caps set out in this Agreement.
- 30.7 In order to protect the legitimate interests of TTL and other members of the TfL Group, including the maintenance of transport services across London, the preservation of the operation of the railway on the London Underground, ensuring the timely delivery of the Services and the recovery of losses incurred by TTL or other members of the TfL Group, the Parties acknowledge and agree, having been advised by independent legal experts that the rates for liquidated damages set out in Clause 30.1 (Engineering Overrun Payments) (and as amended in accordance with Clause 30.5 (Engineering Overrun Payments)):
- (a) are proportionate and reasonable to protect TTL's legitimate interests;
 - (b) represent a commercially justifiable position which reflects the effect an Engineering Overrun; and
 - (c) are not a penalty.
- 30.8 The Concessionaire waives any defence as to the enforceability of any liquidated damages payment in this Agreement on the grounds that such liquidated damages are void as penalties.
- 30.9 If Engineering Overrun occurs, TTL shall, within ninety (90) Working Days of the end of the TTL Period in which the Engineering Overrun occurred, raise an invoice for the relevant amount. The invoice shall be payable by the Concessionaire within twenty (20) Working Days of receipt.

31 LOSS OF EXCLUSIVITY

- 31.1 Subject to Clause 31.4 (Loss of Exclusivity), on the occurrence of a Loss of Exclusivity Trigger Event, TTL may serve notice on the Concessionaire (a "**Loss of Exclusivity Notice**") revoking any rights granted to the Concessionaire pursuant to Clauses 6.26 (Exclusivity) to 6.30 (Future TTL Assets) inclusive as they relate to Streetscape Services and Fibre Services (as applicable).
- 31.2 The Parties agree that from the date of service of the Loss of Exclusivity Notice pursuant to Clause 31.1 (Loss of Exclusivity):
- (a) subject to Clause 31.4 (Loss of Exclusivity), the Concessionaire shall not be entitled to enforce or rely on the provisions of Clauses 6.26 (Exclusivity) to 6.30 (Future TTL Assets) inclusive in relation to the Fibre Services or the Streetscape Services (as applicable); and
 - (b) the Concessionaire shall act in good faith and shall not do (or fail to do) any act which would disrupt any Replacement Concessionaire.

- 31.3 TTL has no obligation to exercise its rights under this Clause 31 (Loss of Exclusivity) prior to or instead of exercising its right to terminate or partially terminate this Agreement.
- 31.4 TTL's exercise of its rights under this Clause 31 (Loss of Exclusivity) shall not revoke any rights granted to the Concessionaire pursuant to this Agreement to continue to access TTL Assets as required for the Concessionaire to comply with its obligations under this Agreement (including those set out at Clause 6.28 (Current TTL Assets)), which shall continue on a non-exclusive basis following service of a Loss of Exclusivity Notice.
- 31.5 Where TTL serves a Loss of Exclusivity Notice, it shall not be entitled to exercise any right of Partial Termination in respect of that particular occurrence of a Loss of Exclusivity Trigger Event.

32 REMEDIAL ADVISER

32.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) TTL reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), TTL may give notice to the Concessionaire (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:

- (i) a meeting between the TTL Representative and the Concessionaire Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Concessionaire of a Remedial Adviser, as further described in this Clause 32 (Remedial Adviser).

32.2 For the avoidance of doubt, if the Intervention Cause is also a Concessionaire Termination Event, TTL has no obligation to exercise its rights under Clause 32.1 (Remedial Adviser) prior to or instead of exercising its right to terminate this Agreement.

32.3 If TTL gives notice that it requires the appointment of a Remedial Adviser:

- (a) the Remedial Adviser shall be:
 - (i) a person selected by the Concessionaire and approved by TTL; or
 - (ii) if none of the persons selected by the Concessionaire have been approved by TTL (or no person has been selected by the Concessionaire) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by TTL;
- (b) the terms of engagement and start date agreed with the Remedial Adviser must be Approved by TTL; and
- (c) any right of TTL to terminate this Agreement pursuant to Clause 36.1(d) (Termination by TTL) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the "**Intervention Period**").