



[SUBJECT TO CONTRACT]

Contract Reference Number: (ICT12797) London Simulator
(system dynamics)

Date: 13 February 2018

**Agreement for the Supply of Software and
Maintenance Services**

between

Greater London Authority (GLA)

and

Greenwood Strategic Advisors AG

Version: August 2011

CONTENTS**Clause****Page**

1	DEFINITIONS	1
2	COMMENCEMENT AND DURATION	14
3	SERVICE PROVIDER'S OBLIGATIONS	14
4	CHARGES AND PAYMENTS	18
5	THE GLA GROUP'S OBLIGATIONS	21
6	DOCUMENTATION	22
7	PERFORMANCE AND DELAY	23
8	WARRANTIES AND OBLIGATIONS	24
9	CONFLICTS OF INTEREST	29
10	ACCESS TO THE AUTHORITY PREMISES	30
11	COMPLIANCE WITH POLICIES AND LAW	32
12	CORRUPT GIFT AND PAYMENTS OF COMMISSION	37
13	EQUIPMENT	37
14	QUALITY AND BEST VALUE	38
15	RECORDS, AUDIT AND INSPECTION	39
16	CONTRACT MANAGEMENT AND CHANGE CONTROL	41
17	INSURANCE	42
18	THE GLA GROUP'S DATA	44
19	INTELLECTUAL PROPERTY RIGHTS	44
20	GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY	49
21	FORCE MAJEURE	52
22	TERMINATION	53
23	CONSEQUENCES OF TERMINATION/EXIT	54
23A	DECLARATION OF INEFFECTIVENESS	56
24	STEP IN RIGHTS	58
25	SEVERABILITY	60
26	ASSIGNMENT/SUB-CONTRACTING/CHANGE OF OWNERSHIP	60
27	CONFIDENTIALITY AND TRANSPARENCY	62
28	FREEDOM OF INFORMATION	64
29	DATA PROTECTION	65
30	AMENDMENT AND WAIVER	67
30	EMPLOYEES	67
32	NOTICES	70
33	PUBLICITY	70
34	DISASTER RECOVERY	71
35	INDEMNITY - CONDUCT OF CLAIMS	72
36	LAW AND DISPUTE RESOLUTION	73
37	RIGHTS OF THIRD PARTIES	74
38	ENTIRE AGREEMENT/RELIANCE ON REPRESENTATIONS	75
39	GENERAL	75

Schedules	77
1 Key Contract Information	77
ANNEX A INSURANCES	83
ANNEX B SPECIAL CONDITIONS OF CONTRACT	84
2 Services	85
ANNEX A SERVICES	87
ANNEX B ADDITIONAL IPR CLAUSES	88
3 Charges	90
4 Specification	93
ANNEX A Historical data for London Simulator calibration	98
ANNEX B Candidate scenarios for dynamic analyses	104
ANNEX C: MRA RICE Background	105
5 Project Plan	106
6 Acceptance Testing	107
7 Change Control Procedures	108
8 Security Policy	113
PHYSICAL	113
TECHNICAL	113
9 Agreed Equality Policy	114
10 Exit Management	115

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

BETWEEN

- (1) **Greater London Authority** (the **“Authority”**)
- (2) The party set out in **Schedule 0** as being the Service Provider (the **“Service Provider”**)

BACKGROUND

- (A) The Authority wishes to procure and the Service Provider wishes to supply certain software and/or services, as set out below.
- (B) 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:

“Agreed Equality Policy” equality policy agreed between the Authority and the Service Provider as set out in **Schedule 9**, if any

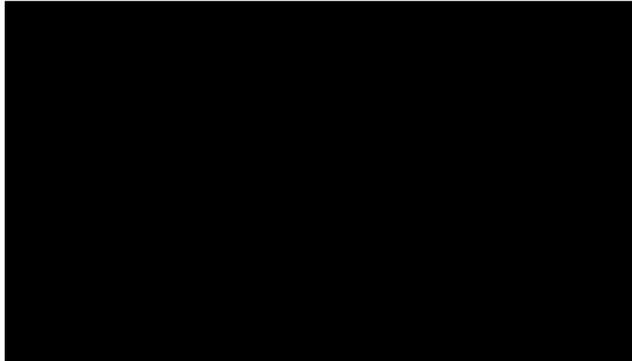
“Agreement” this Agreement, its Schedules, Annexes and Appendices (if any) and any other document expressly incorporated into this Agreement by virtue of any provision of this Agreement

“Agreement End Date” date set out in **Schedule 1** as the Agreement End Date

“Authority Premises” land or premises (including temporary buildings) owned or occupied by or on

behalf of the Authority and/or any member of the GLA Group

“Beneficiaries”



a “Business Day”

a day other than a Saturday or Sunday or a public or bank holiday in England

“Business Hours”

hours set out in **Schedule 1**

“Cessation Plan”

a plan agreed between the parties or determined by the Authority pursuant to **Clause 23A** to give effect to a Declaration of Ineffectiveness

“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 0**

“Commencement Date”

the date of this Agreement

“Confidential Information”

all information in respect of the business of the Authority and/or any of the GLA Group Members 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; products or services including information concerning the Authority's and/or the GLA Group Members' relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Authority and/or GLA Group Members and any other information which, if disclosed, will be liable to cause harm to the Authority and/or a GLA Group Member

"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 4** which shall consist of the Service Provider's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount

"Copy"

individual copy on electromagnetic recording material of one or more of the programs constituting the Software

"Declaration of Ineffectiveness"

a declaration of ineffectiveness in relation to this Agreement made by a Court of competent jurisdiction pursuant to Regulation 47J of the Public Contracts Regulations 2006 or Regulation 45J the Utilities Contracts Regulations 2006

“Disaster”	unplanned interruption (whether of information processing facilities or systems or otherwise), including 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 Service Provider to perform the 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”	Service Provider’s plan for its emergency response, back-up procedures and business continuity in the event of a Disaster
“Dispute”	dispute or difference that may arise out of or in relation to this Agreement
“Dispute Resolution Procedure”	procedure for resolving/attempting to resolve disputes, as set out in clause 36
“Documentation”	technical and user documentation (including report and presentation materials, quantitative specifications of simulation scenarios, and post-simulation analysis files) prepared in accordance with this Agreement
“DPA”	Data Protection Act 1998 and related secondary legislation
“e-GIF”	UK Government’s “e-government interoperability framework” standard, as may be

updated or replaced from time to time, details of which are available on the Cabinet Office website, www.govtalk.gov.uk

“Euro Compliant”

functioning and able to function accurately in any currency of the United Kingdom and the European Union, including any currency in use or currencies in concurrent use following partial or complete European Economic and Monetary Union

“European Commission”

the European Commission, DG Regional and Urban Policy, 1049 Bruxelles, Belgium and its institutions, agencies and bodies

“FOI Legislation”

Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004, and any guidance 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 if those events should have been negated by implementation by the Service Provider of its' Disaster Recovery Plan 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 Force Majeure Event or its impact

"Funder"	the European Commission
"GLA"	the Greater London Authority
"Holding Company"	company which from time to time directly or indirectly controls the Service Provider where "control" is as defined by section 840 of the Income and Corporation Taxes Act 1988
"Information"	information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority
"Information Request"	request for any Information under the FOI Legislation

“Insolvency Event”

any of the following:

- (a) the Service Provider and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager or administrator being appointed over all or part of the business of the Service Provider and/or the Holding Company;
- (c) being a company, the Service Provider 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) the Service Provider and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Service Provider becoming bankrupt or dying;
or

(f) any similar event to those in (a) to (e) above occurring in relation to the Service Provider and/or the Holding Company under the law of any applicable jurisdiction

**"Insurance" or
"Insurances"**

insurances, as set out in **Annex A of Schedule 0**

**"Intellectual Property
Rights" or "IPR"**

any and all patents, trade marks, 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

"Key Milestone Dates"

key dates for delivery of the Software, the Services, or parts thereof, as may be specified in the Project Plan

"Key Personnel"

Service Provider's key personnel set out in **Schedule 0**, as may be updated by agreement in writing from time to time

**"Liquidated Damages
Period"**

period in which Liquidated Damages shall be paid, as set out in **Schedule 0**, if any

"Liquidated Damages"

financial damages as set out in **Schedule 0**, if any

"Losses"

all costs (including legal costs and costs of enforcement), expenses, liabilities

(including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments

the "parties"	the parties to this Agreement
"Personal Data"	has the meaning given to it by section 1(1) of the Data Protection Act 1998
"Processing"	has the meaning given to it by section 1(1) of the Data Protection Act 1998 and "Process" and "Processed" will be construed accordingly
"Project Plan"	plan in relation to any part of the provision of the Software and/or Services as set out in Schedule 3 or as agreed between the parties in writing from time to time
"Schedules"	schedules attached to and forming part of this Agreement
"Security Policy"	the GLA Group's security polic(y)(ies), the current version(s) of which is/are as set out in Schedule 11 , as such security polic(y)(ies) may be updated by the Authority in writing from time to time
"Service Provider's Equipment"	equipment and materials of whatsoever nature used by the Service Provider in providing the Services which do not themselves form part of the Services or the

	Software and in which title is not intended to pass to the Authority under this Agreement, as set out in Schedule 0 , if any
“Service Provider’s IPR”	parts of the Software or Services which exist prior to the commencement of this Agreement which are owned by the Service Provider and the Intellectual Property Rights in which are to be retained by the Service Provider, as specified in Schedule 0 , if any
“Service Provider’s Personnel”	employees, officers, suppliers, sub-contractors and agents of the Service Provider engaged in the performance of any of the Services and including the Key Personnel
“Services”	services required from the Service Provider in building and supplying the Software; the Maintenance Services, if any; and the Additional Services, if any, in each case as are specified in Schedule 0 (including its Annexes), together with 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; and any other services from time to time agreed between the parties in writing to be supplied by the Service Provider to the Authority under this

	Agreement
“Site(s)”	Authority Premises, as specified in Schedule 0
“Software”	Service Provider Software, the Authority Software, and the Third Party Software
“Specification”	either the GLA Group's Statement of Requirements or the GLA Group's written specification for the Software, as set out in Schedule 2 , which may be updated by agreement in writing from time to time by both parties and where a full Specification has not yet been agreed between the parties, any “Specification” shall mean the GLA Group's Statement of Requirements until such time that the full agreed Specification has been signed off between the parties in writing after which point “Specification” shall be deemed to refer to such fully agreed specification
“Statement of Requirements”	high level Statement of Requirements of the Authority for the Software, as set out in Schedule 2 , if applicable, as may be updated or superseded by a full specification in writing from time to time
“Successor Authority”	person created by statute or subordinate legislation to assume all (or part of) the GLA Group's functions
“GLA”	Transport for London, a statutory corporation whose principal place of business is at Windsor House, 50 Victoria

Street, London SW1H 0TL

“GLA Group”	the Authority and the other companies or organisations related to Authority, as set out in Schedule 0
“GLA Group Member”	any member of the GLA Group
“GLA Group’s Liability Cap”	amounts set out in Schedule 0
“Third Party”	person, partnership, company or any other undertaking not being the Service Provider or a GLA Group Member
“Third Party IPR”	parts of the Software or Services which are owned by a third party, the Intellectual Property Rights in which the Authority has expressly agreed are to be retained by a third party as specified in Schedule 0 , as may be updated, replaced or amended from time to time
“Transparency Commitment”	the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the Authority is committed to publishing its contracts, tender documents and data from invoices received
“Virus”	program code or 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

"Warranty Period" warranty period(s) set out in **Schedule 0**

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument, unless the context otherwise requires, shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted (whether in whole or in part) by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to 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 paragraph in any Schedule or Annex or Appendix (if any) shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule or Annex or Appendix;
- 1.7 in the event, and only to the extent, of any conflict between the clauses, the Schedules, the Annexes, and the Appendices (if any), the clauses prevail, except where:
- 1.7.1 the conflicting part of the Schedule, Annex or Appendix is explicitly expressed to take precedence;

- 1.7.2 the conflict is with a provision in **Annex B of Schedule 1** (Special Conditions of Contract), in which case the provisions in **Annex B of Schedule 1** shall prevail; or
- 1.7.3 the conflict is with a provision in the existing License Agreement between the Authority and Greenwood that is incorporated herein by reference, in which case the provisions of the **Licence Agreement** shall prevail;
- 1.8 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;
- 1.9 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.10 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Commencement Date and shall, unless and until terminated in accordance with its terms, continue in force until the earlier of:
 - 2.1.1 the completion of the Services; or
 - 2.1.2 the Agreement End Date,
(being the “Term”).

3. SERVICE PROVIDER’S OBLIGATIONS

- 3.1 The Service Provider shall supply the Software and/or perform the Services in accordance with the terms and conditions of this Agreement.
- 3.2 The Service Provider shall perform its obligations in relation to the Acceptance Tests in accordance with **Schedule 6**.

3.3 The Service Provider:

- 3.3.1 acknowledges that it has sufficient information about the GLA Group and its requirements for the Software and/or the Services and that it has made all appropriate and necessary enquiries to enable it to supply the Software and perform the Services 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 Service Provider of any fact relating to the GLA Group's requirements for the Software and/or the Services or otherwise;
- 3.3.3 shall comply with all lawful and reasonable directions of the Authority relating to its supply of the Software and performance of the Services;
- 3.3.4 shall, when required, give to the Authority such written or oral advice or information regarding the Software and/or the Services as the Authority may reasonably require;
- 3.3.5 where a format for electronic receipt of orders by the Service Provider is set out in **Schedule 1**, shall, unless the Authority 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 the Authority's personnel (including its employees, officers, suppliers, sub-contractors and agents) as specified in **Schedule 2**.

3.4 Notwithstanding anything to the contrary in this Agreement, the GLA 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 Service Provider shall provide the Service Provider's Personnel as necessary for the proper and timely performance and management of the

Services in accordance with the Agreement and shall give the Authority, if so requested, full particulars of all such persons who are or may be at any time employed on performing the Agreement. The Service Provider shall ensure that all Service Provider's Personnel deployed on work relating to the Agreement shall be properly managed and supervised.

3.6 Subject to the provisions of this **clause 3**, the Service Provider shall maintain the continued involvement of the Key Personnel in the performance of the Services and shall take all reasonable steps to avoid changes to any of its staff designated as Key Personnel. The Service Provider shall give the Authority reasonable notice of any proposals to change Key Personnel and **clause 3.7** shall apply to the proposed replacement personnel.

3.7 The Service Provider will only use personnel to perform the Services who:

3.7.1 are suitably qualified and experienced to perform their role in performing the Services;

3.7.2 hold up to date and comply with professional certifications and qualifications relevant to the Services they are providing; and

3.7.3 in these and any other respects are acceptable to the Authority.

The Supplier shall demonstrate compliance with this **clause 3.7** as required by the Authority from time to time.

3.8 Without prejudice to any of the Authority's other rights, powers or remedies (including under **clause 3.7**), the Authority may (without liability to the Service Provider) deny access to such Service Provider's Personnel to any Authority Premises if such Service Provider's Personnel in the Authority's view have not been properly trained in any way required by this Agreement and/or are otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall notify the Service Provider of such denial in writing and in which case the Service Provider shall immediately remove such Service Provider's Personnel from performing the Services and provide a suitable replacement (with the Authority's prior written consent in the case of Key Personnel).

- 3.9 If the Authority requests, for bona fide reasons, that any member of the Service Provider's Personnel should cease to be involved in the supply of the Software or the performance of the Services under this Agreement, it shall notify the Service Provider in writing and state the reasons for the request. If the Service Provider agrees to the request (such agreement not to be unreasonably withheld) the said member shall be removed immediately and the Service Provider 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 Service Provider's Personnel will not relieve the Service Provider from performance of its obligations under this Agreement nor provide grounds for an extension of time for the supply of the Software or the performance of the Services.
- 3.10 The Service Provider shall not (except where the individuals are clearly not required for the performance of that part of the relevant Services) 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 Services without the prior consent of the Authority. This shall not prevent the Service Provider from allowing members of the Service Provider's Personnel to take sickness, maternity, paternity, compassionate, religious or holiday leave or to attend a reasonable number of training courses.
- 3.11 In the event that a member of the Key Personnel resigns or shall for any reason cease to be engaged in the provision of the Services, the Service Provider shall ensure that a suitably and similarly qualified replacement who is acceptable to the Authority 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 Service Provider); and that the performance of the Services are not affected. The Authority shall not unreasonably withhold agreement to the appointment of such replacement.

- 3.12 The Service Provider acknowledges and agrees that it shall be wholly responsible for the acts and omissions of the Service Provider's Personnel regardless of whether or not they are employees of the Service Provider. The Authority 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 Service Provider).

4. CHARGES AND PAYMENTS

- 4.1 Subject to the Service Provider complying with and performing properly its obligations under this Agreement, the Service Provider shall be entitled to invoice the Authority in accordance with this **clause 4**.
- 4.2 In consideration of the proper performance of the Services and the supply of the Software in accordance with this Agreement, the Service Provider may invoice the Authority the Charges in respect of the Software and the Services at the amounts and on the basis set out in **Schedule 1 and Schedule 0**. Where no invoicing dates are set out in **Schedule 1 or Schedule 0**, then the Service Provider shall be entitled, within thirty (30) days following the end of each calendar month, or upon a milestone payment date set out in any Project Plan (as applicable), to submit an invoice in respect of the Charges arising during such month or upon achievement of such milestone (as applicable). For the avoidance of doubt, the Service Provider may not invoice the Authority for payments in relation to Key Milestone Dates or any other agreed payment milestones until such time that the Service Provider has delivered the applicable Services and/or parts of the Software and has fully performed its obligations in relation to such Key Milestone Dates or other agreed payment milestones.
- 4.3 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.

- 4.4 The Service Provider shall submit invoices to the postal address stated in **Schedule 0** (or as otherwise specified by the Authority from time to time) or, where an electronic format for submission of invoices is set out in **Schedule 1**, such electronic format shall, unless the Authority requires otherwise, be used. Each such invoice shall contain all information required by the Authority including the Contract Reference Number, SAP order number, the Service Provider's name and address, a separate calculation of VAT and an adequate description of the Services provided.
- 4.5 If the Authority considers (acting reasonably) that any sums, fees or other charges claimed by the Service Provider in any invoice have 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 the Authority may choose from time to time within thirty (30) days of receipt of such invoice, or within such other time period as may be agreed under **Schedule 1**.
- 4.6 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority (whether related to payment or otherwise) shall:
- 4.6.1 indicate or be taken to indicate the GLA Group's acceptance or approval of the Services or Software or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under or by virtue of this Agreement; or
 - 4.6.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to **clause 4.8**, the Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt.

- 4.7 In the event that the United Kingdom joins the European Economic and Monetary Union, the Authority shall require the Service Provider, at no additional charge, to convert any sums payable in connection with this Agreement from sterling to Euros in accordance with EC Regulation Number 1103/97.
- 4.8 All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by the Authority arising out of or attributable to this Agreement or any other contract between the Authority or any GLA Group Member and the Service Provider (howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) may be deducted by the Authority from monies due or which may become due to the Service Provider under this Agreement or the Authority may recover such amount as a debt. The GLA Group's rights under this clause 4.8 will be without prejudice to any other rights or remedies available to the Authority under this Agreement or otherwise.
- 4.9 If the Authority receives an invoice which the Authority reasonably believes specifies a Charge which is not valid or properly due or in respect of which any Service has not been duly and properly provided or where the Authority reasonably believes the invoice has not been calculated correctly or if the invoice contains any other error or inadequacy ("**Disputed Charge**"):
- 4.9.1 the Authority shall pay to the Service Provider the part of the Charges under that invoice which is not a Disputed Charge;
- 4.9.2 the Authority may withhold payment of the Disputed Charge in that invoice and, in that case, the Authority shall promptly (and in any event within thirty (30) days after receipt of the invoice) notify the Service Provider of the nature of the dispute and the parties shall commence, within five (5) days after the receipt of the GLA Group's notice, to resolve the dispute in accordance with the dispute resolution procedure set out in **clause 36**; and

- 4.9.3 once the dispute has been resolved, the Authority shall pay any amount due as part of that resolution within ten (10) days of such resolution.
- 4.10 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 Service Provider in discharging its obligations under this Agreement.
- 4.11 Interest shall accrue at the interest 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.

5. THE GLA GROUP'S OBLIGATIONS

- 5.1 The Authority shall:
- 5.1.1 purchase the Software and/or the Services in accordance with the terms of this Agreement;
 - 5.1.2 subject to **clauses 4.8 and 4.9**, pay all sums, fees and other charges due under this Agreement upon the dates provided for under this Agreement;
 - 5.1.3 allow the Service Provider access to Sites in accordance with **clause 10**;
 - 5.1.4 provide the Service Provider, on request and within a reasonable period thereafter, with information and assistance that the Service Provider may reasonably require.

6. DOCUMENTATION

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

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

6.1.2 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 the GLA 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

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

6.1.4 , it shall be submitted to the Authority for approval and be subject to approval by the Authority in accordance with clause 6.2

6.2 The Documentation to be submitted to the Authority for approval in accordance with clause 6.1 shall be subject to one (1) draft correction cycle as specified in this clause 6.2. Unless agreed otherwise, the Authority shall, within five (5) days of the Service Provider submitting the Documentation either notify the Service Provider in writing of its approval of the Documentation (as applicable) or provide the Service Provider with its reasons in writing why such item(s) (or any part of it) is not approved whereupon the Service Provider shall make the required amendments and re-submit the revised Documentation to the Authority and the foregoing provisions shall apply. If the revised Documentation is not approved by the Authority and/or if the Service Provider does not accept the GLA Group'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 the Authority submitting its reasons for such non-approval or (if later) the Service Provider's notification of non-acceptance of the GLA Group's reasons for non-approval (whichever is applicable). If, following the expiration of such period, the Documentation has not been approved by the Authority, the matter shall be referred for resolution in accordance with **clause 36**.

- 6.3 The Authority and Funder shall have the right to reuse all documents [(save for that in which Service Provider IPR exists)] in conformity with European Commission Decision 2011/833/EU of 12 December 2011 on the reuse of European Commission documents where that Decision is applicable and if the documents fall within its scope and are not excluded by any of its provisions. For the sake of this provision, the terms 'reuse' and 'document' have the meanings given to them by Decision 2011/833/EU.

7. **PERFORMANCE AND DELAY**

- 7.1 In respect of each of the Services to be performed under this Agreement, the Service Provider shall provide or complete the performance of such Service(s) on or before the applicable date specified in the applicable Project Plan or, in the event no such date is specified, promptly having regard to the nature of the project ("**Milestone**"). Time for the supply of the Software and provision of the Services shall be of the essence of this Agreement.
- 7.2 The Service Provider shall notify the Authority 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 Service Provider (and, to the extent that the Service Provider considers that the Authority is responsible for such delay, actions it requests be taken by the Authority) to remedy such delay and any effects such delay may have on the performance of the Services or supply of the Software 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.

7.3 If the Service Provider shall fail (to the extent that such failure was not directly due to any failure by the Authority to comply with its obligations under this Agreement) to provide the Service(s) or supply the Software in accordance with this Agreement by the Milestone then notwithstanding anything else contained in this Agreement the Service Provider shall not be entitled to any payment for any additional time spent and materials used by the Service Provider in providing the Service(s).

7.4 The Service Provider shall deliver the applicable parts of the Software and/or Services on or before the Key Milestone Dates. Save where such failure is caused by any omission by the Authority, the Authority shall be entitled to Liquidated Damages, if applicable, in relation to any failure by the Service Provider to meet such Key Milestone Dates. The parties agree that such Liquidated Damages are a genuine and reasonable pre-estimate of the loss which the Authority would suffer during the Liquidated Damages Period arising from a failure by the Service Provider to provide the Software and/or Services (or parts thereof) as contemplated in this clause 7.4. The Liquidated Damages shall be the GLA Group's only financial remedy for failure to meet the Key Milestone Dates during the Liquidated Damages Period unless the Service Provider has failed to provide the undelivered parts of the Software and/or Services it has previously failed to provide by the end of the Liquidated Damages Period in which case the Authority shall be entitled to bring a claim for further damages in respect of financial losses suffered during and after such Liquidated Damages Period. The provisions of this clause 7.4 shall be without prejudice to the GLA Group's other rights and remedies under this Agreement, including the GLA Group's rights to seek injunctive relief in any court of competent jurisdiction and/or to claim damages.

8. WARRANTIES AND OBLIGATIONS

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

8.1.1 the Service Provider:

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

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

8.1.1.3 is entering into this Agreement 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;

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

8.1.3 all materials, equipment and goods recommended, used or supplied by the Service Provider in connection with this Agreement shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979, sound in design, fit for purpose, shall comply with all statutory requirements and regulations relating to their sale and use and shall be in conformance in all respects with the requirements of the GLA Group including the Specification;

8.1.4 the Service Provider shall provide the Services:

- 8.1.4.1 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 with sufficient resources including project management resources;
 - 8.1.4.2 in conformance in all respects with the requirements of the Authority and so that they fulfil the purpose indicated by or to be reasonably inferred from such requirements;
 - 8.1.4.3 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;
 - 8.1.4.4 so that they are properly managed and monitored and shall immediately inform the Authority if any aspect of the Agreement is not being or is unable to be performed;
- 8.1.5 the Service Provider shall fully co-operate with the GLA Group's agents, representatives or contractors (including other suppliers of computing products and services) and supply them with such information, materials and assistance as the Authority may reasonably request or authorise from time to time;
- 8.1.6 all of the Service Provider'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 ("**Applicable Laws**") and that the GLA Group's possession and/or use of the Software and/or its receipt of the benefit of the Services will not place the Service Provider or any of those persons so named in this clause in breach of any Applicable Law(s), provided that the Service Provider shall have no liability

under this clause 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 the Authority. The Change Control Provisions shall apply in the event that a change in law requires changes to the Software to be implemented by the Service Provider where the changes are peculiar to the business of the Authority or the GLA Group;

8.1.7 the Service Provider shall:

8.1.7.1 not introduce into any of the GLA Group's 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 Software or any other computer systems or programs in the possession of the GLA Group or impair the receipt of the benefit of the Service(s); or

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

and this clause 8.1.7.1 shall apply notwithstanding that any such things are purported to be used for the purposes of protecting the Service Provider's IPR, Third Party IPR, the Service Provider's contractual rights or other rights; or

8.1.7.2 not damage the reputation of the GLA Group;

8.1.8 the media on which any Software is supplied will be free from material defects in materials and workmanship under normal use;

8.1.9 it shall not and shall ensure that its Personnel and subcontractor's do not, without the GLA Group's prior written consent (such consent to be signed off by an authorised signatory of the Authority), include in

the Software any third party software code which materially conforms to 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;

8.1.10 the Service Provider shall ensure that the Software and any software, electronic or magnetic media, hardware or computer system recommended by the Service Provider for use in connection with this Agreement shall:

8.1.10.1 where specified by the Authority in **Schedule 0**, be Euro Compliant;

8.1.10.2 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;

8.1.10.3 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 GLA Group Member and/or any third party, on which it is used or with which it interfaces or comes into contact; and

8.1.10.4 be compliant with e-GIF,

and any variations, enhancements or actions undertaken by the Service Provider in respect of such software, electronic or magnetic media, hardware or computer system shall not affect the Service Provider's compliance with this **clause 8.1.10**.

Subject to **clause 8.1.6**, in all cases the costs of compliance with this **clause 8.1** shall be borne by the Service Provider.

- 8.2 The Service Provider shall ensure that the benefit of any and all warranties which it receives in respect of any Third Party Software are passed on to the GLA Group such that the GLA Group can enforce those warranties directly against such Third Party Software licensors.
- 8.3 Without prejudice to any other rights, powers or remedies the Authority may have, in the event of any breach(es) of the warranties set out at **clauses 8.1.3, 8.1.4, Fehler! Verweisquelle konnte nicht gefunden werden., Fehler! Verweisquelle konnte nicht gefunden werden., 9.1.6, 8.1.7, 8.1.8, 8.1.9 and 8.1.10** the Service Provider 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 re-occurrence of such breach(es) in the future. To the extent that any such breach(es) re-occurs then, subject to the cause of the said re-occurrence being the same or similar to that which caused the initial breach(es), the Service Provider shall forthwith supply such further Services as are necessary to remedy such breach(es) and to prevent any further re-occurrence thereof. Any Services required to be performed pursuant to this **clause 8.3** shall be performed at no additional cost to the Authority.
- 8.4 Each warranty and obligation in this **clause 8** shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement.

9. **CONFLICTS OF INTEREST**

- 9.1 The Service Provider 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 GLA 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 shall not prevent the Service Provider from providing services to an existing client of the Service Provider to whom the Service Provider is, as at the date of this Agreement, providing services provided that the Service Provider shall:

- 9.1.1 not act for any such client in respect of any transactions between any member of the GLA Group and such client; and
 - 9.1.2 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 Service Provider carries out in relation to any member of the GLA Group;
 - 9.1.3 ensure that any personnel acting for any such client do not have access to information held by the Service Provider relating to any member of the GLA Group; and
 - 9.1.4 inform the Authority 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 9.1.1 to 9.1.3 inclusive.**
- 9.2 The Service Provider shall undertake ongoing and regular conflict of interest checks throughout the duration of the Agreement and shall notify the Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services and shall work with the Authority or any member of the GLA Group to do whatever is necessary to manage such conflict to the GLA Group's satisfaction.
- 9.3 If the Service Provider is in breach of **clause 9.1** or if the Authority is not satisfied on the issue of any conflict of interest in accordance with **clause 9.2**, the Authority may terminate this Agreement and any other contracts between the Service Provider and any member of the GLA Group immediately.

10. **ACCESS TO THE AUTHORITY PREMISES**

- 10.1 Any access to any Authority Premises made available to the Service Provider in connection with the proper performance of this Agreement shall be free of charge and shall be used by the Service Provider solely for the purpose of performing the Services during the term of this Agreement in accordance with this Agreement provided, for the avoidance of doubt, that the Service Provider shall be responsible for its own costs of travel including any

congestion charging and/or low emission zone charging. The Service Provider shall:

- 10.1.1 have the use of such Authority 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 Authority Premises;
 - 10.1.2 vacate such Authority Premises upon the termination of this Agreement or at such earlier date as the Authority may determine. If the Service Provider is asked to vacate the Authority Premises before the termination of this Agreement, the Service Provider shall not be liable for any delay in the supply of the Software or the performance of the Services to the extent so caused by the request to vacate (provided such request is not due to the Service Provider's breach or default);
 - 10.1.3 not exercise or purport to exercise any rights in respect of any the Authority Premises in excess of those granted under this **clause 10**;
 - 10.1.4 ensure that the Service Provider's Personnel carry any identity passes issued to them by the Authority at all relevant times; and
 - 10.1.5 not damage the Authority Premises or any assets of the GLA Group.
- 10.2 Nothing in this **clause 10** shall create or be deemed to create the relationship of landlord and tenant in respect of any of the Authority Premises between the Service Provider and any GLA Group Member.
- 10.3 Unless agreed otherwise in writing between the parties (referencing this Agreement), the Authority shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Service Provider.
- 10.4 The Service Provider shall, while on the Authority Premises, comply with all of the GLA Group's security procedures and requirements notified to it from time to time, including the Security Policy, and shall ensure that all of the

Service Provider's Personnel comply with all such procedures and requirements.

10.5 The Authority reserves the right, acting reasonably:

10.5.1 to refuse to admit to any of the Authority Premises any of the Service Provider's Personnel who fail to comply with any of the GLA Group's procedures, requirements, policies and standards referred to in **clause 11**;

10.5.2 to instruct any of the Service Provider's Personnel to leave any of the Authority Premises at any time and such Service Provider's Personnel shall comply with such instructions immediately.

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

11. COMPLIANCE WITH POLICIES AND LAW

11.1 The Service Provider undertakes to procure that all of the Service Provider's Personnel comply with all of the GLA Group's policies and standards that are relevant to the performance of the Services (including where the GLA is the Authority the GLA's Dignity at Work policy as updated from time to time and with the GLA's Code of Ethics as updated from time to time, and where GLA is the Authority, GLA's workplace harassment policy as updated from time to time (copies of which are available on request from GLA) and with GLA's Code of Conduct (which is available on GLA's website, www.GLA.gov.uk)), including those relating to safety, security, business ethics, drugs and alcohol, the Security Policy, and any other on-site regulations specified by the Authority for personnel working at the Authority Premises or being granted access to the Sites in accordance with **clause 10**. The Authority shall provide the Service Provider with copies of such policies and standards on request. In the event that the Services are being provided to both the GLA and GLA, then the policies and standards of each of the GLA and GLA shall apply as appropriate.

- 11.2 The GLA Group's workplace harassment policy as set out in **clause 11.1 ("Policy")** requires the GLA Group's own staff and those of its contractors to comply fully with the Policy to eradicate harassment in the workplace. The Service Provider shall:
- 11.2.1 ensure that its staff, and those of its sub-contractors, working on the Authority Premises are fully conversant with the requirements of the Policy;
 - 11.2.2 fully investigate allegations of workplace harassment in accordance with the Policy; and
 - 11.2.3 ensure that appropriate, effective action is taken where harassment is found to have occurred.
- 11.3 The Authority is committed to the improvement of business performance and the minimisation of risks and disruption to the GLA Group's and the Service Provider's respective employees, agents and subcontractors and customers of the GLA Group and those interfacing with the GLA Group transport networks through the effective management of health, safety and environmental issues and the Service Provider shall demonstrate its support for such commitment by:
- 11.3.1 implementing an effective health, safety and environmental management system; and
 - 11.3.2 maximising opportunities for environmentally responsible procurement and maximising environmental opportunities and minimising environmental risks,
- and shall communicate its methodology for doing so to the Authority.
-
- 11.4 If required by the Authority under **Schedule 0**, the parties shall agree an equality policy and if so, for the duration of this Agreement, the Service Provider shall comply with the Agreed Equality Policy.

11.5 Without prejudice to the generality of the foregoing, the Service Provider acknowledges that the Authority is under a duty:

11.5.1 where the Authority is GLA by virtue of a Mayor's direction under section 155 of the Greater London Authority Act 1999 (in respect of section 404(2) of the Greater London Authority Act 1999), and where the Authority is the GLA under section 404(2) of the Greater London Authority Act 1999, to have due regard to the need:

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

11.5.1.2 to eliminate unlawful discrimination; and

11.5.1.3 to promote good relations between persons of different racial groups, religious beliefs and sexual orientation; and

11.5.2 under section 76A of the Sex Discrimination Act 1975 and section 71 of the Race Relations Act 1976, to have due regard to the need to eliminate unlawful discrimination on grounds of sex or marital status and/or race and to promote equality of opportunity and good relations between persons of different racial groups;

and, in providing the Services, the Service Provider shall assist and cooperate with the Authority and any GLA Group Member where possible to enable the Authority and any other GLA Group Member to satisfy its duty.

11.6 The Service Provider:

11.6.1 shall not unlawfully discriminate;

11.6.2 shall procure that the Service Provider's Personnel do not unlawfully discriminate; and

11.6.3 shall use reasonable endeavours to procure that its direct and indirect subcontractors do not unlawfully discriminate

in relation to the Services, within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, and any other relevant enactments in force from time to time relating to discrimination in employment.

11.7 Without prejudice to **clauses 11.5 and 11.6**, the Service Provider shall:

11.7.1 assist and co-operate with the Authority where possible to enable the Authority to comply with its duties under section 1 and section 149 of the Equality Act 2010 as and when section 1 and/or section 149 come into force, including any amendment or re-enactment of section 1 or section 149, and any guidance, enactment, order, regulation or instrument made pursuant to these sections; and

11.7.2 where the GLA is the Authority:

12.7.2.1 comply with policies developed by the Authority with regard to compliance with the Authority's duties referred to in **clauses 11.5 and 11.7.1** as are relevant to the Agreement and the Service Provider's activities;

11.7.2.2 obey directions from the Authority with regard to the conduct of the Services in accordance with the duties referred to in **clauses 11.5 and 11.7.1**;

11.7.2.3 assist, and consult and liaise with, the Authority with regard to any assessment of the impact on and relevance to this Agreement of the duties referred to in **clauses 11.5 and 11.7.1**;

- 11.7.2.4 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 11.7** as if the sub-contractor were in the position of the Service Provider;
 - 11.7.2.5 provide to the Authority, upon request, such evidence as the Authority may require for the purposes of determining whether the Service Provider has complied with this **clause 11.7**. In particular, the Service Provider shall provide any evidence requested within such timescale as the Authority may require, and co-operate fully with the Authority during the course of the Authority's investigation of the Service Provider's compliance with its duties under this **clause 11.7**; and
 - 11.7.2.6 inform the Authority forthwith in writing should it become aware of any proceedings brought against it in connection with this Agreement by any person for breach of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, or the Equality Act 2010.
- 11.8 If, pursuant to or in consequence of performing its obligations under this Agreement, the Service Provider gains access to any computer system of any GLA Group Member including any software, hardware, firmware, database, data or file, whether directly or remotely:
- 11.8.1 all access shall be strictly limited to that part of the computer software, hardware, firmware, database, data or files (as the case may be) as is required for proper performance of its obligations under this Agreement;

- 11.8.2 the Service Provider shall comply with all reasonable security audit and other procedures and requirements of any GLA Group Member in relation to access; and
 - 11.8.3 the Service Provider shall ensure that only the Service Provider'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 Service Provider pursuant to this Agreement.
- 11.9 In providing the Services, the Service Provider shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) to the need to:
- 11.9.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
 - 11.9.2 enhance the environment and have regard to the desirability of achieving sustainable development;
 - 11.9.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
 - 11.9.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.
- 11.10 Without limiting the generality of **clause 8.1.6** the Service Provider shall comply with the Bribery Act 2010 and any guidance issued from time to time by the Secretary of State under it.

12. CORRUPT GIFT AND PAYMENTS OF COMMISSION

The Service Provider 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 GLA Group Member nor favour any employee, officer or agent of any GLA Group Member with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of any GLA Group Member other than as a representative of the Authority, without the GLA Group's prior written approval.

13. **EQUIPMENT**

13.1 Risk in:

13.1.1 all of the Service Provider's Equipment shall be with the Service Provider at all times; and

13.1.2 all other equipment and materials forming part of the Services ("**Materials**") shall be with the Service Provider at all times unless or until ownership and risk transfers in accordance with the **Annexes to Schedule 0** of this Agreement,

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

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

13.3 All of the Service Provider's Equipment which the Service Provider brings to the Authority Premises shall be removed by the Service Provider on termination of this Agreement and the Authority shall provide the Service Provider with such access to the Authority Premises as is reasonably required to enable such removal.

14. **QUALITY AND BEST VALUE**

14.1 The Service Provider acknowledges that the Authority is a best value authority for the purposes of the Local Government Act 1999 and, as such, the Authority 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. Accordingly, the Service Provider shall, where reasonably requested by the Authority, 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 Service Provider necessary to satisfy the requirement contemplated in this Agreement.

- 14.2 Where the GLA is the Authority then in accordance with the statutory requirement set out in section 61(3) of the Greater London Authority Act 1999, the Service Provider shall send such representatives as may be requested to attend the Greater London Assembly for questioning in relation to the Agreement. The Service Provider acknowledges that it may be liable to a fine or imprisonment if it fails to comply with a summons to attend.

15. RECORDS, AUDIT AND INSPECTION

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

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

15.1.2 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) following termination of this Agreement ("**Retention Period**").

- 15.2 The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Service Provider what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any

aspect of the Service Provider's performance of the Services (including compliance with **clause 11**). The Authority 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 Service Provider is not, without due cause, disrupted or delayed in the performance of its obligations under this Agreement.

- 15.3 The Service Provider grants to the Authority and its agents the right, at any time, on two (2) Business Days' notice, to audit and/or test the security and robustness of the Software, the Services and/or the Service Provider's compliance with the GLA Group's requirements on security, data integrity and protection against breach of confidentiality. Such audits and tests may include penetration testing and ethical hacking and the Service Provider 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. In view of the fact that such audits and testing may be intended to simulate a criminal attack, the Service Provider agrees not to take any action against the GLA Group or its agents performing the audits or tests and that the GLA Group and their agents shall not be responsible or liable for any loss, damage, expenses or claims incurred by the Service Provider as a result of such tests or audits, including any loss or damage caused to the Service Provider's systems or the Service Provider's business or any third party claims brought against the Service Provider relating to or arising out of such tests or audits except to the extent that it would be unlawful for the Authority not to be responsible or liable. The Service Provider agrees to indemnify the GLA Group and its agents against any loss, damage or expenses that the GLA Group or its agents may incur by reason of claims, actions, demands or proceedings brought against the GLA Group or its agents by third parties, including the Service Provider's suppliers, arising out of or in connection with such audits or tests.
- 15.4 For the purposes of exercising its rights under **clauses 15.2** and **15.3**, the Service Provider shall provide the Authority and/or any person nominated by the Authority with all reasonable co-operation including:

- 15.4.1 granting access to any premises, equipment, plant, machinery or systems used in the Service Provider's performance of this Agreement, and where such premises, equipment, plant, machinery or systems are not the Service Provider's own, using all reasonable endeavours to procure such access;
 - 15.4.2 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to any Records;
 - 15.4.3 making all Records available for inspection and providing copies of any Records if requested; and
 - 15.4.4 making the Service Provider's Personnel available for discussion with the Authority.
- 15.5 Any audit, inspection and/or testing by the Authority pursuant to **clause 15.3** shall not relieve the Service Provider or any of its sub-contractors from any obligation under this Agreement or prejudice any of the GLA Group's rights, powers or remedies against the Service Provider.
- 15.6 The Service Provider shall promptly, to the extent reasonably possible in each particular circumstance, comply with the GLA Group's reasonable requests for access to senior personnel engaged in the Service Provider's performance of the Services.
- 15.7 This **clause 15** shall survive termination of this Agreement.
16. **CONTRACT MANAGEMENT AND CHANGE CONTROL**
- 16.1 The Service Provider shall provide the Authority with a written report on a monthly basis in respect of the Services performed in the preceding month or at the intervals set out in **Schedule 0**, 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 0**. 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.

16.2 Any reports to be provided to the Authority under **clause 16.1** will contain at least the following and any other agreed items:

16.2.1 written status summary;

16.2.2 requests for action from the Authority;

16.2.3 activities completed during the period;

16.2.4 activities to be completed in the next period and by whom;

16.2.5 perceived risk factors and the strategies being used to minimise them; and

16.2.6 where applicable to the relevant Service(s) being provided, measurement of the Service Provider's performance against the Service Levels and details of any Service Credits accrued,

in a form to be agreed between the Authority and the Service Provider.

17. **INSURANCE**

17.1 The Service Provider shall at its sole cost obtain and maintain the Insurances.

17.2 The Service Provider shall:

17.2.1 procure that its public liability insurance extends to indemnify the Authority as principal;

17.2.2 procure the Authority'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;

17.2.3 provide evidence satisfactory to the Authority 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 Service Provider shall within five (5) Business Days after the date of renewal also provide the Authority with satisfactory evidence that such Insurance has been renewed;

- 17.2.4 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 the Authority Premises (including contents) that are occupied by the Service Provider for the purpose of performing the Services;
- 17.2.5 if required by the Authority, 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 the Authority not less than thirty (30) days' notice of intention to cancel or make such change;
- 17.2.6 bear the cost of all or any excesses under the Insurances;
- 17.2.7 notify the Authority 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;
- 17.2.8 notify the Authority 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 in excess of £100,000 or the figure set out in **Schedule 0**, if different, on any Insurance and, if requested by the Authority 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 the Authority may reasonably require) within three (3) Business Days of the GLA Group's request;

- 17.2.9 promptly and diligently deal with all claims under the Insurances (or any of them) relating to the Services and in accordance with all insurer requirements and recommendations; and
- 17.2.10 in relation to any claim settled under the Insurances in respect of the Services and to the extent that the proceeds of such claim are payable to the Service Provider, pay the proceeds to the person who suffered the loss or damage that gave rise to the claim (whether the Authority, a GLA Group Member or any third party).
- 17.3 If the Service Provider is in breach of **clause 17.2** and does not remedy such breach within thirty (30) days of notice from the Authority to do so, then without prejudice to any of its other rights, powers or remedies, the Authority may pay any premiums required to keep any of the Insurances in force or itself procure such Insurances. In either case, the Authority may recover such premiums from the Service Provider, together with all expenses incurred in procuring such Insurances as a debt.
- 17.4 The Service Provider warrants 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.
- 17.5 In relation to Insurances which must be held for a period which extends beyond termination, this **clause 17** shall survive termination of this Agreement.
- 18. THE GLA GROUP'S DATA**
- 18.1 The Service Provider acknowledges the GLA Group's ownership of Intellectual Property Rights which may subsist in the GLA Group's data. The Service Provider shall not delete or remove any copyright notices contained within or relating to GLA Group's data.
- 18.2 The Service provider shall at any time when any of the GLA Group's data is in its control or possession preserve the integrity of such GLA Group's data and to prevent any corruption or loss of GLA Group's data.

19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 Except for any of the Service Provider's Software, the Third Party Software, the Service Provider's IPR and Third Party IPR, all Intellectual Property Rights of whatever nature in the Software and the Services ("**the Authority Rights**") whether created by the Service Provider or any of the Service Provider's Personnel shall or shall on creation of the same be and remain vested in the Authority. Prior to such vesting, the Service Provider grants the GLA Group a perpetual, royalty-free, worldwide and transferable licence to use, adapt, translate, support and sub-licence the Authority Rights to the extent necessary for the Authority, the GLA Group and its other authorised agents to receive its rights under this Agreement, including with respect to the right to test the Software and/or Services. The Service Provider shall do all such acts and execute all such deeds and documents as shall be necessary or desirable to perfect the right, title and interest of the Authority in and to such Intellectual Property Rights, including ensuring that the Service Provider's Personnel assign all such Intellectual Property Rights owned by them either direct to the Authority or to the Service Provider to enable the Service Provider to comply with its obligations hereunder and waive any moral rights they may otherwise have, in each case at no cost to the Authority.
- 19.2 Nothing in this **clause 19** shall prevent the Service Provider 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 Service Provider of any Intellectual Property Right.
- 19.3 To the extent that any GLA Group Member provides the Service Provider for the purpose of or in connection with providing the Services or supplying the Software with any materials in which any GLA Group Member owns (or is licensed by a third party to use) the Intellectual Property Rights, the Service Provider acknowledges and agrees that nothing in this Agreement grants to the Service Provider any right, title or interest in such materials other than a limited non-exclusive right to use those materials solely for the purposes of

providing the Services. All Intellectual Property Rights in such materials are and shall remain the exclusive property of the GLA Group Member or (if applicable) its third party licensors.

- 19.4 The Service Provider warrants and shall ensure that the possession and/or use by the GLA Group of the Software, and the performance by the Service Provider of the Services 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 Service Provider 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.
- 19.5 If any third party claims that the possession and/or use of the Software and/or the receipt of the Services ("**Indemnified Deliverables**") by any GLA Group Member and/or the provision by the Service Provider 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 Service Provider shall indemnify, keep indemnified and hold harmless the GLA Group Members (including their respective employees, sub-contractors and agents) from and against all Losses arising from or incurred by reason of any such IPR Claim (including the defence and any settlement of such IPR Claim).
- 19.6 In the event of a claim pursuant to **clause 19.5**:
- 19.6.1 the Authority shall promptly notify the Service Provider of the claim;
- 19.6.2 the Service Provider shall, at its own cost and expense, control the defence of such IPR Claim and any related proceedings or settlement negotiations, except that the Authority shall be entitled to take any action which it deems necessary if the Service Provider fails to take action, or (in the GLA Group'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 the Authority, prejudice the interests of the GLA Group; and

19.6.3 at the cost and expense of the Service Provider, the Authority shall take all reasonable steps to co-operate with the Service Provider in the defence or settlement of such IPR Claim.

19.7 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 Service Provider or any GLA 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 Service Provider shall at its expense as soon as possible following (and in any event within thirty (30) days of) such event occurring:

19.7.1 obtain for the GLA Group Members the right to continue to possess, use and/or receive the benefit of the relevant Indemnified Deliverable(s); or

19.7.2 replace or modify the relevant Indemnified Deliverable(s) so that it becomes non-infringing without detracting from the functionality or performance of the overall Software or Service and provided that any such replacement or modification shall not prevent the Service Provider's compliance with the warranties contained at **clause 8**.

19.8 The Service Provider shall have no liability under or in connection with this Agreement for any infringement caused solely and directly by:

19.8.1 the combination of the relevant Indemnified Deliverable with other products, data or information not supplied by the Service Provider unless the combination was made or approved by the Service Provider;

19.8.2 the modification of the Indemnified Deliverable unless the modification was made or approved by the Service Provider;

19.8.3 the supply by or on behalf of the Authority of any of the materials specified at **clause 19.3**; or