

**REDACTED COPY**

**Enforcement Infrastructure Service Agreement**

**between**

**TRANSPORT FOR LONDON**

**and**

**SIEMENS PLC**

**relating to**

**provision of an Enforcement Infrastructure Service for the Western  
Extension of the Congestion Charging Scheme for London**

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**THIS AGREEMENT** is dated **21 September 2005** and made

**BETWEEN:**

- (1) **TRANSPORT FOR LONDON**, ("**TfL**") (which expression shall include any firm, corporation or other contracting authority succeeding to the functions of TfL in relation to the Services to be provided under this Agreement), of Windsor House, 42-50 Victoria Street, London SW1H 0TL; and
- (2) **SIEMENS PLC**, (the "**Service Provider**"), a company registered in England & Wales with company number 727817 and having its registered office at Siemens House, Oldbury, Bracknell, RG12 8FZ.

**Background:**

- (A) TfL has implemented a fully functioning congestion charging scheme within a prescribed area within London pursuant to a Rebaselined Combined Services Agreement dated 12 March 2002, a Supplemental Agreement dated 19 August 2003, the WEZ Supplemental Agreement dated 21 February 2005 (the "**WSA**") and as may be further amended from time to time (each such document and amendment together being referred to herein as the "**CSA**") entered into between TfL and the Core Service Provider.
- (B) TfL is planning for a proposed extension of the Congestion Charging Scheme ("**CCS**"), to include areas to the west of the existing central zone, known as the western extension zone ("**WEZ**"). The extension will only proceed following formal consultation, consideration of all views and approval of changes to the Scheme Order.
- (C) In the event that the WEZ proceeds TfL will require a service provider to design, build, test, operate and maintain the Enforcement Infrastructure for the WEZ.
- (D) If the WEZ proceeds, TfL will require the Service Provider to design, build, test, operate and maintain a system and processes for the provision of the Enforcement Infrastructure Service including any additional, future and new services requested at TfL's discretion and to supply to TfL all of the Enforcement Infrastructure. TfL may also require the Service Provider to undertake some preparatory design work.
- (E) The parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**PART 1: PROVISIONS RELATING TO THIS AGREEMENT**

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Agreement where the context admits the definitions set out in schedule 1 will apply.

1.2 **Construction of certain references**

In this Agreement where the context admits:

- (A) words and phrases the definitions of which are contained or referred to in Part XXVI Companies Act 1985 will be construed as having the meanings so attributed to them;
- (B) any reference to a “**person**” includes any individual, company, corporation, firm, partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality);
- (C) references to any statute or statutory provisions include reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision will include any subordinate legislation made from time to time under that provision;
- (D) references to “**this Agreement**” or to any other agreement or document referred to in this agreement mean this agreement or such other agreement or document as amended, varied, supplemented, modified or novated from time to time;
- (E) references to clauses, annexes and schedules are references to clauses and annex and schedules of and to this Agreement, and references to paragraphs are, unless otherwise stated, references to paragraphs of the schedule in which the reference appears;
- (F) references to TfL include its successors and permitted assigns which will include any person who at any time is entitled, by assignment, novation, merger, division, reconstruction, reorganisation or otherwise, to TfL’s rights under this Agreement or any interest in those rights, or who, as an insolvency practitioner or otherwise, is entitled to exercise those rights (and, in the case of a novation or similar event, references in this Agreement to TfL’s rights will include the novated rights to which another person is entitled as a result of that event);
- (G) any reference to “**writing**” will include typewriting, printing, lithography, photography, telex, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form; and
- (H) where a general obligation in this Agreement is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.

### 1.3 **Headings**

The headings and sub-headings are inserted for convenience only and will not affect the construction of this Agreement.

### 1.4 **Schedules**

The schedules form part of this Agreement and will have full force and effect as if expressly set out in the body of this Agreement.

### 1.5 **Precedence**

In the event of any conflict or inconsistency between any provision contained in this Agreement and any of the schedules and annexes or any other documents incorporated herein by reference, the following order of precedence will apply, but only in so far as is necessary to resolve that conflict or inconsistency:



- (A) the clauses;
- (B) schedule 1 (Definitions);
- (C) schedule 2 (Statement of Requirements);
- (D) the other schedules to this Agreement;
- (E) an annex to a schedule; and
- (F) any other documents incorporated into this Agreement by reference.

## **PART 2: SERVICE PROVISION**

### **2. Scope of Services**

2.1 Subject to clause 3, the Service Provider shall provide the Services to TfL as follows:

- (A) from the Design Commencement Date, the Service Provider shall provide the Design Services;
- (B) from the Build Commencement Date, the Service Provider shall provide the Build Services;
- (C) provided Notice of Agreement to Operate has been served on the Service Provider by TfL, from the Operational Commencement Date, the Service Provider shall provide the Operational Services;
- (D) the Service Provider shall provide Additional Services, Future Services and New Services in accordance with clause 26 (Additional Services, Future Services and New Services) and the Change Control Request Procedure;
- (E) in the event of a Disaster Recovery Event at any time after the Operational Commencement Date, the Service Provider shall supply the Disaster Recovery Services as part of the Operational Services.

### **3. Effective Date and Duration**

3.1 This Agreement shall come into force on the date hereof (the “**Effective Date**”) and shall, subject to earlier termination pursuant to clause 3.2, clause 4.13, clause 59 (Termination) or any other provision of this Agreement, continue in force until midnight on the Expiry Date.

3.2 TfL shall be entitled, at its option, to terminate this Agreement by giving notice to the Service Provider of at least three (3) Months prior to each of the following dates (each a “**Break Date**”):

- (A) 16 February 2008;
- (B) 16 February 2009;
- (C) 16 February 2010;
- (D) 16 February 2012; and

(E) 16 February 2014,

such termination to take effect from the relevant Break Date.

#### 4. **Commencement of Services**

##### **Service of Commencement Notice**

4.1 The commencement of performance of the Design Services and the Build Services by the Service Provider shall be conditional upon the Service Provider receiving written notice from TfL on or before 24 March 2006 (the "**Lapse Date**") to the effect (respectively) that:

(A) the Service Provider is required to commence performance of the Design Services (a "**Design Commencement Notice**"); and/or

(B) the Service Provider is required to commence performance of the Build Services (a "**Build Commencement Notice**"),

(each, a "**Commencement Notice**").

4.2 TfL shall not be entitled to issue a Build Commencement Notice unless both:

(A) the WEZ Variation Order has been confirmed by the Mayor of London and has entered into force; and

(B) TfL has, prior to or at the same time as the issue of such notice, issued a Design Commencement Notice.

4.3 For the avoidance of doubt TfL may, if the WEZ Variation Order has been confirmed by the Mayor of London and has entered into force, expressly provide that a Commencement Notice comprises both a Design Commencement Notice and a Build Commencement Notice.

4.4 TfL shall issue a Build Commencement Notice within a reasonable period if and once the WEZ Variation Order has been confirmed by the Mayor of London and has entered into force.

4.5 The Commencement Notice shall specify the date from which the Service Provider is required to commence performance of the services specified therein (in the case of a Design Commencement Notice, the "**Design Commencement Date**" and, in the case of a Build Commencement Notice, the "**Build Commencement Date**") (each, a "**Commencement Date**"). The Design Commencement Date shall be no later than the Lapse Date.

4.6 If a Design Commencement Notice has not been served on the Service Provider on or before the Lapse Date:

(A) this Agreement shall terminate and be of no further legal effect;

(B) subject to clause 4.6(C), neither party shall owe any duty or have any liability to the other party under this Agreement; and

(C) termination of this Agreement shall be without prejudice to the provisions of clauses 67 (Publicity) and 68 (Confidentiality), which shall survive such termination.

### Service of Design Commencement Notice

4.7 In the event that TfL serves a Design Commencement Notice pursuant to clause 4.1:

- (A) the Service Provider shall provide the Design Services, commencing on the Design Commencement Date, until the earlier of:
  - (1) the achievement by the Service Provider of Milestones 1 and 2 as evidenced by the issue of a Notice of Approval by TfL in respect of those Milestones in accordance with clause 15 (Achievement of Milestones); or
  - (2) termination by TfL of this Agreement pursuant to clause 4.13; and
- (B) where the Design Commencement Date specified in such notice falls:
  - (1) on or before 03 October 2005 (the “**Latest Design Services Start Date**”), subject to clause 4.8, there shall be no change to the Milestone Dates specified in schedule 3 (Implementation Milestones and Deliverables); or
  - (2) after the Latest Design Services Start Date:
    - (a) the parties shall in good faith seek to agree whether the Milestones may be achieved by their respective Milestone Dates and whether Operational Commencement Date may be achieved by the Planned Operational Commencement Date and appropriate steps and actions to ensure their achievement;
    - (b) if, within five (5) Working Days of the date of service of the Design Commencement Notice, the parties fail to agree appropriate steps and actions to ensure that the Milestones may be achieved by their respective Milestone Dates and that the Operational Commencement Date may be achieved by the Planned Operational Commencement Date, the Planned Operational Commencement Date and the Milestone Date of each Milestone shall be adjusted from the date specified in this Agreement by a period equal to the period from the Latest Design Services Start Date to the Design Commencement Date.

### Service of Build Commencement Notice

4.8 In the event that TfL serves a Build Commencement Notice pursuant to clause 4.1:

- (A) the Service Provider shall, from the Build Commencement Date, commence provision of the Build Services, notwithstanding that Milestones 1 and 2 may not have been achieved as at that date;
- (B) if the Build Commencement Date specified in such notice falls:
  - (1) on or before 30 November 2005 (the “**Latest Build Services Start Date**”), there shall be no change to the Milestone Dates specified in schedule 3 (Implementation Milestones and Deliverables), as that schedule may have been amended in accordance with clause 4.7(B)(2); or
  - (2) after the Latest Build Services Start Date:
    - (a) the parties shall in good faith seek to agree whether the Milestones may be achieved by their respective Milestone Dates and whether

Operational Commencement Date may be achieved by the Planned Operational Commencement Date and appropriate steps and actions to ensure their achievement;

- (b) if, within five (5) Working Days of the date of service of the Build Commencement Notice, the parties fail to agree appropriate steps and actions to ensure that the Milestones may be achieved by their respective Milestone Dates and that the Operational Commencement Date may be achieved by the Planned Operational Commencement Date, the Planned Operational Commencement Date and the Milestone Date of each Milestone shall be adjusted from the date specified in this Agreement (as those dates may have been amended in accordance with clause 4.7(B)(2)) by a period equal to the period from the Latest Build Services Start Date to the Build Commencement Date.

### Deferred Deployment of Outstations

4.9 If the Build Commencement Date specified in the Build Commencement Notice falls after 31 October 2005:

- (A) The Service Provider shall be permitted to defer the installation of such number of Outstations as the parties, acting reasonably and in good faith may, within ten (10) Working Days of the date of service of the Build Commencement Notice, agree, provided that:
  - (1) The number of Outstations in respect of which installation is to be deferred shall in no event be greater than twenty (20); and
  - (2) In no event shall the Service Provider be entitled to defer installation of the Key Outstations; and
- (B) The Service Provider shall promptly amend the Installation Programme to provide for such change in the programme of Outstation installation; and
- (C) For the avoidance of doubt, the provisions of paragraph 5A of schedule 7 (Charging Structure) shall apply to the payments (including any Milestone Payments) due in respect of the installation of the Deferred Outstations.

### Approval of Long Lead Items Prior to Issue of a Build Commencement Notice

4.10 The parties have agreed that the Service Provider may order a number of long lead items in advance of the service by TfL of a Build Commencement Notice, in order for the Service Provider to successfully achieve full operation by the Planned Operational Commencement Date. The legally binding arrangements in relation to the supply of such items (each an “**Approved Long Lead Item Supply Agreement**”) shall be on arms’ length commercial terms which shall reflect the details set out in schedule 31 (Approved Long Lead Item Supply Agreement Details), being for each such agreement:

- (A) the identity and quantities of such long lead items; and
- (B) the aggregate amount of all breakage costs, liquidated damages and other expenses or costs for which the Service Provider will be liable if the Approved Long Lead Item Supply Agreement is terminated before delivery of all items which would otherwise be supplied under it (the amounts so notified to TfL being referred to as “**Long Lead Item Breakage Costs**”).

- 4.11 The Service Provider shall, on written request of TfL, provide such written evidence of its compliance with clause 4.10 as TfL may reasonably require from time to time.
- 4.12 In relation to Approved Long Lead Item Supply Agreements only, the provisions of clause 4.13(B) shall apply.

**Termination after issue of a Design Commencement Notice but prior to issue of a Build Commencement Notice**

- 4.13 TfL may terminate this Agreement immediately by written notice at any time after the Effective Date and prior to the date on which it issues a Build Commencement Notice. In the event of such termination:
- (A) TfL shall pay to the Service Provider an amount equal to the reasonable costs incurred by the Service Provider in carrying out the Design Services from the Design Commencement Date to the date of termination, calculated by reference to staff day-rates specified in Table 2 of Annex C to schedule 9 (Change Control Request Procedure), within forty (40) days of receipt from the Service Provider of a valid invoice in respect of such costs together with such timesheets and/or other records as TfL may reasonably require to verify the accuracy of such invoice. The amount payable under this clause shall be subject to a cap equal to the Design Services Payment. For the avoidance of doubt, TfL shall not be liable to the Service Provider for any other amount in respect of or in connection with such termination; and
  - (B) TfL shall pay to the Service Provider an amount equal to the aggregate Long Lead Item Breakage Costs directly and unavoidably incurred as a result of such termination under each Approved Long Lead Item Supply Agreement, provided that the Service Provider has taken all reasonable steps to mitigate or reduce the amount of such Long Lead Item Breakage Costs, including but not limited to using the relevant items elsewhere in its business where practicable. For the avoidance of doubt in no event shall TfL be liable for any sums payable by the Service Provider to: (i) the counterparties to any Approved Long Lead Item Supply Agreements which are not set out in schedule 31 (Approved Long Lead Item Supply Agreement Details); or (ii) any person under any other arrangements or agreements. Upon payment of the relevant sum under this clause 4.13(B), the Service Provider shall deliver all items supplied under the relevant Approved Long Lead Item Supply Agreements to TfL or deal with them as TfL may reasonably require; and
  - (C) the Service Provider shall, promptly following the date of termination:
    - (1) provide such reasonable numbers of copies of Documentation produced by the Service Provider for the purpose of performing the Design Services as TfL may require (whether or not such Documentation is complete); and
    - (2) if required by TfL, provide all reasonable co-operation and assistance in the explanation of any such Documentation.

**Achievement of Milestone 2 before a Build Commencement Notice is served**

- 4.14 If TfL has not, on or before the date of achievement of Milestone 2, served a Build Commencement Notice, TfL shall promptly following the date of achievement of Milestone 2 notify the Service Provider in writing whether it:
- (A) requires the Service Provider to maintain such staff as TfL reasonably considers necessary for the Service Provider to be prepared to perform the Build Services until such time as TfL issues a Build Commencement Notice or terminates this

Agreement pursuant to clause 4.13, in which event TfL shall pay to the Service Provider (provided the Service Provider has taken all reasonable steps to mitigate such amount) an amount equal to the reasonable costs incurred by the Service Provider in maintaining such staff from the date of achievement of Milestone 2 to the Build Commencement Date or the date of termination (as appropriate), calculated by reference to staff day-rates specified in Table 2 of Annex C to schedule 9 (Change Control Request Procedure). Such payment shall be made within forty (40) days of receipt from the Service Provider of a valid invoice in respect of such costs together with such timesheets and/or other records as TfL may reasonably require to verify the accuracy of such invoice; or

- (B) requires the Service Provider to continue with such elements of design as the parties may agree through the Change Control Request Procedure; or
- (C) terminates this Agreement in accordance with clause 4.13.

### **Delay Compensation**

4.15 Where the period of adjustment to the Planned Operational Commencement Date pursuant to clause 4.8(B)(2) is greater than the period between the Latest Build Services Start Date and the Build Commencement Date, the Service Provider shall be entitled to Delay Compensation in respect of such greater period only and the provisions of clauses 6.6(A) and 6.6(B) and 6.7 to 6.9 (inclusive) shall apply mutatis mutandis in respect of such period of adjustment.

### **Relationship with clause 6 (Delay of Planned Operational Commencement Date) and clause 16 (Delay Plans)**

4.16 The provisions of this clause 4 shall be without prejudice to the provisions of clause 6 (Delay of Planned Operational Commencement Date) and clause 16 (Delay Plans).

## **5. Services**

5.1 The Service Provider shall provide the Services including all related Tests:

- (A) in accordance with the Specification and the other terms and conditions of this Agreement;
- (B) in accordance with the Implementation Plan during the Implementation Phase;
- (C) in accordance with any specific performance standards (without prejudice to clause 5.1(H)) or obligations contained in this Agreement;
- (D) in the absence of any specific performance standards or obligations in accordance with Good Industry Practice;
- (E) in accordance with all applicable Laws;
- (F) without prejudice to clauses 5.1(A) and 5.1(C) so as to ensure that:
  - (1) the Milestones are achieved; and
  - (2) the provision of Operational Services commences on the Planned Operational Commencement Date;

- (G) in a manner that is not, or is not likely to be, injurious to health or to cause damage to property; and
  - (H) in accordance with all Service Levels where such Services are or become subject to the performance regime in accordance with schedule 5 (Service Level Agreement).
- 5.2 The Service Provider shall provide the Design Services and Build Services and conduct all related Tests in order to meet all Milestones in accordance with the timetable set out in schedule 3 (Implementation Milestones and Deliverables) (or, where such timetable has been amended pursuant to clause 4 (Commencement of Services) or clause 6 (Delay of Planned Operational Commencement Date), in accordance with such amended timetable.
- 5.3 Without prejudice to any other provision of this Agreement, the parties shall comply with the provisions of schedule 27 (Outstation Installation and Traffic Management).
- 5.4 In the event that TfL requires the Service Provider to provide Additional Services or Future Services and/or it is agreed through the Change Control Request Procedure that the Service Provider should provide any New Services, the Service Provider shall provide the Design Services and Build Services (or any required part(s) thereof as dictated by the scope of the Additional Services, Future Services or the New Services) and conduct all related Tests in order to meet all Milestones as specified as a result of the Change Control Request Procedure set out in schedule 9 (Change Control Request Procedure).
- 5.5 If Service Levels are not met, Service Credits shall accrue in accordance with schedule 5 (Service Level Agreement) and shall be deducted from the Charges in accordance with schedule 7 (Charging Structure). The parties agree that the Service Credits shall be an abatement of the Charges.
- 5.6 The parties agree that:
- (A) the purpose of the Service Credits is to give the Service Provider an incentive to perform and that they are not intended as a penalty for non-performance or to quantify the full extent of TfL's losses in relation to a failure by the Service Provider to meet or exceed the Service Levels;
  - (B) accordingly, if, notwithstanding the application of the Service Credit Cap, the value of Service Credit Points accrued in any one Month is equal to or greater than fifty percent (50%) of the value of the Charges which would otherwise have been payable in that Month, TfL shall be entitled to exercise its other rights and remedies under this Agreement;
  - (C) subject to the limitations and exclusions of liability set out in clause 49 (Indemnities and Limitations of Liability), nothing in this Agreement shall restrict TfL's rights, powers and remedies provided by any other provision of this Agreement, by law or otherwise in respect of: (i) the Service Provider's negligence; nor (ii) any breach of this Agreement which is not subject to the Service Level Agreement or reflected in the Service Provider's performance as judged under the Service Level Agreement.
  - (D) subject to clauses 5.6(B) and 5.6(C), Service Credits shall be the sole remedy of TfL in relation to a breach of the Service Levels; and
  - (E) the parties do not intend TfL to make a windfall by making double recovery for the same loss or damage by claiming the Service Credits in addition to any claim for damages at common law in relation to the same loss or damage, and accordingly if TfL claims Service Credits in addition to damages in relation to the same loss or

damage, the amount of the Service Credits shall be deducted from the sums payable by the Service Provider as damages in relation to the same loss or damage.

5.7 The Service Provider shall:

- (A) subject to the terms of this Agreement, undertake all necessary actions so as to ensure the Operational Services are and remain fully operational at all times in accordance with the Agreement; and
- (B) co-operate fully at all times and in a timely manner with the Core Service Provider and TfL and without limitation to the generality of the foregoing, in accordance with clause 18 (Co-operation with TfL and Other Service Providers),

in order to ensure that the Scheme is not compromised.

5.8 The Service Provider shall take all reasonable steps to ensure that, prior to provision of any part of the Services, it has full knowledge of the extent and nature of the Services to be provided and has allowed for all items of work shown upon, described by, or referred to in this Agreement or which are otherwise necessary to provide such Services and will have gained adequate detail and insight into all such items of work prior to the provision of the relevant Services.

## 6. **Delay of Planned Operational Commencement Date**

6.1 Notwithstanding any prior change to the Planned Operational Commencement Date pursuant to clause 4 (Commencement of Services), TfL shall be entitled at any time after service of a Build Commencement Notice pursuant to clause 4.1, in its absolute discretion, by notice to the Service Provider, to delay the Planned Operational Commencement Date on one or more occasions by up to an aggregate period of twelve (12) Months from the date specified in this Agreement.

6.2 If TfL delays the Planned Operational Commencement Date:

- (A) by no more than an aggregate period of three (3) Months, notwithstanding the provisions of clause 16 (Delay Plans), the Service Provider acknowledges that it shall not be necessary to change any Milestone Date and no Milestone Date shall be changed unless otherwise agreed by TfL (and, for the avoidance of doubt, except that TfL may in its sole discretion change the Milestone Dates of Milestone 6 and Milestone 7 such that they are adjusted by the same period as the period of adjustment to the Planned Operational Commencement Date pursuant to clause 6.1); or
- (B) by more than an aggregate period of three (3) Months, the Service Provider and TfL shall, promptly following notification of the change to the Planned Operational Commencement Date, use best endeavours to agree which Milestone Dates require adjustment as a direct result of the change and the period of adjustment which is necessary as a consequence, except that TfL may in its sole discretion change the Milestone Dates of Milestone 6 and Milestone 7 such that they are adjusted by the same period as the period of adjustment to the Planned Operational Commencement Date pursuant to clause 6.1.

6.3 In the event that agreement in accordance with clause 6.2(B) is not reached within fifteen (15) Working Days of TfL's notification under clause 6.1:

- (A) either party may refer the Milestone Dates in dispute to the Dispute Resolution Procedure to determine the appropriate period of adjustment; and



- (B) pending agreement or resolution of an appropriate adjustment (if any) to the Milestone Dates, the parties shall comply with the then current timetable of Milestone Dates.
- 6.4 Where a dispute as to the appropriate period of adjustment of any Milestone Dates is referred to the Dispute Resolution Procedure pursuant to clause 6.3(A), the parties agree to use their best endeavours to cooperate fully and in a timely manner with the Expert. The parties shall procure that the Expert's terms of reference require the Expert to appoint an alternate if he will not be available for any reason and shall provide that under no circumstances shall the Expert adjust any Milestone Dates beyond the aggregate period of any delays.
- 6.5 If TfL wishes, pursuant to clause 6.1, to delay the Planned Operational Commencement Date by more than twelve (12) Months the delay shall be subject to the Change Control Request Procedure.
- 6.6 In the event of a delay to the Planned Operational Commencement Date pursuant to clause 6.1:
- (A) the Service Provider shall exercise all reasonable endeavours to mitigate its losses, expenditure and costs and to minimise the consequences of such delay (including without limitation by delaying the purchase of any components of the Enforcement Infrastructure and the recruitment of any staff as appropriate); and
  - (B) the Service Provider shall keep a record, supported by relevant documentation of any steps it has taken to mitigate pursuant to clause 6.6(A) and such records and documentation shall be supplied to TfL prior to Delay Compensation being agreed and paid in accordance with clause 6.6(C); and
  - (C) TfL shall pay to the Service Provider the Delay Compensation for the duration of such delay (starting on the date on which the Planned Operational Commencement Date would have occurred but for a delay pursuant to clause 6.1) on a Monthly basis in accordance with schedule 8 (Invoicing and Payment Procedure).
- 6.7 TfL shall only be obliged to pay such amount as is agreed or determined (pursuant to clause 6.8) as being equal to the Delay Compensation and in determining the amount of Delay Compensation payable, the Service Provider shall provide such evidence as TfL shall reasonably require to verify such amounts. For the avoidance of doubt, this clause 6.7 is without prejudice to clause 6.3.1 (Waiver and Approvals).
- 6.8 If the parties cannot agree in writing the extent of any Delay Compensation, the parties shall resolve the matter in accordance with the Dispute Resolution Procedure. Any undisputed amounts of the Delay Compensation shall continue to be payable notwithstanding the dispute.
- 6.9 For the avoidance of doubt, the provisions of clause 16 (Delay Plans) shall not apply in respect of a delay to the Planned Operational Commencement Date pursuant to clause 6.1.

### **PART 3: TDE MATTERS**

#### **7. TDE and Service Provider's Solution**

- 7.1 Subject to clause 7.2, with effect from the Effective Date the provisions of the agreement entered into between TfL and the Service Provider dated 17<sup>th</sup> February 2005 relating to the

technical design evaluation of proposed technology to be supplied as part of the Enforcement Infrastructure (the “**TDE Agreement**”) shall, subject to the remainder of this clause 7, terminate and be of no further legal effect. The parties acknowledge that none of the designs, proposals, systems, solutions or other items provided by the Service Provider as part of the Services are subject to the TDE Agreement (including but not limited to the limitation of liability provisions). Any claims arising in relation to any work undertaken and/or items provided in respect of this Agreement (whether developed in whole or in part under the TDE Agreement) shall be (and shall be deemed to have been) brought under this Agreement and shall be subject to the provisions of this Agreement, including but not limited to the limitations of liability set out in clause 49 (Indemnities and Limitations of Liability), and not the provisions of the TDE Agreement, which are hereby superseded.

- 7.2 Any claims brought in relation to the work undertaken in accordance with the TDE Agreement shall for the purposes of clause 49 (Indemnities and Limitations of Liability) be deemed to have arisen on the date that they are brought.
- 7.3 The designs, solutions and proposals developed by the Service Provider in accordance with the TDE Agreement and as further developed prior to the Effective Date form part of this Agreement and are attached hereto as schedule 28 (Service Provider’s Solution) (as the same may be developed and/or supplemented from time to time in accordance with this Agreement, are referred to as the “**Service Provider’s Solution**”).

#### **PART 4: DOCUMENTATION**

##### **8. Implementation Planning and Related Documents**

- 8.1 The Service Provider shall, in accordance with the applicable Milestone Dates and the Implementation Plan (as appropriate):
- (A) provide the Design Services such that the Service Provider creates:
- (1) the Implementation Plan;
  - (2) the Quality Plan;
  - (3) Capacity Plans;
  - (4) Evidential Strategy;
  - (5) the Testing Requirements;
  - (6) the Functional Specification;
  - (7) the Technical Specification;
  - (8) the Process Definition Deliverable;
  - (9) the Exit Plan;
  - (10) the Test Strategy; and
  - (11) the Escrow Software List,
- (each being “**Key Documents**”), in each case to reflect the Statement of Requirements;

- (B) perform any other tasks allocated to it in the Implementation Plan in relation to the Design Documents; and
- (C) provide TfL with a copy of the Key Documents.

8.2 TfL shall:

- (A) supply the Service Provider on reasonable notice with information the Service Provider reasonably requires so that the Service Provider is not delayed in performing its obligations under clause 8.1;
  - (B) within such period as is specified in the Implementation Plan (or as the parties otherwise agree in writing) following TfL's receipt of the relevant Key Document (and, in respect of the Implementation Plan itself, within five (5) Working Days following TfL's receipt of the Implementation Plan):
    - (1) review the relevant Key Document; and
    - (2) notify the Service Provider that TfL:
      - (a) accepts the relevant Key Document; or
      - (b) if the relevant Key Document:
        - (i) fails to provide for the functions and the performance criteria specified in the Specification; or
        - (ii) is not of the quality required under this Agreement;
- rejects the relevant Key Document.

8.3 If TfL rejects any Key Documents under clause 8.2(B)(2)(b):

- (A) TfL shall inform the Service Provider of the reason or reasons for such rejection;
- (B) the Service Provider shall, at no cost to TfL, promptly undertake a revision or amendment of the relevant Key Documents and re-submit them to TfL for review; and
- (C) the parties shall repeat the procedure set out in clause 8.2 and this clause 8.3 until acceptance of the Key Documents.

8.4 The provisions of clause 15.7 shall apply in relation to the Key Documents (mutatis mutandis).

## 9. **Preparation and Submission of Testing Documents**

9.1 The Service Provider shall, in accordance with the applicable Milestone Dates, the Implementation Plan, the Specification and schedule 4 (Testing Regime) and so as to achieve all relevant Milestones:

- (A) prepare:
  - (1) the Implementation Phase Testing Documents to reflect the Test Strategy and the Specification; and

- (2) an updated version of each of the Implementation Phase Testing Documents following a Change so as to incorporate the effects of that Change in the relevant document in accordance with the Change Control Request Procedure; and
  - (B) submit a copy of the Documentation referred to in clause 9.1(A)(1) or 9.1(A)(2) (as appropriate) to TfL for approval pursuant to clauses 10.1(B) and 10.2.
- 9.2 The Service Provider shall, in accordance with clause 2.1(C), the applicable Milestone Dates, the Change Control Request Procedure, the Specification and schedule 4 (Testing Regime) and so as to achieve all relevant Milestones:
- (A) promptly upon request by TfL, prepare:
    - (1) the Operational Phase Testing Documents as required from time to time to reflect the Test Strategy and the Specification and to deal with the Testing of:
      - (a) Changes;
      - (b) work undertaken to resolve Issues; and
      - (c) work undertaken as a result of Security Incidents; and
    - (2) an updated version of each of the Operational Phase Testing Documents following a Change so as to incorporate the effects of that Change in the relevant document in accordance with the Change Control Request Procedure; and
  - (B) promptly upon request by TfL, submit a copy of the Documentation referred to in clause 9.2(A)(1) or 9.2(A)(2) (as appropriate) to TfL for approval pursuant to clauses 10.1(B) and 10.2.

## 10. **Approval of Documentation**

- 10.1 In relation to Documentation (other than the Key Documents which are subject to clause 8 (Implementation Planning and Related Documents)), TfL shall:
- (A) supply the Service Provider on reasonable notice with information the Service Provider reasonably requires so that the Service Provider is not delayed in performing its obligations under clauses 9.1 and 9.2;
  - (B) within such period as is specified in the Implementation Plan (if applicable) and in any event so as to comply with any applicable Milestone Dates (or as the parties otherwise agree in writing including pursuant to the Change Control Request Procedure) following TfL's receipt of any Documentation envisaged under clauses 9.1 and 9.2:
    - (1) review that Documentation; and
    - (2) either:
      - (a) issue to the Service Provider a notice confirming that TfL approves Documentation to be reviewed by TfL during the Implementation Phase; or

- (b) issue to the Service Provider a notice confirming that TfL approves Documentation to be reviewed by TfL during the Operational Phase; or
- (c) agree the Change subject to the Change Control Request Procedure; or
- (d) issue to the Service Provider notice of rejection of that Documentation.

10.2 If TfL rejects any Documentation under clause 10.1(B)(2)(d):

- (A) TfL shall inform the Service Provider of the reason or reasons for such rejection;
- (B) the Service Provider shall, at the Service Provider's cost, promptly undertake a revision or amendment of that Documentation and re-submit it to TfL for review within such period as TfL may reasonably require;
- (C) the Service Provider shall promptly escalate the matter to such level of seniority within the Service Provider's Personnel as TfL may require; and
- (D) the parties shall repeat the procedure set out in clause 10.1 and this clause 10.2 until a notice confirming that TfL has approved that Documentation, or agreement subject to the Change Control Request Procedure (as applicable), is issued pursuant to clause 10.1.

## 11. **Changes to Key Documents and Updating Documentation**

- 11.1 Once the Key Documents have been accepted in accordance with clause 8.2, either party may request changes to those documents from time to time in accordance with the Change Control Request Procedure. The Service Provider shall provide TfL with copies of Key Documents on request.
- 11.2 In respect of Documentation other than Key Documents, the Service Provider shall regularly update all Documentation and provide copies to TfL on request (including updated copies on termination of this Agreement).

## **PART 5: DEVELOPMENT, DESIGN, BUILD AND SUPPLY**

### 12. **Development**

- 12.1 The Service Provider shall, subject to clause 4 (Commencement of Services), in accordance with applicable Milestone Dates, the Implementation Plan and the Specification, provide the following Build Services:
- (A) complete development, design, build and supply of the Enforcement Infrastructure so that it provides the functions and meets the performance criteria in the Specification; and
  - (B) perform any other tasks allocated to it in the Implementation Plan in relation to the development, design, build and supply of the Enforcement Infrastructure Service.

### 13. **Progress Monitoring of Design and Build**

- 13.1 During the Implementation Phase until Agreement to Operate of the entire Enforcement Infrastructure Service is granted under clause 14 (Testing), the Service Provider shall, on a weekly basis (or such other time agreed between the parties in writing):

- (A) submit a report to TfL (in such format as may be specified by TfL from time to time, including in electronic format), specifying:
    - (1) the tasks performed by the Service Provider in that week; and
    - (2) any proposed variations to the Design Documents or the Implementation Plan which the Service Provider believes are essential; and
  - (B) if the weekly report raises any issues of concern to TfL, it may request the Service Provider promptly to:
    - (1) supply more information relevant to such issues; or
    - (2) meet with TfL to discuss the issues of concern.
- 13.2 Reports submitted under this clause 13 and meetings to discuss issues arising shall be submitted or held, as appropriate, in accordance with schedule 10 (Contract Management and Reporting Procedure) for consideration at the then next Project Review Meeting or Performance Review.

## **PART 6: TESTING, ACHIEVEMENT OF MILESTONES AND DELAY**

### **14. Testing**

- 14.1 The Service Provider shall, in accordance with the applicable Milestone Dates, the relevant Implementation Phase Testing Documents or Operational Phase Testing Documents (as applicable), the Change Control Request Procedure and schedule 4 (Testing Regime) and so as to achieve all relevant Milestones, perform the Testing so as to ensure that the relevant parts of the Enforcement Infrastructure Service perform the features and functions and meet the performance criteria in the Specification.
- 14.2 The Service Provider shall:
- (A) give TfL at least seven (7) Working Days' written notice prior to each Test;
  - (B) at all times provide such access, facilities, information, data, explanation, documentation and assistance to TfL and nominated agents of TfL in order for TfL (and/or that nominated agent) to participate in such Test Witnessing as TfL may require;
  - (C) prepare a detailed Test Report in respect of each Test immediately following the conducting of that Test;
  - (D) immediately provide to TfL a copy of each Test Report and the Service Provider agrees that TfL may, subject to the provisions of clause 68 (Confidentiality), share the Test Report in form or substance with any Third Party for any purpose;
  - (E) immediately update the Issue Management Log in respect of each Test following the conducting of that Testing and ensure that the Issue Management Log is made available to TfL immediately following each Test with accurate, up to date and complete information and data regarding that Testing; and
  - (F) subject to any contrary written instructions from TfL from time to time, ensure that all test data containing Personal Data is securely and promptly destroyed once it is no

longer needed for Testing purposes and shall confirm to TfL once such destruction has been completed.

15. **Achievement of Milestones**

15.1 TfL shall, as soon as commercially practicable and in any event within five (5) Working Days of the later of:

- (A) completion of relevant Testing, Test Witnessing and receipt by TfL of the relevant Test Report and Issue Management Log information (if relevant);
- (B) delivery by the Service Provider of all Deliverables to be delivered as part of the relevant Milestone (if relevant); and
- (C) completion of all other tasks and activities specified in this Agreement and as may be agreed by the parties in writing from time to time as being required to demonstrate compliance with the acceptance criteria for the relevant Milestone ("**Milestone Tasks**"),

comply with clause 15.2.

15.2 TfL shall (without prejudice to any of TfL's other rights and remedies under this Agreement or otherwise):

- (A) issue to the Service Provider a Notice of Approval in respect of any Milestone to be achieved during the Implementation Phase where the relevant Testing, delivery of Documentation and/or Milestone Tasks establishes such achievement;
- (B) issue to the Service Provider a Notice of Agreement to Operate in respect of all of the Enforcement Infrastructure Service where TfL has received proof that all the requirements of the applicable Milestone to which it relates have been met;
- (C) issue to the Service Provider a Notice of Approval in respect of any Milestone to be achieved during the Operational Phase where the relevant Testing, delivery of Documentation and/or completion of Milestone Tasks establishes such achievement;
- (D) issue to the Service Provider a Notice of Business Acceptance in respect of any Test which was to be performed, Documentation which was to be provided or Milestone Task which was to be undertaken during the Operational Phase (including following the Change Control Request Procedure); or
- (E) issue to the Service Provider notice of rejection of those Services provided as part of the Milestone if:
  - (1) any Milestone to be achieved to which those Tests relate is not achieved due to:
    - (a) one or more Severity 1 Issues;
    - (b) three or more Severity 2 Issues; or
    - (c) four or more Severity 3 Issues;
  - (2) the cumulative effect of all Issues identified (regardless of their respective Severity Levels) and/or of any failures to complete Milestone Tasks adversely

affects the operation of the Enforcement Infrastructure Service or any part of it; or

- (3) any Documentation to be provided is missing or is not Fit for Purpose Documentation, in which event, irrespective of whether or not TfL issues such notice of rejection:
  - (a) a Severity 2 Issue shall be deemed to have occurred in respect of each Key Document which is missing or is not Fit for Purpose Documentation or otherwise in accordance with the terms of this Agreement; and
  - (b) a Severity 3 Issue shall be deemed to have occurred in respect of each other item of Documentation which is missing or is not Fit for Purpose Documentation or otherwise in accordance with the terms of this Agreement,

including without limitation for the purposes of assessing any Agreed Retention.

15.3 If TfL rejects any Services provided as part of a Milestone under clause 15.2(E):

- (A) TfL shall inform the Service Provider of the reason or reasons for such rejection;
- (B) the Service Provider shall immediately and at the Service Provider's cost make all corrections, fix all Defects and deficiencies, provide, complete, rectify or amend (as appropriate) any Documentation, complete all relevant Milestone Tasks and/or perform or re-perform Tests or alternative tests, all within thirty (30) days after the applicable Milestone Date (unless otherwise expressly agreed in writing between the parties), to demonstrate to TfL's satisfaction that the relevant parts of the Enforcement Infrastructure Service provide the features, functions, and facilities and meet the performance criteria specified in the Specification and this Agreement, including without limitation in connection with the Service Provider implementing any Work-off Plan pursuant to clause 15.3(C) such that the relevant Milestone is achieved within such thirty (30) day period or such other period as may be expressly agreed in writing between the parties;
- (C) the Service Provider shall immediately upon the request of TfL and at the Service Provider's cost prepare a Work-off Plan including details of the steps to be taken by the Service Provider to perform its obligations under clause 15.3(B) and shall, without limiting clause 15.3(B), promptly (and in any event within two (2) Working Days of the date of the notice of rejection) submit a copy of that Work-off Plan to TfL for its approval pursuant to clauses 10.1 and 10.2 which shall apply mutatis mutandis to that Work-off Plan and, subject to those clauses 10.1 and 10.2, the Service Provider shall fully carry out that Work-off Plan;
- (D) the Service Provider shall promptly escalate the matter to such level of seniority within the Service Provider's Personnel as TfL may require;
- (E) the parties shall repeat the procedure set out in clauses 15.1, 15.2 and this clause 15.3 until acceptance of the relevant parts of the Enforcement Infrastructure Service pursuant to clause 15.2 or termination of this Agreement pursuant to clause 15.3(F);
- (F) TfL may issue a Notice of Approval, Notice of Agreement to Operate and/or Notice of Business Acceptance (as applicable), conditional upon the Service Provider complying with the relevant Work-off Plan produced by the Service Provider in



accordance with clause 15.3(C). If the Service Provider fails to comply with the Work-off Plan, or if the Service Provider does not achieve the aims of the Work-off Plan to the satisfaction of TfL, TfL may, where such relevant Milestone is Milestone 6 (Ready for Service) only, terminate this Agreement with immediate effect by giving notice to the Service Provider.

- 15.4 Without prejudice to TfL's rights under clause 15.3(F), if a Milestone is not achieved by the relevant Milestone Date, TfL may either:
- (A) withhold the grant of the Notice of Approval, Notice of Agreement to Operate or Notice of Business Acceptance (as appropriate) in respect of that Milestone and retain the full amount of the relevant Milestone Payment until the earlier of:
    - (1) the full achievement of the Milestone; or
    - (2) the grant of the Notice of Approval, Notice of Agreement to Operate or Notice of Business Acceptance (as appropriate) pursuant to clause 15.5 below; or
  - (B) grant the Notice of Approval, Notice of Agreement to Operate or Notice of Business Acceptance (as appropriate) in respect of that Milestone and pay the relevant Milestone Payment to the Service Provider on the relevant Milestone Date less the amount of the Agreed Retention.
- 15.5 Notwithstanding that TfL may have withheld the grant of the Notice of Approval, Notice of Agreement to Operate or Notice of Business Acceptance (as appropriate) in respect of a particular Milestone and retained the full amount of the relevant Milestone Payment in accordance with paragraph 15.4(A), TfL shall be entitled, in its absolute discretion, at any time to grant the Notice of Approval, Notice of Agreement to Operate or Notice of Business Acceptance (as appropriate) in respect of that Milestone and either:
- (A) to pay the relevant Milestone Payment to the Service Provider, less the amount of the Agreed Retention, pending achievement of the Milestone by the Service Provider, such net sum being due and payable within the period from the date of such grant and otherwise in accordance with schedule 8 (Invoicing and Payment Procedure); or
  - (B) to:
    - (1) waive the requirement for the Service Provider to remedy the relevant outstanding Issues and fully achieve the Milestone (and in such circumstances TfL shall not be required to pay the Agreed Retention (or such proportion of it) as relates to the outstanding Issues and unfulfilled obligations of the Service Provider under this Agreement); and
    - (2) make an appropriate deduction to the ongoing Charges to reflect the value and/or cost of the reduced utility, operability and/or functionality of the Services and/or Enforcement Infrastructure on an on-going basis to TfL and/or Customers resulting from the issues outstanding and/or defective performance of the Service Provider, such deduction being as agreed in writing between the parties (each party negotiating in good faith to promptly agree such deduction) or, if the parties do not reach such agreement within five (5) Working Days following TfL granting the relevant Notice of Approval, Notice of Agreement to Operate or Notice of Business Acceptance in respect of that Milestone, such deduction being as determined by the Expert pursuant to clause 77 (Dispute Resolution) if either party refers the matter for Expert determination,

provided that TfL shall not exercise its rights pursuant to clause 15.5(B) without having taken into consideration (acting in good faith) any timely and reasonable representations made by the Service Provider.

15.6 For the avoidance of doubt:

- (A) any amounts retained by TfL pursuant to clauses 15.4 or 15.5(A) above shall be paid to the Service Provider on the subsequent full achievement of the relevant Milestone; and
- (B) the provisions of clauses 15.4 to 15.6 shall apply in addition, and without prejudice, to clause 16.13(B).

15.7 The Service Provider agrees that:

- (A) all Testing shall be the responsibility of, and carried out at the expense of, the Service Provider, except where re-testing of the end-to-end Enforcement Infrastructure is required due to faults or omissions of the Core Service Provider or TfL, provided such faults or omissions result in testing extending beyond the time period or resource allocated for that specific Testing in the Implementation Plan (in which case the Service Provider's reasonable costs of re-testing shall be paid by TfL);
- (B) where end-to-end re-testing of the Combined Services System is required due to the Service Provider's default, act, omission or negligence and such re-testing results in TfL being required to reimburse the Core Service Provider in performing such re-testing under the terms of the CSA ("**Retesting Compensation**"), the Service Provider shall promptly on TfL's request and on production by TfL of reasonable evidence of the amount of such Retesting Compensation pay to TfL a sum equal to such Retesting Compensation;
- (C) there shall be no transfer of risk by the Service Provider to TfL in connection with the Enforcement Infrastructure Service, or any parts thereof, arising from any granting by TfL of a notice that TfL approves a document, Notice of Approval, Notice of Agreement to Operate and/or Notice of Business Acceptance, and all risk in the Enforcement Infrastructure Service shall remain with the Service Provider at all times;
- (D) the issue of a notice that TfL approves a document, Notice of Approval, Notice of Agreement to Operate and/or Notice of Business Acceptance shall not affect:
  - (1) TfL's right to later reject any part of the Enforcement Infrastructure Service the subject of such notice or to reject any other part of the Enforcement Infrastructure Service whether or not any notice has been issued in respect of, or is otherwise in connection with, such other part of the Enforcement Infrastructure Service (but only to the extent such part is not in accordance with the requirements of this Agreement); or
  - (2) TfL's right to:
    - (a) later withhold an Agreed Retention pursuant to clause 15.4(B) or 15.5(A);
    - (b) receive Retesting Compensation;
    - (c) receive TfL Actual Delay Costs; or

- (d) make any other deductions from the Charges permitted under this Agreement; or
    - (3) any other rights or remedies of TfL under this Agreement, common law or in equity;
  - (E) Milestones must be achieved in sequence; and
  - (F) any termination by TfL pursuant to clause 15.3(F) shall be deemed to be for a material breach of this Agreement by the Service Provider.
- 15.8 Without limiting clause 8 (Implementation Planning and Related Documents) and clause 9 (Preparation and Submission of Testing Documents) or this clause 15, the Service Provider shall at all times comply with its other obligations set out in schedule 4 (Testing Regime).
- 15.9 The Service Provider or TfL may request changes to any document or Testing envisaged under clauses 8, 9, 14 and/or this clause 15 from time to time. Any such changes requested after notice that TfL approves a document, Notice of Approval, Notice of Agreement to Operate or Notice of Business Acceptance (as appropriate) has been issued, shall be effected through the Change Control Request Procedure.
- 15.10 Approval or rejection of any Work-off Plan and the Service Provider's compliance or non-compliance with any agreed Work-off Plan shall be without prejudice to TfL's rights to claim compensation in the event of a delay to the Planned Operational Commencement Date in accordance with 16.13(B) or any other rights and remedies of TfL under this Agreement, common law or in equity.
- 15.11 Where any Test Specification, Test Criteria or other detailed description, refinement, development or specifications of the measure or criteria by which the achievement (or otherwise) of any Milestone is to be determined remains to be developed and agreed between the parties after the date of execution of this Agreement, neither party shall (without the written agreement of the other party):
- (A) seek to introduce any new requirements or acceptance criteria or extend or amend any requirements or acceptance criteria currently specified in this Agreement; or
  - (B) seek to place on any description or specification of any requirement or acceptance criteria specified in this Agreement any interpretation which cannot reasonably be inferred from the drafting in this Agreement.
- 15.12 Where in clauses 15.3(B), 15.3(F), 41.4(B), 41.5 and 47.6(A) any requirement or acceptance criterion is stated to refer to a set of tasks being performed or completed "to the satisfaction of TfL" (or similar), TfL shall apply an objective assessment as to whether such task has been performed or completed and in making such assessment TfL shall at all times remain cognisant of, and comply with, the provisions of clause 15.11 above.

## 16. **Delay Plans**

- 16.1 In the event of a change to the Milestone Dates or Planned Operational Commencement Date pursuant to clause 4.7(B), 4.8(B) or 6.1 the provisions of this clause 16 shall not apply.
- 16.2 Notwithstanding that the provisions of clause 17 (Relief Events) or clause 57 (Force Majeure) may apply the Service Provider shall comply with its obligations under this clause 16.

- 16.3 The Service Provider shall as soon as practicable notify TfL in writing if the Service Provider (or a Sub-Contractor), has delayed or is likely to delay or if it may reasonably be expected to delay meeting any of the Milestones by the relevant Milestone Dates or the Planned Operational Commencement Date (or to cause the Service Provider to do so).
- 16.4 TfL shall as soon as practicable notify the Service Provider in writing if either: (i) TfL; or (ii) an Other Service Provider (if TfL has been so notified by such Other Service Provider) is likely to or may reasonably be expected to cause the Service Provider to delay meeting any of the Milestones by the relevant Milestone Dates or the Planned Operational Commencement Date.
- 16.5 In the event of any actual, likely or unavoidable delay in the Milestones being achieved by the Milestone Dates or in meeting the Planned Operational Commencement Date each party shall:
- (A) notify the other as soon as practicable of such circumstances (unless already notified of such circumstances by the other); and
  - (B) exercise all reasonable endeavours to mitigate its losses, expenditure and costs and to minimise the consequences of such delay including any consequential delay to any other Milestone or the Planned Operational Commencement Date.
- 16.6 Each party shall keep a record, supported by relevant documentation, of the steps it has taken to mitigate pursuant to clause 16.5 and such records and documentation shall be supplied to the other party prior to Delay Compensation or TfL Actual Delay Costs being agreed and paid in accordance with this Agreement.
- 16.7 Without prejudice to TfL's rights under clause 8 (Implementation Planning and Related Documents), clause 9 (Preparation and Submission of Testing Documents) or clause 15 (Achievement of Milestones), if a delay arises or is, in TfL's reasonable opinion, likely to arise in respect of achievement of one or more Milestones by the relevant Milestone Dates or the Planned Operational Commencement Date then the Service Provider shall promptly provide a delay plan ("**Delay Plan**") to TfL and at the latest within ten (10) Working Days following receipt of notice from TfL stating that such a delay has occurred or is likely to occur or from when the Service Provider first became aware of the delay, whichever is the earlier. The Delay Plan shall set out:
- (A) the cause of such delay;
  - (B) the proposed relief pursuant to clause 16.12 or clause 16.13(A) (if any) from the Service Provider's obligations under this Agreement as a result of the delay;
  - (C) the proposed costs pursuant to clause 16.13(A) (if any) to which the Service Provider is entitled as a result of the delay; and
  - (D) how the delay is to be remedied (if applicable) and in what timescale so that the relevant Milestone can be achieved and (wherever possible) all following Milestones can be achieved by their respective Milestone Dates, and/or so that the Planned Operational Commencement Date can be achieved.
- 16.8 The Service Provider shall also identify and demonstrate in the Delay Plan (and shall provide supporting documentation to demonstrate):
- (A) that any need for relief from its obligations under the Agreement could not reasonably be expected to be mitigated in accordance with this Agreement whilst

acting in accordance with Good Industry Practice, and without incurring material expenditure; and

- (B) the extent to which any circumstance or occurrence was the direct cause of the delay in the achievement of the Planned Operational Commencement Date, breach of its obligations and/or financial loss (as applicable) which would entitle the Service Provider to be paid the Delay Compensation in accordance with clause 16.13(A).

16.9 TfL shall have the right to consent to the Delay Plan (such consent not to be unreasonably withheld or delayed) but shall have the right to require reasonable changes to the Delay Plan including changes that are aimed at preserving the Milestone Dates or the Planned Operational Commencement Date in preference to minimising cost, which changes the Service Provider shall adopt. Such reasonable changes shall be incorporated in the Delay Plan by the Service Provider within five (5) Working Days of TfL notifying such changes to the Service Provider.

16.10 Unless otherwise expressly agreed in writing by TfL, the cost of preparing and implementing the Delay Plan shall be borne in full by the Service Provider, provided that in the circumstances set out in clause 16.12 and clause 16.13(A), TfL shall bear such costs (except that, for the avoidance of doubt, the Service Provider shall not also be entitled to recover such costs as part of the Delay Compensation).

16.11 The Service Provider shall carry out its obligations in the Delay Plan promptly if and once it is approved in writing by TfL (and including such changes as TfL may require in accordance with clause 16.9) and shall commence such work within one (1) Working Day of such approval by TfL unless otherwise set out in the Delay Plan.

16.12 To the extent that a delay in the Service Provider meeting any of the Milestones by the relevant Milestone Dates is directly and materially caused by TfL or a Third Party (except where such Third Party is: (i) a Sub-Contractor; or (ii) under the control of the Service Provider, for the duration of such delay the Service Provider shall be entitled to such relief from its obligations under this Agreement, and such extension of time in achieving such affected Milestones as may be agreed between the parties acting reasonably and set out in writing.

16.13 If the Operational Commencement Date is delayed beyond the Planned Operational Commencement Date, provided always that the party receiving relief and/or compensation (if any) has substantially complied with its obligations under this clause 16, and subject to clause 16.14, the following provisions shall apply:

- (A) to the extent that such delay is directly and materially caused by:
- (1) any breach of this Agreement by TfL (which shall be deemed for the purpose of this sub-clause to include where a delay arises pursuant to judicial review) or negligence of TfL; or
  - (2) Protestor Action; or
  - (3) an Other Service Provider; or
  - (4) Vandalism or one or more road traffic accidents; or
  - (5) any material defect in Other Service Provider Hardware included in the Enforcement Infrastructure at the discretion of TfL pursuant to clause 19.1; or

- (6) compliance with clause 19.2(D) in the event that the proviso in that clause has been complied with, to the extent applicable,

the Service Provider shall be entitled to such relief from its obligations under this Agreement, and such extension of time in achieving the Planned Operational Commencement Date (being not shorter than the period equal to the length of the delay or as otherwise agreed by the parties within ten (10) Working Days of the commencement of the delay acting reasonably and in good faith) and set out in writing and/or TfL shall pay to the Service Provider the Delay Compensation for the duration of such delay on a Monthly basis in accordance with schedule 8 (Invoicing Procedure);

- (B) in respect of delay to the Operational Commencement Date beyond the Planned Operational Commencement Date only (and not, for the avoidance of doubt, any other Milestone) to the extent that such delay is the result of any failure by the Service Provider to perform its obligations under this Agreement, the Service Provider shall pay to TfL the TfL Actual Delay Costs within thirty (30) days of the quantum of such costs having been agreed or determined pursuant to clause 16.14;
- (C) to the extent that such delay is the result of a Force Majeure Event, the provisions of clause 57 (Force Majeure) shall apply and neither party shall be liable to pay the Delay Compensation, or TfL Actual Delay Costs, as appropriate;
- (D) to the extent that such delay is the result of a Relief Event, the provisions of clause 17 (Relief Events) shall apply and neither party shall be liable to pay the Delay Compensation, or TfL Actual Delay Costs, as appropriate; or
- (E) to the extent that such delay is a result of any other reason other than as set out under clause 16.13(A), 16.13(B), 16.13(C) or 16.13(D), no relief from obligations nor extension of time shall be granted and neither party shall be liable to pay the Delay Compensation, or TfL Actual Delay Costs, as appropriate.

16.14 Each party shall be obliged to pay such amount as is agreed or determined as being equal to the Delay Compensation or TfL Actual Delay Costs (as appropriate) including without limitation pursuant to clause 16.17 and in determining the amount of Delay Compensation or TfL Actual Delay Costs payable, each party shall provide such evidence as the other party shall reasonably require to verify such amounts. For the avoidance of doubt, this clause 16.14 is without prejudice to clause 63.1 (Waiver and Approvals).

16.15 Except as provided for in clause 16.12, 16.13(A), clause 17 (Relief Events) and clause 57 (Force Majeure), the Service Provider shall not be entitled to any relief, nor shall TfL be under any obligation to give any extension of time in respect of any delay, which affects the Services or any of the Service Provider's other obligations under this Agreement.

16.16 Without prejudice to clause 16.15, any delays caused by the Service Provider's failure to achieve a Milestone in accordance with clause 8 (Implementation Planning and Related Documents), clause 9 (Preparation and Submission of Testing Documents) or clause 15 (Achievement of Milestones) shall be dealt with in accordance with and subject to the provisions of the relevant clause.

16.17 If the parties cannot agree in writing the extent of any TfL Actual Delay Costs, Delay Compensation, delay incurred, relief from the Service Provider's obligations under the Agreement, or TfL disagrees that a Relief Event or Force Majeure Event has occurred (or as to its consequences), the parties shall resolve the matter in accordance with the Dispute Resolution Procedure. Any undisputed amounts of the TfL Actual Delay Costs or Delay Compensation shall continue to be payable notwithstanding the dispute.

**PART 7: RELIEF FROM OBLIGATIONS AND TFL EVENTS****17. Relief Events**

- 17.1 In the event that, and to the extent that, either party is unable to perform any of its obligations under this Agreement as a direct result of the occurrence of a Relief Event then, subject to the remaining provisions of this clause 17, the affected party shall not be liable under this Agreement for such non-performance. For the avoidance of doubt, to the extent that the Relief Event affects some only of a party's obligations, such party shall only be granted relief under this clause 17 from those affected obligations and not from any other of its obligations under this Agreement.
- 17.2 The Service Provider shall only be granted relief for failure to perform its obligations under this Agreement on the occurrence of a Relief Event if and to the extent such failure is not attributable to a failure by the Service Provider to comply with the Disaster Recovery Plan and other provisions specified in clause 46 (Disaster Recovery) and schedule 25 (Disaster Recovery) (unless, and to the extent, such failure is also due to a Relief Event or a TfL Event preventing the Service Provider's delivery of such disaster recovery and contingency services).
- 17.3 If the Service Provider is affected by a Relief Event, TfL shall be relieved of its obligation to make payments under this Agreement to the Service Provider in respect of the obligations affected by such Relief Event for so long as such Relief Event continues.
- 17.4 The party affected shall notify the other as soon as practicable after a Relief Event (as appropriate) ceases or no longer causes it to be unable to comply with its obligations under this Agreement. Following such notification the Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Relief Event.
- 17.5 Relief from liability provided to either party (including, without limitation, in clause 16.13 and clause 57 (Force Majeure)) for any delay or failure to perform the obligations of this Agreement arising from a Relief Event or Force Majeure Event shall no longer apply upon, or to the extent that, the Relief Event or the Force Majeure Event (as appropriate) cease to prevent the party from complying with its obligations.
- 17.6 If either party shall become aware of circumstances of a Relief Event which give rise to or which are likely to give rise to any delay or inability of it to perform its obligations, such party shall use all reasonable endeavours to notify the other by the most expeditious means available of such circumstances and to minimise and mitigate the consequences of the Relief Event, as applicable, in accordance with Good Industry Practice with particular regard to:
- (A) delay (including any consequential delay to the Planned Operational Commencement Date or any Milestone);
  - (B) any impact on the operation of the Scheme and the other party;
  - (C) the ability of the affected party to perform its obligations under this Agreement; and
  - (D) any losses, damages, expenditure, costs and expenses to be incurred in mitigating the effects of the Relief Event.
- 17.7 For the avoidance of doubt all costs and expenses incurred by the Service Provider in returning the Services to full operation during or after a Relief Event other than arising

through industrial dispute involving TfL's or any Other Service Providers' personnel (except where, in respect of the period following the Operational Commencement Date, such Other Service Provider is a Managed Contractor and the costs and expenses are directly and materially caused by the Service Provider's breach of its obligations under this Agreement or negligence in relation to the Management Services), shall be for the account of the Service Provider.

17.8 To the extent that a Relief Event causes, or is anticipated to cause, a delay in the Service Provider meeting any of the Milestones by the relevant Milestone Date or a delay to the Operational Commencement Date beyond the Planned Operational Commencement Date, the provisions of clause 16 (Delay Plans) shall apply (to the extent that they are applicable), provided that the Service Provider shall nevertheless also comply with the provisions of this clause 17.

17A **TfL Events**

17A.1 If on or at any time after the Operational Commencement Date, as a direct result of the occurrence of a TfL Event:

- (A) the Service Provider is unable to comply with its obligations under this Agreement; and/or
- (B) the Service Provider anticipates that it will incur costs or be subject to a reduction in the Charges which it would have otherwise received in accordance with this Agreement (such reduction being referred to as "**Lost Revenue**");

then the Service Provider is entitled to apply for relief from its obligations and (where permitted under this Agreement) claim compensation under this Agreement.

17A.2 To obtain relief and/or claim compensation the Service Provider must:

- (A) as soon as practicable, and in any event within fifteen (15) Working Days after it became aware that the TfL Event has caused or is likely to cause delay, breach of an obligation under this Agreement and/or the Service Provider to incur costs or Lost Revenue, give to TfL a notice of its claim for payment of compensation and/or relief from its obligations under the Agreement;
- (B) within ten (10) Working Days of receipt by TfL of the notice referred to in paragraph 17A.2(A) above, give full details of the TfL Event and the extension of time and/or any costs and/or Lost Revenue in respect of which compensation is claimed;
- (C) take all reasonable steps in accordance with Good Industry Practice to mitigate or recover the costs or Lost Revenue claimed including, but not limited to, repairing or replacing any parts of the Enforcement Infrastructure which are affected;
- (D) demonstrate to the reasonable satisfaction of TfL that:
  - (1) the TfL Event was the direct cause of the costs or Lost Revenue in respect of which compensation is claimed; and
  - (2) the costs and/or Lost Revenue in respect of which compensation is claimed, time lost, and/or relief from the obligations under the Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice; and



- (E) not incur any costs in respect of or in relation to Other Service Provider Hardware without TfL's express prior written consent.

17A.3 In the event that the Service Provider has complied with its obligations under paragraph 17A.2 above, then:

- (A) in the case of an additional cost being incurred by the Service Provider as a result of capital expenditure being incurred by the Service Provider at any time, TfL shall reimburse the Service Provider for the actual costs reasonably incurred within forty (40) days of its receipt of a written demand by the Service Provider supported by all relevant information;
- (B) in the case of a payment of compensation for costs that does not result in capital expenditure being incurred by the Service Provider but which reflects either a change in the costs being incurred by the Service Provider after the Operational Commencement Date or Lost Revenue (or both), TfL shall compensate the Service Provider by an adjustment to the Charges; and/or
- (C) TfL shall give the Service Provider such relief from its obligations under the Agreement, as is reasonable for such a TfL Event but which for the avoidance of doubt shall include relief from compliance with the relevant Service Levels if and to the extent that any are directly affected.

For the purposes of this clause the Service Provider's additional costs shall be calculated using the rates set out in Annex C of schedule 9.

17A.4 In the event that information is provided after the dates referred to in paragraph 17A.2 above (other than due to a Force Majeure Event, a Relief Event or a TfL Event), then the Service Provider shall not be entitled to any extension of time, compensation, or relief from its obligations under the Agreement in respect of the period for which the information is delayed.

17A.5 If the parties cannot agree the extent of any compensation, delay incurred, relief from the Service Provider's obligations under the Agreement, or TfL disagrees that a TfL Event has occurred (or as to its consequences), or that the Service Provider is entitled to any relief under this clause, the parties shall resolve the matter in accordance with clause 77 (Dispute Resolution).

## **PART 8: CO-OPERATION**

### **18. Co-operation with TfL and Other Service Providers**

18.1 The Service Provider shall co-operate fully and promptly with TfL and, where requested by TfL, Other Service Providers in relation to all Services and any points of interoperability or interface between the Enforcement Infrastructure Service and the services to be provided by the Other Service Providers, including, but not limited to:

- (A) testing;
- (B) performance measuring and monitoring;
- (C) delivery and testing of disaster recovery services and disaster recovery plans;
- (D) implementation of any changes to TfL's or any Other Service Provider's Systems, procedures or processes (including but not limited to technology refreshes);

- (E) delivery and testing of security policies;
  - (F) preparation and delivery of exit strategies and plans; and
  - (G) resolving any interfacing, integration or interoperability problems.
- 18.2 The co-operation referred to in clause 18.1 shall include, but not be limited to, promptly providing TfL and, where applicable, Other Service Providers with (but solely to the extent necessary for the implementation and operation of the Services or the Enforcement Infrastructure Interface and inter-operation of the Services with the services provided by Other Service Providers):
- (A) information requested by them;
  - (B) access to operational and technical staff to answer questions;
  - (C) participation in any joint testing initiatives; and
  - (D) input in relation to its end of any technical or System interfaces required including the Enforcement Infrastructure Interface and TfL Interface.
- 18.3 The Service Provider shall fully and promptly co-operate with all requests of TfL and, where requested by TfL, Other Service Providers in relation to:
- (A) the testing of any interfaces, interactions and data flows between the Services provided by the Service Provider and the services to be provided by the Core Service Provider; and
  - (B) all services provided by any Other Service Providers, as appropriate, which interface with or are directly impacted by the Services, including without prejudice to the generality of the foregoing, promptly and accurately providing all Data and Information required by the Other Service Providers, as appropriate, for them to comply with their obligations to TfL to the extent provision of such Data is within the Service Provider's control or possession.
- 18.4 In performing the Services, the Service Provider shall use best endeavours to avoid prejudicing TfL's relationship with any Other Service Provider.
- 18.5 In the event that TfL provides all or part of the Core Services directly, due to TfL exercising its rights of step-in under, or as a consequence of termination of, the CSA, or otherwise, the Service Provider shall continue to perform the Services in accordance with this Agreement as if TfL were the Core Service Provider and shall provide all full and prompt assistance, co-operation and information to TfL for the purposes thereof.
- 18.6 The Service Provider agrees that its obligations under this clause 18 are in addition and without prejudice to the Service Provider's other obligations under this Agreement, including without limitation under clause 5 (Services).
- 18.7 Without limiting the Service Provider's obligations to provide the Services (including without limitation the Management Services), TfL shall, and shall use best endeavours to procure that Other Service Providers shall, cooperate with the Service Provider to the extent necessary for the Service Provider to provide the Services.
- 18.8 For the avoidance of doubt, in relation to cooperation required during the Operational Phase, in the event that any obligation of the Service Provider under this clause 18

comprises a Change, the provisions of clause 39 (Change Control Request Procedure) and schedule 9 (Change Control Request Procedure) shall apply.

## **PART 9: OPERATIONAL PHASE: OPERATION, SUPPORT AND MAINTENANCE**

### **19. Equipment and Hardware**

19.1 The Enforcement Infrastructure Interface to be provided by the Service Provider may, at TfL's option, include Other Service Provider Hardware as the interconnection point (being the data exit point from the Service Provider Hardware into the Other Service Provider's Systems) between the Enforcement Infrastructure Interface and interfaces with Other Service Providers (including but not limited to the Core Interface).

19.2 In relation to any Other Service Provider Hardware, the Service Provider shall:

- (A) site the Other Service Provider Hardware on the Premises for the purpose of interconnecting the Enforcement Infrastructure Interface to the Core Interface;
- (B) provide an Other Service Provider with reasonable access to the Premises from time to time on reasonable notice in order to enable that Other Service Provider to install, maintain and remove Other Service Provider Hardware provided that TfL shall use reasonable endeavours to procure that such Other Service Provider gives reasonable notice and a reasonable level of detail regarding the purpose for requiring such access;
- (C) at its own cost, provide a suitable operating environment (including air temperature and humidity) for the Other Service Provider Hardware at the Premises, being the same (or identical to the) environment as the Service Provider provides for its own comparable equipment and hardware located at the Premises; and
- (D) ensure at all times that it does not do, omit to do or permit any Third Party to do or omit to do, anything which:
  - (1) prevents the Other Service Provider from accessing (including without limitation by way of connectivity) the Other Service Provider Hardware (including without limitation by electronic remote management); or
  - (2) otherwise terminates, disrupts, affects or reduces the connectivity of the Other Service Provider Hardware with the Enforcement Infrastructure,

provided that where compliance with this sub-clause 19.2(D) would adversely affect the provision of the Services, the Service Provider shall promptly inform TfL in writing of this fact giving its reasons, following which (where TfL, acting reasonably, determines that it is more likely than not to have such an adverse effect) TfL shall promptly confirm in writing that complying with this sub-clause shall be deemed to be a TfL Event;

- (E) at its own cost, ensure that it has in place insurance adequate to cover:
  - (1) loss or damage to the Other Service Provider Hardware while on the Premises;
  - (2) loss or damage to the Premises and its property caused by the Other Service Provider Hardware; and
  - (3) business losses incurred by it arising out of such circumstances; and

(F) at all times fully and promptly co-operate with the Other Service Provider in order to ensure that the adequate insurance referred to in clause 19.2(E) is in place.

19.3 TfL shall, or shall use reasonable endeavours to procure that the relevant Other Service Provider shall, provide the Service Provider with relevant information where such information is required in order for the Service Provider adequately to comply with its obligations in clause 19.2 and where, acting in accordance with GIP, the Service Provider should not reasonably be expected to be aware of such information.

19.4 The Service Provider shall at its own cost provide all aspects of the Enforcement Infrastructure, including but not limited to the Service Provider Hardware for use in the Enforcement Infrastructure but excluding, for the avoidance of doubt, any Other Service Provider Hardware and the poles which are to be made available to the Service Provider in accordance with schedule 27 (Outstation Installation and Traffic Management).

## 20. **Data Processing Capacity**

20.1 The Service Provider shall by the Operational Commencement Date and during the Operational Phase:

(A) ensure that the Enforcement Infrastructure has at all times sufficient Capacity to enable the Operational Services to be supplied in accordance with the Service Levels; and

(B) subject to clause 20.6 and to compliance by TfL of its obligation in clause 20.3(A), carry out Capacity Planning to ensure that the Enforcement Infrastructure will have sufficient processing power and speed, Data storage and transport capacity and network bandwidth and configuration to cope with all foreseeable contingencies and with planned expansion of the Operational Services.

20.2 The Service Provider shall during the Operational Phase prepare draft Capacity Planning plans ("**Draft Capacity Plans**") and shall submit a current version of such plans to TfL:

(A) every six (6) Months; or

(B) with greater regularity if TfL requests it or if the Service Provider wishes to raise a Capacity Planning issue of concern with TfL.

20.3 TfL:

(A) shall inform the Service Provider of any likely significant increases in the demand for Capacity of which it is aware during the Operational Phase; and

(B) may consult with the Service Provider regarding the Draft Capacity Plans and shall have the right, by notice to the Service Provider, to agree the Draft Capacity Plans ("**Agreed Capacity Plans**") or to require the Service Provider to make amendments to the Draft Capacity Plans ("**Requested Amendments**"). Requested Amendments shall be requested and agreed through the Change Control Request Procedure.

20.4 The Service Provider shall, subject to clause 20.6, comply with the Agreed Capacity Plans (whether agreed or determined through the Change Control Request Procedure) in providing the Operational Services, any Additional Services, any Future Services and/or any New Services.

20.5 The parties shall meet to discuss Capacity Planning:

- (A) annually; or
- (B) with greater regularity on the request of either party if that party wishes to raise a Capacity Planning issue of concern with the other party.

20.6 To the extent that, in order to comply with its obligations under clauses 20.3(B) and 20.4, the Service Provider will need to increase the Capacity, such increase shall be effected through the Change Control Request Procedure.

## 21. **Technology Compatibility**

21.1 The following provisions shall apply in relation to technology comprised in the Enforcement Infrastructure Service:

- (A) the Service Provider shall consult with TfL and the Core Service Provider on all questions of technology strategy and policy affecting TfL or the Core Service Provider in relation to the Enforcement Infrastructure Service;
- (B) the Service Provider shall liaise with the Core Service Provider and TfL during the Implementation Phase and the Service Provider and TfL shall each use best endeavours to agree in writing the technology standards required in relation to the Operational Phase and/or in relation to Future Services. The Service Provider shall at all times adhere to the technology architecture principles as stated in the Specification, and shall not depart from such technology standards and such technology architecture principles (such departure being a “**Technology Change**”) except by way of the Change Control Request Procedure;
- (C) unless agreed in writing between the parties, the Service Provider shall not be entitled to increase the Charges as a result of any Technology Change;
- (D) the Service Provider shall ensure that the Systems used by it to provide the Services are compatible for use with, work in combination with, and interface with (together “**Compatibility**” and “**Compatible**” shall have a corresponding meaning) the Core Interface and other Systems used by the Core Service Provider and Other Service Providers and, in relation to Management Information, TfL, save where the Core Interface and/or any such other System has been altered without reasonable prior notice having been given to the Service Provider and such alteration has an adverse effect on Compatibility;
- (E) the Service Provider shall, as soon as practicable, notify TfL in writing if Systems used by the Service Provider in connection with the Enforcement Infrastructure Service are not at any time fully Compatible and/or are not fit for the purpose of providing the Enforcement Infrastructure Service efficiently and effectively; and
- (F) the Service Provider shall provide TfL at its request with information regarding the operating environment, System constraints and other operating parameters applicable to the Enforcement Infrastructure.

21.2 Subject to clause 21.3, if the Service Provider makes changes to the Enforcement Infrastructure resulting in TfL, the Core Service Provider and/or any Other Service Provider having to make changes to their own Systems (including Systems for Management Information, in the case of TfL) in order to achieve Compatibility between the Enforcement Infrastructure and the Systems used by the Core Service Provider, TfL and/or any Other Service Provider, the Service Provider shall reimburse the costs reasonably incurred by the Core Service Provider, the Other Service Provider and/or TfL (as appropriate) in achieving

Compatibility unless such changes are effected through the Change Control Request Procedure.

- 21.3 If it is necessary for the Service Provider to make changes to the Enforcement Infrastructure in order to achieve Compatibility between the Enforcement Infrastructure and the Systems used by the Core Service Provider or any Other Service Provider due to the Core Service Provider or the Other Service Provider making changes to its own Systems, such changes to the Enforcement Infrastructure shall be effected as Mandatory Changes through the Change Control Request Procedure.
- 21.4 TfL shall, and shall use best endeavours to ensure that any Other Service Provider shall, consult with the Service Provider prior to TfL or any Other Service Provider making changes to its own Systems which shall, or is more likely than not to, affect the Service Provider's ability to achieve Compatibility between the Enforcement Infrastructure and such Systems.
- 21.5 The Service Provider and TfL acknowledge that it is in the interests of both parties to take advantage of potential improvements in technology which will improve the quality and timeliness of the Services or reduce the cost of providing such Services. Accordingly either party may use the Change Control Request Procedure to propose any changes or improvements in the technology used to provide the Services.

## 22. **Systems, Support and Maintenance**

22.1 Subject to clause 21.3, the Service Provider agrees that it shall be for the Service Provider to determine what Hardware, Software and Systems to use in order to comply with the Specification in the delivery of the Enforcement Infrastructure Service. Accordingly the Service Provider shall not be entitled to require an increase in Charges or payment of other sums (whether under the Change Control Request Procedure initiated by it or otherwise):

- (A) to finance changes it wishes to make:
- (1) to the Enforcement Infrastructure or the Service Provider's Solution in order to ensure that the Enforcement Infrastructure and other parts of the Enforcement Infrastructure Service comply with the Specification; or
  - (2) to "hard coded" Systems or Software if, contrary to the requirements of the Statement of Requirements, the Service Provider makes codes, status or other Parameters "hard coded" within applications used in the Enforcement Infrastructure; or
- (B) in the event that any Hardware, Software or Systems are not provided by TfL, the Core Service Provider or any Other Service Provider, unless the Specification specifies that such Hardware, Software or Systems are to be provided by TfL or the Core Service Provider or any Other Service Provider (in which case any additional costs which the Service Provider wishes to pass on to TfL in providing such Hardware, Software, or Systems shall be agreed through the Change Control Request Procedure).

22.2 The Service Provider shall:

- (A) ensure that all Hardware, Software, Systems, cameras, equipment and infrastructure used by it as part of the Enforcement Infrastructure:
- (1) adequately perform and fulfil their respective requirements and functionality and interface, integrate and interoperate appropriately with each other, in each

case in accordance with the Specification (or as agreed from time to time in accordance with the Change Control Request Procedure);

- (2) are installed, used and maintained in accordance with their manufacturers' technical specifications; and
  - (3) are free from material defects in materials, workmanship and installation;
- (B) ensure that any Hardware, Software and Systems used as part of, or by the Service Provider in connection with, the Enforcement Infrastructure Service are maintained and supported by the Service Provider from time to time;
- (C) without limiting clause 22.2(A) or 22.2(B), provide full support and maintenance in relation to the Enforcement Infrastructure Service (including all Enforcement Infrastructure). As part of providing such full support and maintenance, the Service Provider shall at its own cost:
- (1) without prejudice to the Service Provider's obligations under clause 30.1(F), ensure that in relation to Hardware, Software or Systems used as part of the Enforcement Infrastructure it shall throughout the term of this Agreement use models, versions and releases of that System then currently maintained or supported by the relevant lessor, licensor or supplier of the Hardware, Software or Systems (save that where compliance with this clause would require replacing, updating or upgrading any part of the Enforcement Infrastructure which is not contemplated in the Financial Model, the Service Provider shall not be required to comply with this sub-clause unless and until TfL and the Service Provider determine that such replacement, update or upgrade should take place pursuant to the Change Control Request Procedure);
  - (2) if it wishes to change a System included in the Enforcement Infrastructure because it is no longer supported or maintained by the lessor, licensor or supplier of the System, it shall do so in accordance with clause 22.3;
  - (3) support the Enforcement Infrastructure (including but not limited to any Hardware, Software or Systems comprised therein) to the level set by Good Industry Practice, including preventative, proactive, scheduled, emergency and reactive support and maintenance, monitoring, management, administration and problem resolution; and
  - (4) manage and support the live release of the MIS (and any related databases) and any subsequent versions or releases in accordance with a version or release schedule approved in writing and in advance by TfL, and provide TfL with appropriate user and technical Documentation (to be approved in writing and in advance by TfL for each MIS version or release, such approval not to be unreasonably withheld or delayed). The Service Provider shall ensure that the Documentation includes the requirements specified in the Specification.

22.3 The Service Provider shall, during the Operational Phase, prepare draft support and maintenance plans for Hardware, Software and Systems on a rolling six (6) Monthly basis ("**Draft Maintenance Plans**") and shall submit a current version of such plans to TfL:

- (A) every Month;
- (B) with greater regularity in the Service Provider's discretion if the Service Provider wishes to raise a maintenance issue of concern with TfL; or

(C) such other period as may be agreed in writing between the parties.

22.4 TfL may consult with the Service Provider regarding the Draft Maintenance Plans and shall have the right, by notice to the Service Provider, to approve the Draft Maintenance Plans (“**Approved Maintenance Plans**”) or to require the Service Provider to make amendments to the Draft Maintenance Plans, such amendments to be requested and agreed through the Change Control Request Procedure.

22.5 The Service Provider shall comply with the Approved Maintenance Plans in providing the Enforcement Infrastructure Service.

22.6 The parties shall meet to discuss support and maintenance of the Enforcement Infrastructure:

(A) Monthly; or

(B) with greater regularity at either party’s request if that party wishes to raise a maintenance issue of concern with the other party.

### 23. **System Failure**

23.1 The Service Provider shall notify TfL without delay on it becoming aware of any event of or the likely event of a System Failure, whether or not it constitutes a failure to meet the Service Levels.

23.2 In the event of a System Failure, the Service Provider shall immediately conduct a comprehensive examination of the Enforcement Infrastructure or part of the Enforcement Infrastructure (as appropriate) for the purposes of locating the cause of the System Failure.

23.3 The Service Provider shall provide to TfL promptly on TfL’s request all relevant information:

(A) to demonstrate the cause or causes of the System Failure;

(B) setting out the corrective action which has been, is being and/or is planned to be taken;

(C) relating to maintenance of any relevant part of the Enforcement Infrastructure; and

(D) demonstrating the existing and historical capacity at which the Enforcement Infrastructure or the relevant part thereof is and has been operating,

to facilitate its understanding of the best way to resolve such System Failure or prevent such failure recurring in the future, including, but not limited to, all relevant failure reports, test data, performance reports, volumetric information and operational reports (both historical and current).

23.4 Where the relevant System Failure affects or may affect, or was caused by, an Other Service Provider, the Service Provider shall give TfL all necessary co-operation in resolving the relevant System Failure by co-operating fully and expeditiously with the relevant Other Service Provider, as appropriate, to resolve the same.

23.5 A material failure by the Service Provider to provide the information requested by TfL in accordance with clause 23.3 within 10 (ten) Working Days of the request by TfL will give rise to a right for TfL to terminate this Agreement by notice to the Service Provider.



## 24. **Continuous Improvements and Technology Refresh**

- 24.1 At its own cost, the Service Provider will from time to time benchmark its performance of the Enforcement Infrastructure Service in accordance with Good Industry Practice.
- 24.2 The Service Provider shall have an ongoing obligation throughout the Term of the Agreement to:
- (A) identify improvements to the Enforcement Infrastructure Service to reflect the requirements of then current Good Industry Practice ("**GIP Improvements**"). As part of this obligation the Service Provider shall quarterly in the first twelve (12) Months from the Operational Commencement Date and half yearly for the remaining period of this Agreement identify and advise TfL on, inter alia, new or potential improvements to the Enforcement Infrastructure Service including the quality, responsiveness, procedures, likely performance mechanisms and cost reduction; and
  - (B) whenever possible and as requested by TfL, in accordance with the Change Control Request Procedure, introduce the GIP Improvements to provide continuous improvement of the Enforcement Infrastructure Service to TfL, and, as part of the Change Control Request Procedure, the parties shall discuss and determine an equitable allocation of the costs and of any benefit resulting from the introduction of the GIP Improvements.
- 24.3 As part of identifying GIP Improvements referred to in clause 24.2, the Service Provider shall inform TfL of emerging standards and evolving related technology which would in each case improve the operational efficiency of the Enforcement Infrastructure Service if implemented.
- 24.4 The Service Provider shall comply with the Technology Refresh Policy set out in schedule 12 (Technology Refresh Policy).
- 24.5 The Service Provider shall:
- (A) keep a record of changes (for example, Solution Architecture changes and changes of types and versions of Systems used) made to the Enforcement Infrastructure during the Operational Phase ("**Solution Architecture Change Record**"). TfL shall be entitled to access to such Solution Architecture Change Record in accordance with clause 41 (Audit and Inspection) (amended mutatis mutandis);
  - (B) maintain and regularly update IT strategy plans relating to the Enforcement Infrastructure Service ("**IT Strategy Plans**") reflecting the then current requirements of Good Industry Practice. The IT Strategy Plans shall include measures planned to be taken by the Service Provider in accordance with clauses 22.2 and 24.2(B) to ensure that the Enforcement Infrastructure and its maintenance and operation comply with Good Industry Practice;
  - (C) make its IT Strategy Plans available to TfL at the Effective Date (and thereafter promptly on request from TfL), and promptly provide TfL with a copy of any changes made to such plans from time to time. TfL shall have the right to request changes to the IT Strategy Plans through the Change Control Request Procedure.

## 25. **Training**

- 25.1 The Service Provider shall, at the request of TfL and without charge, provide:

- (A) introductory and ongoing training to TfL's Personnel in relation to the use of the Enforcement Infrastructure:
  - (1) two sessions during the Implementation Phase;
  - (2) on a quarterly basis during the Operational Phase; and
  - (3) at such other times as agreed between the parties;
- (B) if TfL has, by the Change Control Request Procedure (or otherwise), requested an upgrade or replacement to any Hardware or Software used in the Enforcement Infrastructure, introductory and ongoing training for the Service Provider's own Personnel and those Personnel of TfL nominated by TfL in relation to such Hardware or Software, save that where any such upgrade or replacement is requested through the Change Control Request Procedure, the costs of such training shall be borne by such party as is determined pursuant to such Change Control Request Procedure; and
- (C) ongoing appropriate training for each of the Service Provider's teams including, but not limited to, ensuring that all Personnel and Users are trained in the security policies and procedures applicable to their roles and that all Service Provider Personnel are provided with training on Data Protection Laws and FOI Legislation issues, obligations and procedures.

25.2 The Service Provider, in fulfilling its obligations under this clause 25, shall ensure that it does so in each case in accordance with the requirements and frequency specified in the Statement of Requirements.

25.3 The Service Provider shall provide suitably qualified and trained Personnel to deliver such training.

25.4 The Service Provider shall ensure that all of its Personnel are appropriately trained to provide the Services in accordance with the Statement of Requirements including but not limited to dealing with Data in accordance with Data Protection Laws.

## **PART 10: ADDITIONAL SERVICES, FUTURE SERVICES AND NEW SERVICES**

### **26. Additional Services, Future Services and New Services**

#### **26.1 Additional Services**

- (A) TfL shall have the right by sending a Change Control Request in accordance with schedule 9 (Change Control Request Procedure) to require the Service Provider at any time to provide any services which are the same as or substantially similar to those Services provided by the Service Provider during the Implementation Phase and/or the Operational Phase ("**Additional Services**") including, but not limited to, the following:
  - (1) site preparation, installation and commissioning of further Outstations within Greater London;
  - (2) the upgrading of existing sites within the Central Congestion Charging Zone to the same Specification as the Enforcement Infrastructure Service;

- (3) at any time the extension or reduction of the geographical coverage and any parameters of the Services to reflect a change to the Scheme; and
  - (4) the implementation of the Enforcement Infrastructure Service at new sites within the WEZ.
- (B) The amount payable for the Additional Services shall be calculated in accordance with schedule 9 (Change Control Request Procedure).
- (C) The Additional Services shall be provided on and subject to the terms and conditions of this Agreement.
- (D) Milestones, required testing and the process for achievement of Notice of Business Approval in relation to Additional Services shall be based upon and substantially the same as set out in respect of the relevant Services in this Agreement and:
- (1) shall be subject to the agreement of TfL and the Service Provider; or
  - (2) if no such agreement is reached within twenty (20) Working Days of the date of submission of the Additional Services Request, the matter shall be referred to the Dispute Resolution Procedure.

## 26.2 Future Services

- (A) TfL shall have the right by sending a Change Control Request in accordance with schedule 9 (Change Control Request Procedure) to require the Service Provider at any time to prepare and provide design, planning, implementation and (if so requested) operation, support and maintenance services in respect of:
- (1) the provision of new road charging technologies including, but not limited to, the use of in-vehicle transponders ('on-board units', 'tags' or 'radio tags') with roadside detection units ('beacons') using radio, microwave or infrared communications or other dedicated short range communication systems (DSRC), together with associated technologies such as those used for vehicle class classification and determination of vehicle position ("**Future Technologies**"); and/or
  - (2) the modification of the Enforcement Infrastructure Service existing at the time to allow the integration of Future Technologies with the Enforcement Infrastructure; and/or
  - (3) the upgrading of the Outstation and/or Instation technology existing at the time to take account of advances in ANPR technology since the date of this Agreement; and/or
  - (4) other refresh of the equipment used by the Service Provider in the provision of the Services,
- as specified by TfL from time to time ("**Future Services**") in accordance with the Change Control Request Procedure.
- (B) The amount payable for the Future Services shall be calculated in accordance with schedule 9 (Change Control Request Procedure).

- (C) The Future Services shall be provided on and subject to the terms and conditions of this Agreement and as determined in accordance with schedule 9 (Change Control Request Procedure).

### 26.3 New Services

New Services shall be agreed in accordance with the Change Control Request Procedure through a General Change, a Mandatory Change or an Emergency Change, as appropriate.

## PART 11: FINANCIAL MATTERS

### 27. Charges, Milestone Payments and Payment

- 27.1 In consideration of the provision of the Services by the Service Provider in accordance with this Agreement, TfL will pay the Milestone Payments and Charges, as appropriate, to the Service Provider as provided for in schedule 7 (Charging Structure).
- 27.2 The Service Provider shall invoice for payment of the Milestone Payments in accordance with the provisions of schedule 8 (Invoicing and Payment Procedure) and within ten (10) Working Days of successful achievement of the relevant Milestone.
- 27.3 The parties agree:
- (A) all sums payable under or pursuant to this Agreement are exclusive of VAT (if any). Accordingly, where any taxable supply for VAT purposes is made under or in connection with this Agreement by one party to another, the recipient of that supply shall, in addition to any payment received for that supply, pay to the supplier such VAT as is chargeable in respect of the supply at the same time as payment is due or in any other case when demanded by the supplier. The payee shall provide the payer with a valid VAT invoice in respect of any payment of VAT;
  - (B) if any payment in respect of VAT is made under this Agreement in circumstances where VAT was not properly chargeable, then, where the supplier has accounted for such VAT to HM Revenue & Customs, the supplier's obligation to repay any amount to the payer shall be limited to such amount as the supplier is entitled to recover (by way of credit, repayment or otherwise) from HM Revenue & Customs in respect of the VAT wrongly paid.
- 27.4 Charges shall be invoiced on a Monthly basis, within five (5) Working Days of the Performance Report Date for that relevant Month.
- 27.5 Subject to the following TfL shall pay the amount set out in a correct and complete Invoice within forty (40) days of receipt of the Invoice:
- (A) if any part of an Invoice is disputed by TfL, TfL shall only pay the amount which is not in dispute; and
  - (B) if any supporting information which was or should have been submitted with an Invoice is missing or incomplete, including but not limited to performance reporting information, TfL shall notify the Service Provider. If the required information has not been received within ten (10) Working Days from the date of the notice served by TfL, TfL shall be entitled to suspend payment of the relevant amounts until it has received all of the required information from the Service Provider. Once the

required information has been provided, unless TfL disputes the amount of the Invoice, in which case the provisions of clause 27.5(A) shall apply, TfL shall pay to the Service Provider the amount set out in the Invoice within twenty (20) Working Days of receipt of the required information.

- 27.6 If any dispute arises in relation to an Invoice, a Milestone Payment, the Charges and/or any other amount due the parties shall use their best endeavours to resolve the dispute. If, notwithstanding the parties seeking to resolve the dispute, it remains unresolved ten (10) Working Days after it first arose either one of the relevant parties shall be entitled to refer the dispute to the Dispute Resolution Procedure. If it is determined that all or part of the disputed amount is payable TfL shall pay such amount within ten (10) Working Days of such determination.
- 27.7 The Charges shall only be varied in accordance with schedule 7 (Charging Structure) or schedule 9 (Change Control Request Procedure).
- 27.8 For any payments payable by the Service Provider TfL shall have, at its discretion, the option to receive such payments in either pounds Sterling or Euro, provided that TfL can only receive such payments in a currency that is legal tender in the UK (or any part thereof) at the time of payment.

28. **Gainsharing and Commercial Exploitation**

The provisions of schedule 23 (Gainsharing) shall apply to the calculation, sharing and payment of Excess Profits.

29. **Interest**

Interest shall accrue at the Interest Rate on all sums due and payable under this Agreement from the due date until the date of actual payment (both before and after judgment). 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.

## PART 12: ADDITIONAL OBLIGATIONS

30. **Additional Service Provider Obligations**

- 30.1 Without limitation and in addition to the Service Provider's other obligations set out in this Agreement, the Service Provider shall:
- (A) in performing its obligations under this Agreement, not do or omit to do or permit or suffer to be done anything which might be or become a danger to any persons or cause damage to any property;
  - (B) maintain a Specially Written Software change log which will be provided as part of schedule 13 (Asset Register) and shall be current to within one (1) Month of any changes;
  - (C) subject to the Change Control Request Procedure, be obliged to change the scope and extent of the Services in the event of a change to the Scheme, including without limitation changes in the geographical extent of the Scheme;
  - (D) at all times act with good faith in its dealings with TfL, its sub-contractors or agents and the Core Service Provider;

- (E) use reasonable endeavours to procure that its Personnel shall act in such a way that the name and good reputation of TfL is not brought into disrepute or otherwise becomes adversely affected by their action or omission;
- (F) at all times use the latest commercially available version of Virus protection software on all Systems used in the provision of the Services save where TfL's prior approval is required to use such software, and such approval is not on request granted, in which case the Service Provider shall continue to use the version of software previously approved; and
- (G) without prejudice to its obligations under clause 56 (Assets), use its best endeavours to ensure that at all times throughout the duration of this Agreement, all Sub-Contracts, equipment rental or lease agreements in respect of Assets, licences of Intellectual Property Rights (without limitation to clause 42) and all other non-employment contracts which are entered into specifically in relation to this Agreement and which are necessary for the performance of the Services, are assignable (subject to TfL accepting the burden of such contracts) or novatable to TfL (without any transfer charge) upon the occurrence of any of the events described in clause 59 (Termination).

### 31. **Additional TfL Obligations**

#### 31.1 TfL shall:

- (A) use its best endeavours to respond within a commercially reasonable timescale to all reasonable requests by the Service Provider for information and/or access to TfL's Personnel as specifically required in this Agreement but only insofar as required for the Service Provider to perform its obligations under this Agreement;
- (B) use its best endeavours to ensure the provision of services from Other Service Providers necessary for the Service Provider to comply with its obligations under this Agreement;
- (C) use its best endeavours to facilitate communications between the Service Provider and Other Service Providers relevant to this Agreement where such communications are necessary in order for the Service Provider to be able to perform its obligations under this Agreement;
- (D) use its best endeavours to procure that the Core Service Provider shall provide the Service Provider with the Other Service Provider Hardware in accordance with the Implementation Plan, if applicable;
- (E) prior to agreeing to or approving (where TfL has a right to agree to or approve) any change to an Other Service Provider's Systems and/or service delivery processes which will or is likely to impact on the design, functionality or operation of the Enforcement Infrastructure, the provision of the Services or the provisions of this Agreement in any other way, use best endeavours to allow the Service Provider a reasonable opportunity to make representations to TfL in respect of such change. Where TfL has given the Service Provider an opportunity to make representations, TfL shall not agree or approve such a change without having taken into consideration (acting in good faith) any timely and reasonable representations of the Service Provider;
- (F) at all times act with good faith in its dealings with the Service Provider.

**PART 13: EMPLOYEES AND SUB-CONTRACTORS****32. Service Provider's Personnel**

- 32.1 The Service Provider will assume full responsibility for the management of all Service Provider Personnel and of all Sub-Contractors in the provision of the Services.
- 32.2 The Service Provider will use sufficient, suitable, appropriately qualified, experienced and competent Personnel in the provision of the Services and will use all reasonable efforts to ensure continuity of its Personnel.
- 32.3 The Service Provider shall take all reasonable precautions to ensure the reliability of its Personnel having access to TfL's Personal Data and shall ensure that such Personnel are fully aware of the measures to be taken when Processing Personal Data on behalf of TfL.
- 32.4 If TfL reasonably considers that any member of the Service Provider's Personnel is not performing properly, efficiently or effectively or is in any way disruptive to TfL's activities then TfL may, by written notice to the Service Provider, request the Service Provider to take remedial action in relation to such member of the Service Provider's Personnel. If within twenty (20) Working Days of such notice TfL reasonably considers that the matter is still unresolved then TfL will have the right, by written notice to the Service Provider, to require the removal of such member of the Service Provider's Personnel with immediate effect. The exercise of this right will not relieve the Service Provider of its obligations under this Agreement.
- 32.5 The Service Provider shall notify TfL of all proposed Key Personnel appointments and dismissals.
- 32.6 For the term of this agreement and twelve (12) Months thereafter neither party will, without the prior written consent of the other party, solicit or employ any employee of the other party directly involved in performance of that party's obligations under this Agreement. This provision shall not apply if an employee is employed as a result of a response by the employee to a public advertisement or as a result of the operation of the TUPE Regulations.

**33. Service Provider Personnel – Information and No Changes during a Relevant Period****Service Provider Personnel Information**

- 33.1 The Service Provider shall (subject to restrictions imposed by any relevant Data Protection Laws) within fifteen (15) Working Days following a request by TfL during the continuance of this Agreement deliver up, or procure the delivery up of, to TfL full and accurate information in respect of the Service Provider Personnel concerning their number, function, remuneration and benefits, terms of employment or engagement, age, length of service or engagement and the proportion of working time each individual has been concerned with the Services during the preceding twelve (12) Months and such copies of any personnel records as may be required by TfL up to a maximum of one (1) such request in a twelve (12) Month period. Should TfL make further requests the reasonable cost of providing the requested information shall be met by TfL.
- 33.2 In the event that information provided pursuant to clause 33.1 of this Agreement during the Relevant Period changes at any time prior to the expiry or termination of this Agreement, the Service Provider will notify forthwith TfL and shall provide updated information without undue delay. Further, during the Relevant Period, the Service Provider shall clarify any matter in relation to the information provided for which TfL makes a request to the extent relevant to the forthcoming termination or expiry of this Agreement. In supplying such information to TfL the Service Provider thereby consents to the disclosure of such

information to any actual or prospective New Service Provider and to TfL's professional advisers and warrants the accuracy of the information which the Service Provider has supplied to TfL under this clause and subject to TfL complying with any relevant Data Protection Laws.

- 33.3 No later than ten (10) Working Days following the expiry or termination of this Agreement, the Service Provider shall provide or procure the provision to TfL or any actual or prospective New Service Provider (as appropriate) updated payroll information following the final payroll run and P45 details in respect of the Assigned Employees (if any) and:
- (A) agrees to pay or provide to the Assigned Employees (if any) all emoluments due or accrued in the period up to but excluding the Termination Date or Expiry Date (whichever is applicable) and shall pay to the appropriate party an apportioned sum in respect of accrued but untaken holiday pay in respect of the Assigned Employees as at the Termination Date or Expiry Date (whichever is applicable); and
  - (B) shall provide personnel records relevant to any Assigned Employees (if any) requested by TfL.
- 33.4 During any Relevant Period, the Service Provider shall not, and shall use best endeavours to procure that no Sub-Contractors shall, without the written permission of TfL (not to be unreasonably withheld or delayed):
- (A) amend the rate of remuneration (including, without limitation, eligibility to receive payment pursuant to the expiry or termination of this Agreement) otherwise than in accordance with the Service Provider's normal pay review process and/or amended rates granted to equivalent Service Provider staff not involved with activities relating to the provision of the Services, or any other terms of employment or engagement of the Service Provider Personnel;
  - (B) redeploy or terminate the employment or engagement of any of the Service Provider Personnel;
  - (C) recruit any person for employment or engagement in connection with, or assign any additional Personnel to, all or any of the Services provided under this Agreement; or
  - (D) amend any existing, compulsory or voluntary Collective Obligation or enter into any new Collective Obligations.
- 33.5 The Service Provider shall co-operate and procure co-operation from Sub-Contractors (save for TfL or any actual or prospective New Service Provider) in the orderly management of issues relating to the Service Provider Personnel (including without limitation any Assigned Employees) in connection with the expiry or termination of this Agreement. The Service Provider will comply promptly and will procure timely compliance from Sub-Contractors (save for TfL or any actual or prospective New Service Provider) with all reasonable instructions from TfL with regard to arrangements connected with the expiry or termination of this Agreement. Insofar as it is within the Service Provider's control, the Service Provider will take all reasonable steps to reduce the circumstances under which TfL or any New Service Provider may incur cost as a result of the expiry or termination of this Agreement in connection with the Service Provider Personnel. Nothing in this clause 33.5 shall entitle TfL to require the Service Provider to (or purport to) terminate, re-assign or amend the terms of the employment or engagement of the Service Provider Personnel during the Relevant Period.



## Pensions

33.6 The Service Provider shall make available an arrangement (the “**Service Provider Pension Plan**”) for the provision of relevant benefits to the Service Provider Personnel. The terms of the Service Provider Pension Plan (including the benefits provided under it) shall be made available in advance to TfL. “Relevant benefits” has the same meaning as in section 612, Income and Corporation Taxes Act 1988.

## 34. Indemnities relating to Employees

34.1 Subject to clause 34.2, TfL shall on written demand fully indemnify the Service Provider and keep the Service Provider indemnified against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action or proceeding which arises or is alleged to arise or is made against the Service Provider by virtue of the operation of the TUPE Regulations in connection with the commencement of this Agreement and:

(A) is made or brought at any time by one or more of TfL’s Personnel or TfL’s former Personnel in connection with such person’s employment or engagement in respect of the provision of services substantially similar to the Services (or any part of them) provided under this Agreement or the termination of such employment or engagement (including without limitation, any dismissal or alleged dismissal of such person by TfL) or otherwise;

(B) is made or brought at any time by a trade union and/or appropriate representatives in connection with all or any of TfL’s Personnel or TfL’s former Personnel (including without limitation in relation to obligations to inform and consult or any rights, entitlements or liabilities under any Collective Obligations).

34.2 The Service Provider shall, on first becoming aware of any matter in respect of which TfL is liable to indemnify the Service Provider under clause 34.1, promptly notify TfL and shall comply with TfL’s instructions in relation thereto, including, where expressly required in writing by TfL, terminating the member of TfL’s Personnel or TfL’s former Personnel.

34.3 The Service Provider shall on written demand fully indemnify TfL and keep TfL indemnified against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action or proceeding which arises or is alleged to arise or is made against TfL or any New Service Provider by virtue of the operation of the TUPE Regulations or otherwise in connection with the expiry or termination of this Agreement and:

(A) is made or brought at any time by one or more of the Service Provider Personnel or former Service Provider Personnel and relates to facts or events occurring prior to the termination or expiry of this Agreement in connection with such person’s employment or engagement in respect of the provision of the Services provided under this Agreement or the termination of such employment or engagement (including without limitation, any dismissal or alleged dismissal of such person by the Service Provider) or otherwise;

(B) is made or brought at any time by a trade union and/or appropriate representatives in connection with all or any of the Service Provider Personnel or former Service Provider Personnel and relates to facts or events occurring prior to the termination or expiry of this Agreement (including without limitation in relation to obligations to inform and consult or any rights, entitlements or liabilities under any Collective Obligations).

34.4 If on the expiry or termination of this Agreement the TUPE Regulations do not apply then the Service Provider shall on written demand fully indemnify TfL and keep TfL indemnified

against all and any costs, expenses, liabilities, damages and losses arising out of any claim, action or proceeding which arises or is alleged to arise or is made against TfL or any New Service Provider and:

- (A) is made or brought by one or more of the Service Provider Personnel or former Service Provider Personnel and relates to facts or events occurring at any time in connection with such person's employment or engagement in respect of the provision of the Services provided under this Agreement or the termination of such employment or engagement (including without limitation, any dismissal or alleged dismissal of such person by the Service Provider, TfL or a New Service Provider) or otherwise;
- (B) is made or brought by a trade union and/or appropriate representatives in connection with all or any of the Service Provider Personnel or former Service Provider Personnel and relates to facts or events occurring at any time (including without limitation in relation to obligations to inform and consult on any rights, entitlements or liabilities under any Collective Obligations).

### 35. **Assistance with Employment Claims**

35.1 In the event that any of TfL's Personnel or former Personnel or the Service Provider Personnel or any other person who is or has been, or purports to be or have been, employed in connection with all or any of the Services or (prior to the date of this Agreement) services substantially similar to the Services (or any part of them), makes a claim against the Service Provider, TfL or a New Service Provider arising out of or in connection with the provision of the Services or (prior to the date of this Agreement) services substantially similar to the Services (or any part of them), TfL and the Service Provider shall give to the other as soon as practicable after any request all co-operation, assistance and information which may be reasonably required by the other in relation to the claim.

### 36. **Accessibility, Equality and Inclusion**

- 36.1 TfL is committed to the development of equality, inclusion and accessibility for all staff employed by TfL and staff employed by its suppliers, service providers and their suppliers.
- 36.2 The Service Provider shall not throughout the Term unlawfully discriminate within the meaning and the scope of the Sex Discrimination Act 1975, Race Relations Act 1976 and Disability Discrimination Act 1995, Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Religion or Belief) Regulations 2003 or any other relevant enactments in force from time to time relating to discrimination in employment (together the "**Discrimination Acts**") or any statutory modifications or re-enactments thereof relating to discrimination and employment.
- 36.3 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of clause 36.2 by all officers, employees, agents and consultants of the Service Provider and all Sub-Contractors.
- 36.4 The Service Provider acknowledges that TfL is under a duty under Section 71 of the Race Relations Act 1976 to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. The Service Provider agrees that performance of the Services is dependent on attracting and retaining a suitably skilled and motivated workforce throughout the duration of this Agreement. The Service Provider agrees to promote (and shall encourage its officers, employees, agents and consultants and Sub-Contractors to

promote) the principle of equal treatment at all times and shall co-operate fully with TfL to exchange experiences and good practices.

- 36.5 The Service Provider shall put in place and maintain adequate practices and procedures throughout the Term to ensure compliance with this clause 36.
- 36.6 The Service Provider shall upon request (such request not to be made more than once per calendar year) submit to TfL, as reasonably required by TfL from time to time, evidence of its compliance with this clause 36, such information to include without limitation information relating to staff management, promotion opportunities, grievance and disciplinary issues, training, general employment practices and the composition of the workforce. TfL shall use its best endeavours to combine requests under this clause with its annual right of audit under clause 36.9. Where TfL places additional requests under this clause, TfL shall meet the reasonable costs of the Service Provider incurred in providing such information.
- 36.7 If in the reasonable opinion of TfL the Service Provider fails to comply with any of the Discrimination Acts and such non-compliance adversely affects (or is likely to adversely affect) the performance of this Agreement the Service Provider shall co-operate fully with TfL to remedy such non-compliance. Without prejudice to the remainder of this clause above TfL reserves the right to report any non-compliance that it considers serious to the relevant commission established under such legislation.
- 36.8 In the event of a finding of any unlawful discrimination being made against the Service Provider by any court or industrial tribunal, or an adverse finding following any formal investigation by any commission established under any of the Discrimination Acts the Service Provider shall take all appropriate remedial steps to eliminate such unlawful discrimination in the future (including complying with any recommendations issued by the relevant commission). The Service Provider shall on request provide TfL with details of such recommendations and any remedial steps taken.
- 36.9 TfL shall (subject to any legal limitations) be entitled to audit and/or inspect any information in the custody, control or possession of the Service Provider for the purposes of ensuring compliance with this clause 36. The Service Provider shall provide all reasonable co-operation in relation to such audit and/or inspection including granting access to any premises containing such information or where such premises are not the Service Provider's own using reasonable endeavours to procure such access. TfL shall only be entitled to exercise its rights under this clause a maximum of one (1) time per twelve (12) Month period, or at any other such time as TfL may require, provided that at such other times TfL shall meet the reasonable costs of the Service Provider incurred in co-operating with such audit under this clause.
- 36.10 Without limiting any of the foregoing provisions, the Service Provider shall implement, maintain and promote policies in relation to harassment, bullying and discrimination and equal opportunities in employment, consistent with TfL's policies as set out in schedule 24 (Equal Opportunities in Employment – Harassment, Bullying and Discrimination Policies), or as developed by the Service Provider and approved by TfL, such approval not to be unreasonably withheld or delayed. The Service Provider shall take all reasonable steps to monitor and ensure compliance with its policies by its employees, agents and Sub-Contractors and to specify programmes for improvement. The Service Provider shall, in such monitoring, use reporting sheets substantially in the form set out in schedule 24 (Equal Opportunities in Employment – Harassment, Bullying and Discrimination Policies) unless TfL expressly agrees in writing to reporting in a different form.

**37. Sub-Contractors and Key Sub-Contractors**

37.1 The initial list of Key Sub-Contractors is set out in Part 1 of schedule 26 (Sub-Contractors). Where TfL requires a current or proposed Sub-Contractor to be added to the list of Key Sub-Contractors:

- (A) TfL shall send a notice to the Service Provider setting out the name of a current or proposed Sub-Contractor which it requires to be an additional Key Sub-Contractor;
- (B) the Service Provider shall notify TfL of its acceptance of or objection to such proposal by written notice within ten (10) Working Days of receipt of notice from TfL under clause 37.1(A), provided that the Service Provider shall only be entitled to object to such current or proposed Sub-Contractor being added to the list of Key Sub-Contractors where the services provided or to be provided by such Sub-Contractor (for the purposes of this clause 37.2(B) only, the “**Subcontracted Services**”) are not material to the provision of the Services under this Agreement (and such Subcontracted Services shall only be deemed to be not material where an alternative source of such services can be obtained without any significant impact on the provision of the Services). In the event that the Service Provider fails to notify TfL within such time period, or where its purported objection to such proposal is not valid (as determined in accordance with the foregoing provisions of this clause 37.1(B)), the Service Provider shall be deemed to accept such proposal;
- (C) where the parties disagree as to the validity of the Service Provider’s objection under clause 37.1(B), either party may refer the dispute to the Dispute Resolution Procedure;
- (D) promptly following the Service Provider’s acceptance under clause 37.1(B), or determination under the Dispute Resolution Procedure, that such current or proposed Sub-Contractor shall be added to the list of Key Sub-Contractors, the Service Provider shall comply with this clause 37 in respect of such Key Sub-Contractor.

37.2 The Service Provider undertakes to TfL that it will ensure that any Key Sub-Contract (excluding any contract of employment or any contract in respect of TfL's property) entered into specifically for this agreement by the Service Provider:

- (A) will be accompanied by a collateral agreement by the party or parties contracting with the Service Provider directly enforceable by TfL (or its nominee) and substantially in the form of schedule 22 (Collateral Agreement); and
- (B) will not contain any terms which would have the effect of depriving TfL (or its nominee) of all or a substantial part of the benefit of the collateral agreement referred to in clause 37.2(A) above,

provided that, in respect of Key Sub-Contracts which have already been entered into by the Service Provider prior to TfL requiring such contracts to be deemed Key Sub-Contracts pursuant to clause 37.1, the Service Provider shall nevertheless use its reasonable endeavours to procure that the provisions of this clause 37.2 are complied with.

37.3 The following has been agreed concerning the placement of Sub-Contracts:

- (A) the Service Provider shall carry out and be responsible for the placing of Sub-Contracts to meet the requirements of the Specification and to provide the Services; and

- (B) The Service Provider shall create and maintain an accurate and up-to-date log of all Sub-Contracts which it shall make available to TfL on request.

37.4 Notwithstanding the provisions of this clause 37, the placing of any Sub-Contract (including Key Sub-Contracts) shall not relieve the Service Provider of its liabilities for the performance of the Services under this Agreement and the Service Provider shall be responsible for all acts and omissions of its Sub-Contractors.

38. **Key Personnel**

38.1 The Service Provider shall make available for the provision of the Services the services of the Key Personnel in the capacities specified in Part I of schedule 11 (Employees). The Service Provider acknowledges that the Key Personnel are essential to the provision of the Services and shall ensure that all Key Personnel have a minimum of six (6) Months' relevant work experience.

38.2 The Service Provider will take all reasonable steps to ensure it retains the services of its Key Personnel and will not remove or change Key Personnel without TfL's prior written agreement, such agreement not to be unreasonably withheld or delayed.

38.3 The Service Provider shall promptly notify TfL if a member of Key Personnel leaves the employment of the Service Provider and shall include in such notice the reason for their leaving.

38.4 If the Service Provider replaces the Key Personnel for whatever reason, the cost of effecting such replacement shall be borne by the Service Provider (including, for the avoidance of doubt, any costs of training, induction or other efforts involved in bringing the replacement Key Personnel to the same level of knowledge as his or her predecessor with regard to the provision of the Services). The Service Provider will ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement will be fully competent to carry out the tasks assigned to the Key Personnel which he or she has replaced within ten (10) Working Days of his/her commencing work on the Services. For the avoidance of doubt, nothing in this clause shall prevent the Service Provider from using temporary staff in the role of any Key Personnel while it is recruiting a permanent replacement, provided that the Service Provider complies with the provisions of this clause 38 in respect of such temporary staff.

38.5 Before assigning replacement Key Personnel, the Service Provider will provide TfL with a curriculum vitae and any other information about the individual as reasonably requested by TfL, subject to restrictions imposed by any Data Protection Laws.

38.6 If TfL reasonably considers that any member of the Service Provider's Key Personnel (or their performance) is in any respect unsatisfactory then TfL may, by written notice to the Service Provider, request the Service Provider to take remedial action in relation to such member of Key Personnel. If within twenty (20) Working Days of such notice TfL reasonably considers that the matter is still unresolved then TfL will have the right, by written notice, to the Service Provider, to require the removal of the member of Key Personnel that TfL considers unsatisfactory and the terms of clause 38.4 shall apply in respect of replacement of that member of Key Personnel.

38.7 The Service Provider shall provide job descriptions for the Key Personnel positions to TfL on request which shall include as a minimum:

- (A) key accountabilities;
- (B) key competencies;

- (C) the scope of each role; and
- (D) the minimum qualifications required to fulfil the role.

## **PART 14: CHANGE MANAGEMENT**

### **39. Change Control Request Procedure**

Each party shall have the respective rights and obligations under schedule 9 (Change Control Request Procedure).

## **PART 15: CONTRACT MANAGEMENT, REPORTING, ISSUES AND AUDIT**

### **40. Contract Management and Issue Management**

#### **40.1 Contract Management and Reporting Procedure**

The parties shall comply with the provisions of schedule 10 (Contract Management and Reporting Procedure).

#### **40.2 Issue Management**

The Service Provider shall:

- (A) promptly identify all Issues that come to its attention, whether raised by its own Personnel, by Other Service Providers or by TfL, as a result of or in connection with Testing and/or during the operation of the Enforcement Infrastructure Service;
- (B) immediately classify any Issue arising (whether raised by TfL or the Service Provider) as one of the categories set out in clause 40.4;
- (C) promptly notify TfL of the Issue and the Service Provider's proposed classification of the Issue in accordance with any timing requirements set out in the Specification; and
- (D) promptly notify any relevant Other Service Provider of any Issue which may affect that Other Service Provider's Systems, or of any defects or problems arising from, that Other Service Provider's System. In the case of an Issue which may affect the Core Service Provider's Systems or defects in, or problems arising from, such Systems, such notification shall be made via the helpdesk facility provided by the Core Service Provider, where available, and in all other instances by notifying such employee of the Core Service Provider as TfL may notify to the Service Provider from time to time.

40.3 New and any other outstanding Issues shall be discussed at the weekly Project Review Meeting. However, TfL shall be entitled to call, and the Service Provider shall attend, any additional meetings to discuss the proper classification of each new Issue and any other outstanding Issues on such notice as TfL deems appropriate.

40.4 Issues shall be classified as either:

- (A) an error, defect, Bug or other failure of the Enforcement Infrastructure Service to meet the Specification (a “**Defect**”) and shall identify the relevant Severity Level applicable to it;
- (B) a change to TfL’s requirements as set out in the Specification;
- (C) an issue relating to operation or procedure which does not constitute a Defect or change to the Specification but which is required to ensure the efficient functioning of the Enforcement Infrastructure Service, and shall be resolved by the Service Provider at its cost save to the extent such issue results directly from any breach by TfL of its obligations under this Agreement in which case the Service Provider shall be entitled to recover costs attributable to such breach pursuant to clause 17A (TfL Events) as if, for the purposes of this clause 40.4(C) only, such breach were included within the definition of TfL Event; or
- (D) an issue which does not fall within clause 40.4(A), 40.4(B) or 40.4(C) and therefore should be closed.

40.5 The parties shall meet to discuss Issues promptly upon a meeting being called in accordance with clause 40.3 and shall in good faith seek to agree the appropriate classification of each outstanding Issue. If the parties are unable to agree the appropriate classification of the Issue it shall be referred to the next Project Review Meeting to be held in accordance with schedule 10 (Contract Management and Reporting Procedure). Failing agreement at such Project Review Meeting the provisions of clause 40.8 shall apply.

40.6 The Service Provider shall immediately record each Issue arising from time to time in the Issue Management Log (and shall ensure that all Sub-Contractors do so) together with details of:

- (A) the Issue’s classification in accordance with clause 40.4;
- (B) whether such classification is the Service Provider’s classification, has been agreed with TfL or is the classification stipulated by TfL in accordance with clause 40.8; and
- (C) in respect of any Issue classified as a Defect, any corresponding Severity Level.

40.7 The Service Provider shall comply with its obligations under clauses 15.3(A) to 15.3(D) which shall apply mutatis mutandis in respect of each Defect in connection with the Testing and/or the operation of the Enforcement Infrastructure Service.

40.8 The Service Provider shall follow TfL’s instructions in relation to the identification and resolution of Issues (including the classification of an Issue and the classification of the Severity Level in respect of a Defect, if appropriate) and the recording of Issues on the Issue Management Log.

40.9 Any Issue agreed, or determined by TfL in accordance with clause 40.8, to be classified as a Change shall be dealt with through the Change Control Request Procedure.

#### 41. **Audit and Inspection**

41.1 The Service Provider shall maintain a complete and accurate set of records pertaining to all activities relating to the provision of the Services and all transactions entered into by the Service Provider for the purposes of this Agreement and shall retain all such records for a period of not less than six (6) years (or such other period as may be prescribed by Law) following termination or expiry of this Agreement.

41.2 TfL and its authorised representatives on its behalf may at any time during:

- (A) the Term and with prior warning of two (2) Working Days or such other period as TfL deems reasonable (save where not reasonably possible or appropriate); or
- (B) the period of not less than six (6) years (or such other period as may be prescribed by Law) following termination or expiry of this Agreement and with prior warning of ten (10) Working Days or such other period as TfL deems reasonable (save where not reasonably possible or appropriate),

undertake any inspection of the Enforcement Infrastructure and the Services and any audit or check of any aspect of the Service Provider's performance under this Agreement including, without limitation:

- (C) the recording and calculation of the Charges, Service Credit Points and Service Credits;
- (D) the Gainsharing provisions in schedule 23 (Gainsharing);
- (E) the implementation of the Security Policy and compliance with schedule 14 (Security Policy);
- (F) the method of report production and Data transformations including conditions used for extraction of Data from source Systems and reconciliation of source to target Data;
- (G) the Solution Architecture and operation of MIS;
- (H) compliance with the data protection provisions in clause 51 (Data Protection and Freedom of Information) and schedule 15 (Data Protection and Freedom of Information); and
- (I) Testing conduct, methodology and procedures.

The Service Provider shall grant identical inspection, audit and/or checking rights where the same shall have been requested by the District Auditor or any other national or local Government body or department whether currently in existence or coming into existence during the continuance of this Agreement or at any time during the period of six (6) years following termination or expiry of this Agreement.

41.3 The Service Provider shall, at no additional cost to TfL, promptly co-operate in relation to any inspection, audit or check including (without limitation):

- (A) granting or procuring the grant of access to any premises or any relevant parts of premises used in the Service Provider's performance of this Agreement, whether the Premises, a Sub-Contractor's premises or otherwise;
- (B) granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's obligations under this Agreement (but in the case of equipment used non-exclusively, to only that part of the equipment which is used in such performance), wherever situated and whether the Service Provider's own equipment, a Sub-Contractor's equipment or otherwise;
- (C) granting supervised, read-only access to any data dictionary and the fields and records within it to enable Data (including standing data and transaction data



processed by the Enforcement Infrastructure and security settings) to be downloaded from any computer Systems operated by the Service Provider or a Sub-Contractor and used by the Service Provider or such Sub-Contractor in the performance of the Service Provider's obligations under this Agreement;

- (D) ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to, Data during the audit. The Service Provider shall, in addition, maintain records of all and any fraudulent access attempts which may compromise the security of the Services or the Enforcement Infrastructure;
- (E) making the Documentation and any logs, documents and records required to be maintained under this Agreement (whether exclusively or non-exclusively) available for inspection;
- (F) providing a reasonable number of copies of any documents or records and/or granting copying facilities for the purposes of making such copies;
- (G) maintaining Enforcement Infrastructure journal records for a minimum period of twelve (12) Months irrespective of the occurrence of any fraudulent act, suspected fraudulent act or security breach;
- (H) complying with TfL's requests for access to Personnel engaged in the Service Provider's performance of the Agreement;
- (I) procuring that all Personnel fully co-operate with TfL in relation to any audit or inspection conducted pursuant to this clause 41; and
- (J) providing all requested support at its own facilities to TfL or its representatives in the discharge of their functions and allowing them use of suitable office accommodation for the purpose of TfL exercising its rights under this clause 41,

provided that the Service Provider's obligations in clauses 41.3(A), 41.3(B), 41.3(C), 41.3(E), 41.3(F), 41.3(H), 41.3(I) and 41.3(J) shall be subject to reasonable notice having been given by TfL in writing to the Service Provider in advance and provided further that TfL shall act reasonably in relation to any such inspection, audit or check.

41.4 Without limitation to the generality of the foregoing provisions of this clause 41, the audit methodology of the Service Provider used in providing Management Information and reports to TfL will be subject to audit by TfL from time to time on reasonable notice, as required by TfL. The Service Provider shall:

- (A) ensure that the audit methodology identifies omissions in the relevant process being audited and that all mismanaged links between functions are identified and addressed;
- (B) provide details of its audit methodology which shall be at least equivalent to Good Industry Practice and to TfL's reasonable satisfaction;
- (C) without prejudice to the foregoing provisions of this clause 41.4 if TfL considers, acting reasonably, that the Service Provider's audit methodology is not at least equivalent to Good Industry Practice TfL, shall be entitled to require the Service Provider to undertake a review of the Service Provider's audit methodology to determine whether it is in line with Good Industry Practice and where such review determines it is not, adopt a methodology in line with Good Industry Practice within twenty-five (25) Working Days of TfL serving notice on the Service Provider

requiring it to do so (which for the avoidance of doubt cannot be before such review has taken place) or, where no such notice is served, within such other timescale as the Service Provider acting reasonably considers appropriate; and

(D) implement the audit methodology.

- 41.5 Without prejudice to clause 41.4 if TfL, as a result of audit or inspection (whether or not undertaken in accordance with this clause 41), identifies any failures by the Service Provider in complying with the requirements of this Agreement, TfL may notify the Service Provider to this effect. Promptly following receipt of such notice, and in any event no later than twenty (20) days from the date of such notice, the Service Provider shall rectify such failures to the satisfaction of TfL, at no cost to TfL.
- 41.6 In the event that an inspection, audit or check reveals that information previously supplied to TfL pursuant to this clause 41, or otherwise, was inaccurate in a material respect, the cost incurred by TfL and the Service Provider in respect of any such inspection, audit or check shall be borne by the Service Provider.
- 41.7 In the event of dispute or the discovery of an inaccuracy under clause 41.6, or a dispute as to whether fraudulent activity on the part of the Service Provider, its agents, employees or Sub-Contractors has taken place and/or the extent of such fraudulent activity, the Dispute Resolution Procedure shall apply.
- 41.8 All Invoices, Gainsharing figures proposed, Charges levied (or proposed to be levied), costs and expenditure incurred in the performance of the Services and all Financial Reports and other logs and records shall be prepared on an Open Book basis.
- 41.9 All charges and costs associated with services provided by Sub-Contractors and other members of the Service Provider Group shall be documented and made fully transparent by the Service Provider.
- 41.10 In respect of any accounting information supplied by the Service Provider to TfL such statement shall, at the request of TfL, be accompanied by a separate audit certificate from the appointed auditor of TfL or an independent auditor nominated by TfL and at TfL's request.
- 41.11 The Service Provider acknowledges that TfL is a best value authority for the purposes of the Local Government Act 1999 and as such TfL is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The Service Provider shall assist TfL to discharge its duty wherever possible, and in doing so, it shall inter alia carry out any reviews of the Services requested by TfL from time to time. The Service Provider agrees to negotiate in good faith (acting reasonably) any changes to the Agreement in order for TfL to achieve best value.

## **PART 16: INTELLECTUAL PROPERTY**

### **42. Intellectual Property Rights**

#### **42.1 IPR Ownership and Assignment**

(A) All Intellectual Property Rights subsisting in or relating to:

(1) the TfL IPR;

- (2) the Data;
- (3) the Combined Enforcement Infrastructure Interface;
- (4) the TfL Interface;
- (5) any other interfaces with Other Service Providers developed or provided in connection with this Agreement; or
- (6) any other Intellectual Property Rights owned by TfL or created by TfL independently of the Service Provider,

whether pre-existing as at the date of execution of this Agreement or created during the Term of this Agreement shall at all times be vested in TfL or its Third Party licensors.

- (B) In consideration for the payment by TfL to the Service Provider of £1 (receipt of which is hereby acknowledged by the Service Provider), the Service Provider assigns, and shall procure the assignment of, all present and future Intellectual Property Rights in the items or things envisaged under clause 42.1(A) created or otherwise provided by or on behalf of the Service Provider to TfL upon their creation. At the request of TfL, the Service Provider shall execute all documents and do all other things necessary to perfect such assignment.
- (C) All Intellectual Property Rights not referred to in clause 42.1(A) and which are: (i) created or arise from the provision of the Services; or (ii) otherwise used by the Service Provider in relation to this Agreement (the “**Service Provider Owned IPR**”):
- (1) arising from work undertaken or deliverables created by the Service Provider or its Personnel under this Agreement; or
  - (2) owned by or licensed to the Service Provider prior to the date of execution of this Agreement,

shall be owned by the Service Provider or its Third Party licensors.

## 42.2 Licensing of IPR

- (A) TfL grants to the Service Provider a non-exclusive, royalty-free, non-transferrable right to use the Intellectual Property Rights referred to under clauses 42.1(A)(1) to 42.1(A)(4) provided to the Service Provider (with the right to grant sub-licences on identical terms to each Key Sub-Contractor) by TfL, in each case solely for the purpose of the Service Provider meeting its obligations under this Agreement.
- (B) The Service Provider shall not, without the prior written consent of TfL, use the Intellectual Property Rights granted to the Service Provider by TfL under clause 42.2(A) for any purpose other than to provide the Services.
- (C) Upon written request by the Service Provider to TfL, TfL shall promptly grant to the Service Provider (in writing) a non-exclusive, royalty-free, non-transferrable right to use the Intellectual Property Rights referred to under clause 42.1(A)(5) (with a right to grant sub-licences on identical terms to any third party governmental department, agency or body), solely for the purposes of the Service Provider providing an interface between the Service Provider and an Other Service Provider (for the benefit of such third party governmental department, agency or body under a written contract between that third party and the Service Provider), provided that TfL may

refuse to grant such right (or may revoke such right) where TfL in its reasonable discretion determines that such an interface is likely to be (or is) substantially similar to the Combined Enforcement Infrastructure Interface or the TfL Interface.

- (D) The Service Provider shall not, without the prior written consent of TfL (not to be unreasonably withheld or delayed), use the Intellectual Property Rights granted to the Service Provider under clause 42.2(C) for any purpose other than as expressly permitted under that clause 42.2(C).
- (E) Subject to clause 42.2(F), the Service Provider grants (and shall procure the grant) to TfL and other members of the TfL Group (in respect of the period from the date of execution of the TDE Agreement and during the Term) a non-exclusive, royalty-free, non-transferable and irrevocable licence to use (but not copy or modify other than as reasonably necessary in connection with the purposes set out in clause 42.2(F)) the Service Provider Owned IPR for the purposes of:
- (1) TfL receiving the Services;
  - (2) TfL exercising its rights under this Agreement; or
  - (3) facilitating TfL's transport strategies (within the Greater London area).
- (F) The Service Provider agrees that the rights (for TfL and other members of the TfL Group) referred to in clause 42.2(E) include the right for TfL and other members of the TfL Group (for the purposes envisaged under clauses 42.2(E)(1) to 42.2(E)(3)) to:
- (1) sub-license (on substantially identical terms except without the right to grant further sub-licences) to any Third Party (or New Service Provider, if applicable) in relation to the exercise by TfL of its Step-In Rights or its rights under clause 41 (Audit and Inspection) or clause 60 (Exit Management);
  - (2) sub-license (on substantially identical terms except without the right to grant further sub-licences) to any New Service Provider, the Core Service Provider, any Other Service Provider or any Third Party in each case strictly for the performance of their obligations to TfL or the TfL Group in relation to the Scheme;
  - (3) subject to clause 68.2, (Confidentiality), disclose, use or reproduce Documentation or information that the Service Provider may produce or provide or has produced or provided in relation to the Services during the exercise by TfL of its rights under clause 41 (Audit and Inspection) solely to the extent necessary for the proper exercise of those rights;
  - (4) subject to clause 68.2, (Confidentiality) disclose, use, reproduce, modify, adapt and enhance Documentation or information that the Service Provider may produce or provide or has produced or provided in relation to the Services during the exercise by TfL of its Step-In Rights or of its rights under clause 60 (Exit Management) solely to the extent necessary for the proper exercise of those rights; or
  - (5) use, copy, modify and adapt Escrow Software and related Source Code from its release pursuant to clause 44 (Source Code) for the purposes envisaged under clauses 42.2(E)(1) to 42.2(E)(3), save that where TfL has access to Escrow Software and related Source Code under the escrow agreement as a result of the provisions of clause 44.6(C) below TfL shall not have the right to

modify and adapt Escrow Software and related Source Code (but may, without prejudice to its other rights and remedies hereunder, require the Service Provider to do so, in accordance with and subject to the provisions of clause 58 (Rights of TfL to Step-In)).

- (G) Without limitation to clause 60 (Exit Management), in the event of expiry or termination of this Agreement, in respect of the Assets (except in respect of termination to which clause 56.3 applies), the Service Provider shall promptly:
- (1) in the case of Intellectual Property Rights licensed to the Service Provider or its Sub-Contractors in connection with the Assets and (for the avoidance of doubt to the extent end user licences, or support or maintenance agreements in respect of those Intellectual Property Rights in favour of TfL do not already exist) where it is able to do so procure the transfer of all licences or support or maintenance agreements in respect of such Intellectual Property Rights, to TfL, another member of the TfL Group or a New Service Provider; and/or
  - (2) in the case of Service Provider IPR (other than that referred to in clause 42.2(G)(1)) necessary for the proper use of the Assets, unless otherwise expressly in writing instructed by TfL, grant (or use all reasonable endeavours to procure the grant in the case of Service Provider IPR licensed to the Service Provider by a Third Party) to TfL, another member of the TfL Group or a New Service Provider a non-exclusive, perpetual, royalty-free, irrevocable, non-transferable licence (or sub-licence) to use (but not copy or modify, except as set out in clauses 42.2(E) and 42.2(F)) those Intellectual Property Rights,

in each case to the extent necessary to entitle TfL to use those Assets for purposes substantially similar to the purposes for which the Assets were permitted to be used under this Agreement.

- (H) The Service Provider acknowledges that all charges and other costs and expenses relating to the use of the Service Provider Owned IPR, and the Intellectual Property Rights in the Assets envisaged under clause 42.2(G), are included in the Charges payable by TfL to the Service Provider under this Agreement, except that third party licence support or maintenance charges properly arising under any licence transferred pursuant to clause 42.2(G)(1) or procured pursuant to clause 42.2(G)(2) after expiry or termination of this Agreement, shall be borne by TfL.

#### 42.3 Waiver of Moral Rights

The Service Provider shall ensure that:

- (A) the holder of a Moral Right in relation to any Intellectual Property Rights licensed or assigned to TfL under clauses 42.1(B) or 42.2(E) to 42.2(G) does not assert it; and
- (B) if requested to do so by TfL in writing and where permitted by applicable law, the holder of a Moral Right in relation to any Intellectual Property Rights licensed or assigned to TfL under clauses 42.1(B) or 42.2(E) to 42.2(G) waives it.

#### 42.4 Delivery-up of IPR

The Service Provider shall, promptly following a written request by TfL and in any event upon expiry or termination of this Agreement for any reason whatsoever, deliver-up to TfL all physical embodiments of Intellectual Property Rights assigned to TfL under clause 42.1(B), transferred to TfL under clause 42.2(G)(1) or licensed to TfL under clause

42.2(G)(2), including without limitation all Software, Documentation, Systems and Data and, in the case of IPR assigned under clause 42.1(B), Source Code, in which those Intellectual Property Rights subsist to the extent that they are in the possession or control of the Service Provider.

#### 43. **Intellectual Property Rights Indemnity**

43.1 The Service Provider warrants that:

- (A) the provision to and receipt of the Services by TfL;
- (B) the operation of the Enforcement Infrastructure (including use of Software); and
- (C) subject to clause 43.2, the use, copying, modification and adaptation by TfL (or its permitted sub-licensors) of all Intellectual Property Rights licensed or assigned to TfL under clauses 42.1(B) or 42.2(E) to 42.2(G) (including without limitation all Software, Source Code, Documentation, Systems and Data in which those Intellectual Property Rights subsist) in accordance with clause 42 (Intellectual Property Rights),

shall not infringe the Intellectual Property Rights of any Third Party.

43.2 The warranty in clause 43.1(C) shall:

- (A) in relation to the Service Provider's Solution, be deemed to apply from the date of the commencement of the TDE;
- (B) not apply to the extent that such infringement arises as a result of any enhancement, modification or adaptation made other than by the Service Provider or without the Service Provider's consent; and
- (C) not apply to any use, copying, enhancement, modification or adaptation for the purposes envisaged under clause 42.2(E)(3) other than such use, copying, enhancement, modification or adaptation as is otherwise necessary for TfL to enjoy the full benefit of the Services in accordance with the provisions of this Agreement.

43.3 The Service Provider shall on demand fully indemnify TfL and shall keep TfL indemnified against any expense, cost, liability, loss, damage, actions, claims or proceedings whatsoever (including reasonable legal fees and disbursements on a solicitor and own client basis) arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights:

- (A) in connection with the circumstances referred to in clause 43.1(A), 43.1(B) or 43.1(C) (in the case of the Service Provider's Solution from the date of commencement of the TDE); or
- (B) used in connection with the Services or the Enforcement Infrastructure,

(together, "**Claims**"). The indemnity in this clause is not subject to the limits or exclusions set out in clause 49 (Indemnities and Limitations of Liability) other than those set out in clause **Error! Reference source not found.**

43.4 The indemnity in clause 43.3 shall:

- (A) not apply to the extent that TfL has modified, adapted, enhanced or copied the Intellectual Property Rights and such infringement would not have occurred but for that modification; enhancement adaptation or copy; and
- (B) not apply to any use of the Intellectual Property Rights for the purposes envisaged under clause 42.2(E)(3), other than such use as is otherwise in accordance with or permitted under the provisions of this Agreement.

43.5 The Service Provider shall forthwith notify TfL if any Claim is made or brought against the Service Provider.

43.6 The Service Provider shall at its own expense conduct any litigation arising from any infringement or alleged infringement of a Third Party's Intellectual Property Rights and all negotiations in connection therewith and TfL hereby agrees to grant to the Service Provider the exclusive control of any such litigation and such negotiations.

43.7 At the request of the Service Provider, TfL shall afford to it all reasonable assistance for the purpose of contesting any Claim made or brought against TfL for infringement or alleged infringement of any Intellectual Property Rights and shall be repaid all reasonable costs and expenses incurred in so doing including, without limitation, full legal costs and disbursements on a solicitor and own client basis.

43.8 Unless permitted in writing by the Service Provider, TfL shall not make any admissions which may be prejudicial to the defence or settlement of any Claim for infringement or alleged infringement of any Intellectual Property Rights by TfL.

43.9 Without limiting the indemnity in clause 43.3, if a Claim for infringement or alleged infringement of any Intellectual Property Rights is made in connection with any items or Services supplied by the Service Provider under this Agreement or in the reasonable opinion of TfL is likely to be made, the Service Provider may at its sole option and own expense:

- (A) modify any part or all of the item(s) or Services without reducing the performance and functionality of the same, or substitute alternative items or services of equivalent performance and functionality so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified items or services;
- (B) procure a licence for TfL to use the item(s) or Services; or
- (C) take such other action as the Service Provider may propose and TfL may agree to avoid or settle such Claim,

provided that where such items or Services directly affect or directly interface with the public such action shall not be at the Service Provider's sole option but shall require the prior written approval of TfL, such approval not to be unreasonably withheld or delayed.

43.10 If the Service Provider has availed itself of its rights to modify the item(s) or Services or to supply substitute item(s) or services under clause 43.9(A) or to procure a licence in accordance with clause 43.9(B) and such exercise of the said rights has avoided any Claim for infringement or alleged infringement, or if the Service Provider has otherwise avoided or settled the Claim for infringement or alleged infringement in accordance with clause 43.9(C), then (without limiting the indemnity in clause 43.3 in relation to loss or damage sustained by TfL before the time of modification, or avoidance or settlement of the Claim), the Service Provider shall have no further liability thereafter under this clause 43 in respect of the said Claim.

- 43.11 Without limiting the indemnity in clause 43.3, if a modification or substitution in accordance with clause 43.9(A) above is not possible so as to avoid the infringement or alleged infringement or the Service Provider has been unable to procure a licence in accordance with clause 43.9(B) or if the Service Provider has otherwise been unable to avoid or settle the infringement or alleged infringement in accordance with clause 43.9(C) the Service Provider shall be liable for all unavoidable costs of substitute items or services pursuant to the terms of this Agreement.
- 43.12 Subject to the provisions of clauses 43.13 and 43.14, TfL will fully indemnify the Service Provider and keep the Service Provider indemnified against any claim that any material furnished by TfL and used by the Service Provider as permitted by the terms of this Agreement ("**TfL Furnished Material**") infringes a Third Party's Intellectual Property Rights provided that:
- (A) the Service Provider notifies TfL in writing within twenty (20) Working Days of the claim;
  - (B) TfL has sole control of the defence and all related settlement negotiations; and
  - (C) the Service Provider provides TfL with the assistance, information and authority necessary to perform the above. Reasonable out-of-pocket expenses incurred by the Service Provider in providing such assistance will be reimbursed by TfL, including, without limitation, full legal costs and disbursements on a solicitor and client basis.
- 43.13 Clause 43.12 does not apply to the extent the relevant infringement arises as a result of any enhancement, modification or adaptation of TfL Furnished Material and such infringement would not have arisen had such enhancement, modification or adaptation not been made.
- 43.14 If some or all of the TfL Furnished Material is held or is believed by TfL to infringe a Third Party's Intellectual Property Rights, TfL shall have the option, at its expense:
- (A) to modify the material to be non-infringing or supply substitute non-infringing material to the Service Provider;
  - (B) to obtain for the Service Provider the right to continue using TfL Furnished Material; or
  - (C) to require return of the infringing material from the Service Provider and terminate all rights thereto. If such return materially affects either party's ability to meet its obligations under this Agreement, and TfL is unable to obtain a reasonable substitute for such material and the Service Provider is unable to assist TfL in obtaining a reasonable substitute for such material, then the parties shall enter good faith discussions using the Change Control Request Procedure to make such amendments to this Agreement, the Services or the Enforcement Infrastructure as may be necessary to maintain the provision of the Services with the minimum of disruption.

## PART 17: PROVISIONS OF GENERAL APPLICATION

### 44. Source Code

- 44.1 The Service Provider shall, unless notified otherwise by TfL in writing:



- (A) promptly upon TfL's acceptance of any Escrow Software during the Implementation Phase; and
- (B) during the Operational Phase, within ten (10) Working Days of any major modifications (including without limitation any new releases or versions) having been made to Escrow Software included in the Enforcement Infrastructure,

place the Source Code of the relevant part of the Escrow Software together with the associated Documentation in escrow with the National Computing Centre, Manchester, on:

- (C) the terms of the National Computing Centre's standard tripartite agreement, and including the terms referred to in clause 44.6; or
- (D) such other terms as the Service Provider and TfL shall from time to time agree.

44.2 The Service Provider shall thereafter keep current (in relation to the executable code of Escrow Software used to provide the Enforcement Infrastructure Service) the Source Code of major modifications (including without limitation any new releases or versions) to all Escrow Software and the associated Documentation by depositing the latest copy of the Source Code and associated Documentation with the National Computing Centre under the agreement and within the timeframe specified in clause 44.1(B).

44.3 All escrow costs (including without limitation the escrow of modifications) shall be borne by the Service Provider.

44.4 This clause 44 shall not apply to Third Party Software to the extent and during such period as such Third Party Software is:

- (A) not available from the Third Party proprietor(s) thereof in Source Code format to the Service Provider; or
- (B) deposited with a Third Party escrow agent on the basis of a source code deposit agreement and only available in Source Code format to the Service Provider on the occurrence of an event or on the exercise of a right specified in that source code deposit agreement, in which case the Service Provider shall use all reasonable endeavours to procure that TfL is entitled to the benefit of the source code deposit agreement and to receive a copy of the deposited Third Party Software directly from the Third Party escrow agent on substantially the same basis as the Service Provider or any Sub-Contractor (as the case may be). Details of all arrangements made by the Service Provider pursuant to this clause shall be provided to TfL as part of schedule 13 (Asset Register) and shall be kept current to within one (1) Month.

44.5 The Source Code and associated Documentation placed in escrow pursuant to clauses 44.1 and 44.2 shall provide adequate information and instruction to enable TfL or a New Service Provider to make full and proper use of the Software to the extent envisaged under clause 42 (Intellectual Property Rights).

44.6 The parties shall use their best endeavours to ensure that the National Computing Centre's standard tripartite Agreement they use shall include (in addition to the standard release events provided for by such agreement) the following as release events for the Source Code and Documentation (and in such circumstances, and in any event when any other release event occurs under the National Computing Centre's standard tripartite agreement, the Service Provider will forthwith permit the release to TfL of a copy of the relevant Escrow Software):

- (A) in the circumstances envisaged under clause 42.4 (Intellectual Property Rights) where the Service Provider has failed to comply with its obligations under that clause within twenty (20) Working Days and the material referred to in that clause is Escrow Software;
- (B) if there is an Insolvency Event affecting the Service Provider; or
- (C) if TfL exercises its Step-In Rights, and TfL is unable to obtain a copy of any of the Escrow Software to which TfL is entitled under clause 42 (Intellectual Property Rights).

#### 45. **Management Services**

45.1 Without limitation to its obligations under clause 5 (Services), the Service Provider shall provide the Management Services from the Operational Commencement Date in accordance with the provisions of this clause 45 and of schedule 20 (Management Services).

45.2 In providing the Management Services the Service Provider shall:

- (A) promptly advise TfL in the event that there is or may be any conflict of interest between the provision of the Management Services and its other obligations under this Agreement;
- (B) promptly send to TfL a copy of all notices and other communications between the Service Provider and the Managed Contractors, whether the same are sent or received by it, as TfL may from time to time require by written notice;
- (C) to the extent it is, or should have been, aware of any issues or actions required in relation to the Managed Contracts which do not fall within its responsibilities under this clause 45 or schedule 20 (Management Services), promptly advise TfL of the same;
- (D) comply with all reasonable instructions of TfL in relation to its management of the Managed Contracts; and
- (E) on written demand fully indemnify TfL and keep TfL indemnified from and against any expense, cost, liability, loss, damage, actions, claims or proceedings (including but not limited to any such actions, claims or proceedings brought by the Managed Contractors, the Core Service Provider, any Other Service Provider or Third Parties) whatsoever which arise or are alleged to arise or are made against TfL out of or by reason of any breach of contract, tort (including negligence) and/or breach of statutory duty by the Service Provider or its Sub-Contractors, agents or employees, or in acting outside its or their authority under this clause 45 in relation to the Management Services.

45.3 In no event shall the Service Provider have authority to do, or seek or purport to do, any of the following:

- (A) amend or vary any provisions of the Managed Contracts, whether orally or in writing or otherwise;
- (B) terminate the Managed Contracts; and/or
- (C) waive any of TfL's rights under, or any of the Managed Contractors' obligations under, the Managed Contracts.

45.4 The Service Provider shall:

- (A) have no authority, and shall not hold itself out, or permit any person to hold itself out, as being authorised to bind TfL in any way, and shall not do any act which might reasonably create the impression that the Service Provider is so authorised;
- (B) not enter into any contract, exercise any rights or remedies, assume any obligation or risk, or incur any liability, on behalf (nor affect in any way any right, remedy, obligation, risk or liability) of TfL, nor pledge the credit of TfL; and
- (C) have no authority to and shall not take part in any dispute or institute or defend any proceedings, or settle or attempt to settle or make any admission concerning any dispute, proceedings or other claim relating to the Managed Contracts, or any contract in connection with the Managed Contracts or relating to the affairs of TfL in relation to the Managed Contracts or any of those other contracts.

45.5 The Service Provider agrees that, notwithstanding anything to the contrary under this clause 45, the provisions of clause 70 (Relationship) shall (without limiting those provisions) apply in respect of the Management Services.

45.6 TfL shall notify such Managed Contractor in writing of the role and responsibilities of the Service Provider in respect of the Managed Contractors and shall procure that the Managed Contractors comply with the directions of the Service Provider to the extent that such directions are consistent with the requirements of this clause.

#### 46. **Disaster Recovery**

46.1 The Service Provider will throughout the Term comply with the provisions of schedule 25 (Disaster Recovery) including, without limitation, creating, maintaining and updating the Disaster Recovery Plan which will:

- (A) be capable of mitigating, in accordance with Good Industry Practice, any adverse impact on the Services, the Customers and TfL, in any circumstances where the ability of the Service Provider to provide the Services would otherwise be impaired;
- (B) make provision for action to be taken by the Service Provider in the event of non-availability of the Premises; and
- (C) include a communications plan for relevant Service Provider Personnel and TfL, in respect of which the Service Provider will consult with TfL and incorporate its requirements.

46.2 Throughout the Term, the Service Provider will develop enhancements to and upgrades of the Disaster Recovery Plan to ensure that the Disaster Recovery Plan is at all times commensurate with the total volume of business managed and administered or forecast to be managed and administered by the Service Provider. Such updates shall be provided on such dates as the parties may agree from time to time and as TfL may request from time to time.

46.3 Without prejudice to clauses 17 (Relief Events) and 17A (TfL Events), if the Disaster Recovery Plan is invoked for any reason the Service Levels shall continue to apply to the Service Provider's provision of the Services, subject only to any temporary adjustments as TfL may, in its absolute discretion, agree are necessary.

**47. Security**

47.1 The Service Provider shall, in accordance with clause 2.1, the applicable Milestone Dates, the Implementation Plan, the Design Documents and the Change Control Request Procedure, fully comply with the provisions of schedule 14 (Security Policy) to ensure that the Enforcement Infrastructure Service performs the features, functions, and facilities and meets the performance and other criteria in the Specification.

47.2 The Service Provider shall, in accordance with the Design Documents and schedule 14 (Security Policy) promptly prepare:

- (A) a written review of the Security Policy (as amended from time to time pursuant to the Change Control Request Procedure) upon request from TfL from time to time and in any event at least once in each twelve (12) Month period following the date that the first Notice of Business Acceptance is received by the Service Provider from TfL in respect of the Security Policy; and
- (B) an updated version of the Security Policy within ten (10) Working Days following a Change so as to incorporate the effects of that Change in the Security Policy,

in each case to reflect the Specification, and the Service Provider shall submit a copy of those documents (as applicable) to TfL for approval pursuant to clause 47.3(B) and 47.4.

47.3 TfL shall:

- (A) supply the Service Provider on reasonable notice with information the Service Provider reasonably requires so that the Service Provider is not delayed in performing its obligations under clause 47.2;
- (B) within such period as is specified in the Implementation Plan (or as the parties otherwise agree in writing including pursuant to the Change Control Request Procedure) following TfL's receipt of any document envisaged under clause 47.2:
  - (1) review that document; and
  - (2) either:
    - (a) issue (as appropriate) a Notice of Business Acceptance or agree the Change to the Security Policy (including pursuant to a review undertaken pursuant to clause 47.2) subject to the Change Control Request Procedure; or
    - (b) issue to the Service Provider notice of rejection of the relevant document.

47.4 If TfL rejects any document under clause 47.3(B)(2)(b):

- (A) the Service Provider shall promptly undertake a revision or amendment of that document and re-submit it to TfL for review;
- (B) the Service Provider shall promptly escalate the matter to such level of seniority within the Service Provider's Personnel as TfL may reasonably require; and
- (C) the parties shall repeat the procedure set out in clause 47.2 and this clause 47.4 (amended mutatis mutandis) until a Notice of Business Acceptance or agreement

subject to the Change Control Request Procedure (as applicable) is issued pursuant to clause 47.3.

47.5 The Service Provider:

- (A) shall at all times provide such access, facilities, information, data, documentation and assistance to TfL and any Third Party nominated by TfL in connection with the preparation and implementation of the Security Policy and any other security requirements envisaged under this Agreement, provided that, to the extent that any such Third Party will have access to any Service Provider Confidential Information, TfL shall obtain a confidentiality undertaking from such Third Party in relation to the Service Provider Confidential Information prior to such Third Party having access thereto;
- (B) agrees that TfL may, notwithstanding anything to the contrary in this Agreement, share the Security Policy in form or substance with any Third Party for any purpose provided that, to the extent that the Security Policy contains Service Provider Confidential Information, TfL shall have obtained a confidentiality undertaking from each such Third Party in relation to the Service Provider Confidential Information prior to sharing the Security Policy with that Third Party; and
- (C) shall immediately update the Issue Management Log in respect of each Issue in connection with the performance or otherwise of the Service Provider's obligations under this clause 47 and ensure that the Issue Management Log is always available to TfL and is accurate, up to date and complete.

47.6 In the event of a Security Incident:

- (A) the Service Provider shall immediately and, subject to clause 17A (TfL Events), at the Service Provider's cost, correct, make good, reinstate, replace and fix all deficiencies, loss and/or damage to the Enforcement Infrastructure Service in connection with a Security Incident, and/or perform or re-perform Tests or alternative tests relating to the security of the Enforcement Infrastructure Service, including within reasonable timeframes specified by TfL from time to time, to demonstrate to TfL's satisfaction that the relevant parts of the Enforcement Infrastructure Service provide the features, functions, and facilities and meet the performance criteria specified in the Specification and this Agreement including in connection with the Service Provider implementing any Security Rectification Plan pursuant to clause 47.6(B);
- (B) the Service Provider shall immediately and, subject to clause 17A (TfL Events), at the Service Provider's cost, prepare a Security Rectification Plan including full details of the steps to be taken by the Service Provider to perform its obligations under clause 47.6(A) and shall, without limiting clause 47.6(A), submit a copy of that Security Rectification Plan to TfL for its approval pursuant to clauses 47.3 and 47.4 which shall apply mutatis mutandis to that Security Rectification Plan and, subject to those clauses 47.3 and 47.4, the Service Provider shall fully carry out that Security Rectification Plan;
- (C) TfL may, if it rejects a Security Rectification Plan pursuant to clause 47.3, in its absolute discretion withhold any Notice of Authority to Proceed, Notice of Agreement to Operate and/ or Notice of Business Acceptance;
- (D) the Service Provider shall promptly escalate the matter to such level of seniority within the Service Provider's Personnel as TfL may require;

- (E) where such Security Incident has compromised, or in TfL's reasonable opinion is more likely than not to compromise, Evidential Integrity, TfL may exercise its Step-In Rights provided that, where a Security Rectification Plan has been approved by TfL, TfL shall only exercise its Step-In Rights in accordance with clause 47.6(F); and/or
- (F) where such Security Incident has compromised, or in TfL's reasonable opinion is more likely than not to compromise, Evidential Integrity, TfL may, in the event that it is not satisfied (acting reasonably) that the Service Provider is fully complying with the requirements of any Security Rectification Plan approved by TfL under this clause 47 (after the Service Provider has had reasonable opportunity to do so), exercise its Step-In Rights and/or terminate this Agreement with immediate effect by giving notice to the Service Provider.

47.7 The Service Provider agrees that:

- (A) a breach by the Service Provider (or a Sub-Contractor) of the respective obligations under this clause 47 shall be deemed to be for a material breach of this Agreement by the Service Provider; and
- (B) notwithstanding the provisions of clause 47.7(A), a breach or failure of security in connection with the Enforcement Infrastructure Service shall be at the sole risk of, and sole cost to, the Service Provider, save if and to the extent that such breach or failure results directly from the occurrence of a TfL Event.

47.8 Notwithstanding anything to the contrary, the Service Provider shall at all times comply with its obligations set out in schedule 14 (Security Policy).

47.9 Either party may request changes to any document envisaged under this clause 47 by the Change Control Request Procedure.

47.10 The Service Provider shall provide the Services in accordance with, and shall ensure that its Personnel comply with, the provisions of this clause 47 and schedule 14 (Security Policy).

47.11 If any Data is inaccurate, corrupted, lost or sufficiently degraded as to be unusable as a result of the Service Provider's failure to comply with the provisions of this clause 47 or any other act or omission of the Service Provider, the Service Provider shall, where it is possible to restore such data or information, at its own cost carry out (or procure the carrying out of) such remedial action as is necessary to restore such data or information.

47.12 The Service Provider shall on written demand fully indemnify TfL and keep TfL indemnified against all costs, losses, claims (including without limitation claims by the Core Service Provider and other Third Parties) damages, expenses, or proceedings incurred or suffered by it arising as a result of or in connection with:

- (A) any failure to comply with clause 47.1 to 47.10 inclusive; and
- (B) the circumstances referred to in clause 47.11.

#### 48. **Testing of the Disaster Recovery Plan and Security Plan during the Operational Phase**

48.1 The Service Provider will, in relation to the Disaster Recovery Plan, the Disaster Recovery Services, the Disaster Recovery Infrastructure and the Security Plan:

- (A) conduct system level Tests no less frequently than every six (6) Months. These shall comprise a test of each element of the Disaster Recovery Infrastructure and the Enforcement Infrastructure in respect of the capability and procedures undertaken by the Service Provider's technical and operational staff to ensure that:
  - (1) the Disaster Recovery Infrastructure meets the requirements of schedule 25 (Disaster Recovery); and
  - (2) the Service Provider is complying with the Security Policy;
- (B) conduct total service Tests no less frequently than annually. These shall comprise a test of:
  - (1) the Disaster Recovery Plan as a whole to ensure it meets the requirements of schedule 25 (Disaster Recovery); and
  - (2) the Enforcement Infrastructure Service as a whole to ensure the Service Provider is complying with the Security Policy; and
- (C) produce Test Plans and Test Specifications for each test referred to in clause 48.1(A) and (B) above and shall make copies of the same available to TfL upon request.

48.2 The Tests referred to in clause 48.1 will demonstrate:

- (A) the capability of the Service Provider to execute the Disaster Recovery Plan and provide the Disaster Recovery Services; and
- (B) whether the Service Provider is complying with the Security Policy.

Where the tests require downtime of any part of the Enforcement Infrastructure Service, the date and timing of the Tests shall be subject to prior written agreement with TfL. Downtime approved in writing by TfL which results from such Tests will be excluded from any measurement of Service Levels for the purposes of schedule 5 (Service Level Agreement) in respect of the relevant Performance Indicators affected by such Tests.

48.3 The Tests referred to in clause 48.1 may be conducted more frequently than is specified in that clause if the Service Provider, acting in accordance with Good Industry Practice, deems it necessary.

48.4 If any aspect of the Tests referred to in clause 48.1 fails to meet the criteria in the Disaster Recovery Plan and/or the Security Policy the Service Provider shall take such action, at its own expense, as is necessary, and repeat such tests until all the relevant criteria are met.

48.5 The first Test required under clause 48.1 will be undertaken not later than four (4) Months following the Operational Commencement Date.

48.6 The Service Provider will provide TfL with ten (10) Working Days' notice of its intention to carry out the tests required by clause 48.1 and will provide TfL with a copy of the results of any such tests within a reasonable period after the carrying out of any such tests if TfL so requires.

48.7 If TfL so requires, TfL may attend testing of the Disaster Recovery Plan, the Security Plan or any part of either of them. If TfL fails to attend a test, having agreed to do so, TfL may then request further tests (the reasonable costs of which shall be borne by TfL).

48.8 Any participation by TfL in relation to the testing of the Disaster Recovery Plan and/or the Security Plan will be without prejudice to and will not be deemed in any way to restrict the steps required to be taken by the Service Provider pursuant to this clause or its obligations under clause 57 (Force Majeure). Nor shall such participation be deemed to be acceptance by TfL that the Disaster Recovery Plan is adequate or appropriate.

49. **Indemnities and Limitations of Liability**

***[INFORMATION REDACTED]***

50. **Insurance**

50.1 Without prejudice to its liability to indemnify TfL under clause 49 (Indemnities and Limitations of Liability) or any other provision of this Agreement, the Service Provider shall, throughout the Term of this Agreement (and any other period stated in this clause 50, arrange and maintain with a reputable insurer or insurers authorised to underwrite such risks in the United Kingdom, policies of insurance of the following types and levels of indemnity ("**Insurances**"):

- (A) Public liability insurance in respect of the Service Provider's liability for loss or damage to property (including property of TfL) and against liability in respect of death, injury or occupational disease up to a limit of: (i) at least ten million pounds (£10,000,000) for each event or series of connected events; and (ii) at least sixty million pounds (£60,000,000) in aggregate for such liability over the duration of the Term;
- (B) Employer's liability insurance in respect of the Service Provider's liability for death, bodily injury or occupational disease of any person in the Service Provider's employment up to a limit of at least ten million pounds (£10,000,000) for each event or series of connected events;
- (C) Material damage insurance on an all risks basis in respect of the following Assets for their full replacement value from time to time:
  - (1) from the Design Commencement Date to the date of transfer of title to TfL in accordance with clause 56 (Assets), all Assets (although TfL shall not be relieved of its liability for damage to or loss of Assets due to any of the following (provided the Service Provider has promptly taken all reasonable steps to mitigate such damage or loss, including through repairing, replacing and maintaining such Assets): Protestor Action, Vandalism and road traffic accidents); and
  - (2) from the date of transfer of title to TfL in accordance with clause 56 (Assets), those Assets located at the Premises or the Service Provider's premises; and
- (D) Product liability insurance of at least ten million pounds (£10,000,000) for each event or series of connected events.

50.2 In relation to each of the Insurances, the Service Provider shall upon the execution of this Agreement and thereafter within twenty (20) Working Days of each due renewal date of the policies or at such other times as TfL may require, provide to TfL copies or relevant extracts (or other evidence satisfactory to TfL) of all such Insurances together with receipts or other evidence of payment of premiums in respect of such Insurances.

50.3 The Service Provider shall ensure that the Insurances cover the Service Provider's legal liability which may arise out of or in the course of or by reason of the Service Provider's or



its Sub-Contractor's performance, non-performance or part-performance under or in connection with this Agreement.

- 50.4 The public liability insurance policy referred to in clause 50.1(A) shall extend to indemnify TfL as principal and shall be endorsed to provide that no act or omission on the part of the Service Provider shall prejudice TfL's rights under such policy as principal.
- 50.5 The material damage insurance policy referred to in clause 50.1(C) shall be endorsed to note the interest of TfL and a waiver of the insurer's rights of subrogation against TfL.
- 50.6 Where the Insurances contain a care, custody or control exclusion, the relevant policy shall be endorsed so as to delete the exclusion in respect of any premises of TfL (including contents) that are occupied by the Service Provider for the purpose of performing the Services.
- 50.7 The Service Provider shall comply with the terms and conditions of the Insurances and all reasonable requirements of the insurers, including (without limitation), in connection with the prosecution, defence and settlement of claims, the recovery of losses and the prevention of accidents. The Service Provider shall bear the cost of all exclusions and limitations under such insurances and shall pay for any excess or deductible.
- 50.8 In relation to all the Insurances (except employer's liability insurance), the Service Provider agrees that TfL has the right to control and to supervise all dealings with the press and any other media in relation to any incident, event, claim or action arising in connection with this Agreement.
- 50.9 The Service Provider shall give TfL not less than thirty (30) Working Days' prior written notice of any proposed cancellation or a material change in the terms of any of the Insurances.
- 50.10 The Service Provider shall notify TfL as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any of the Insurances lapsing or being terminated or the cover under them being reduced or modified.
- 50.11 As soon as the Service Provider becomes, or should have been, aware of:
- (A) any matter likely to affect the decision of the insurers to grant or to continue any of the Insurances; and/or
  - (B) any event which might materially affect any such insurances,
- the Service Provider shall promptly notify TfL.
- 50.12 In the event of a claim being made under any of the Insurances, the proceeds shall be applied in making good the loss or damage in respect of which the claim is made.
- 50.13 If the Service Provider is in breach of its obligation to arrange and maintain the Insurances, as required under clause 50.1, TfL may, upon becoming aware of such breach, notify the Service Provider and if after two (2) Working Days the Service Provider has not remedied such breach to TfL's satisfaction, TfL may at its absolute discretion:
- (A) pay any premiums required to keep such Insurances in force or may procure such Insurances and in either case recover from the Service Provider all costs, expenses or other amounts as TfL may incur; or

- (B) terminate this Agreement upon written notice provided that TfL has complied with its obligations under clause 59.3.

## 51. **Data Protection and Freedom of Information**

51.1 The Service Provider warrants and undertakes that it will comply with all data protection laws and data protection principles (the “**DP Requirements**”), including, without limitation, in the United Kingdom, the Data Protection Act 1984, the Data Protection Act 1998, the Computers Misuse Act 1990 and the Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003. In complying with all relevant data protection laws, the Service Provider will, including without limitation:

- (A) comply with any applicable notification requirements under such data protection laws;
- (B) ensure that any Personal Data to be supplied by the Service Provider to TfL, Sub-Contractors and/or the Core Service Provider or processed by the Service Provider and/or its Sub-Contractors on behalf of TfL pursuant to this Agreement will be processed in accordance with the requirements of such data protection laws; and
- (C) comply with the further obligations in relation to data protection set out in schedule 15 (Data Protection and Freedom of Information).

51.2 The Service Provider shall and shall use best endeavours to procure that the Sub-Contractors shall in relation to the Services:

- (A) comply with all reasonable requests made by TfL;
- (B) provide all such reasonable assistance as may be required by TfL;
- (C) comply with standards no less demanding than those set out in BS7799 as amended from time to time or such other standards as may from time to time replace, amend or augment such standard or as may be agreed with TfL; and
- (D) comply with the further obligations set out in schedule 15 (Data Protection and Freedom of Information),

so as to enable TfL to comply with its obligations under the FOI Legislation.

51.3 The Service Provider shall be liable for and shall on written demand fully indemnify TfL and keep TfL indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and own client basis) and demands incurred by TfL which arise directly out of or in connection with the breach of contract by, or negligence of, the Service Provider in relation to the Service Provider's data processing activities under this Agreement.

## 52. **Health and Safety**

52.1 The Service Provider will at all times comply with:

- (A) all applicable Health and Safety Legislation; and
- (B) all decisions, requirements, regulations, orders, instructions, directions or rules relating to health and safety applicable to the provision of the Services.

- 52.2 The Service Provider shall be responsible for the observance by itself, its staff and Sub-Contractors of all current and relevant health and safety precautions necessary for the protection of itself, its staff, Sub-Contractors and other persons invited onto or visiting the Premises including all precautions required to be taken by or under any Health and Safety Legislation.
- 52.3 The Service Provider undertakes to carry out formal risk assessments from time to time of all aspects of the Services in accordance with the requirements of all applicable Health and Safety Legislation and to carry out all testing, examination and other work necessary to minimise and, so far as reasonably practicable, eliminate all risk to health or safety resulting from the performance of the Services or the use of any equipment or materials or other things in connection with the Services.
- 52.4 The Service Provider will ensure that there will be present at the Premises at all times an individual suitably qualified in first aid and that all necessary first aid supplies are provided by the Service Provider and are adequate for first aid purposes and meet relevant health and safety standards.
- 52.5 The Service Provider will strictly comply with and will procure that the Service Provider's Personnel strictly comply with such induction training procedures, safety training procedures and site procedures as are required by Health and Safety Legislation and/or as TfL may require from time to time.
- 52.6 In the event that a health or safety risk has arisen or is likely to arise in any part of the sites at or from which the Service Provider provides Services or in the provision of the Services, the Service Provider will notify TfL promptly in writing and will provide TfL with adequate information relating to such risk including any steps and safeguards which the Service Provider proposes to take and observe in order to ensure that the Services are performed safely. The Service Provider shall promptly take such steps and adopt such safeguards.

### 53. **Representations and Warranties**

- 53.1 Without prejudice to any other warranties or representations expressed elsewhere in this Agreement or implied by Law, the Service Provider hereby warrants, represents and undertakes to TfL that:
- (A) it has full authorisations, consents, approvals and permits necessary for it to enter into and discharge its obligations under this Agreement and that this Agreement has been executed by a duly authorised representative of the Service Provider and, without limitation to the generality of the foregoing, the Service Provider has the full capacity and all licences and consents necessary to enable it to grant the licences in clause 42 (Intellectual Property Rights);
  - (B) the Service Provider shall discharge its obligations under this Agreement with all due skill, care and diligence including but not limited to Good Industry Practice and in accordance with any standards set out in this Agreement (including without limitation the Specification);
  - (C) the Services shall be supplied and rendered by appropriately experienced, trained and qualified personnel with all due skill, care and diligence;
  - (D) the Service Provider is aware of the purpose, as set out in this Agreement, for which the Services are required and acknowledges that TfL is relying upon the Service Provider's expertise and knowledge in the provision of the Services;
  - (E) the Services shall be performed in compliance with all applicable Laws;

- (F) the Service Provider has title, free of all liens and encumbrances, to the Enforcement Infrastructure that is sold to TfL;
- (G) all elements of the Enforcement Infrastructure shall:
  - (1) be free from material defects; and
  - (2) conform strictly to the Specification, all statements and other requirements in this Agreement and shall comply in all respects with any Law which may be in force at the time of delivery;
- (H) the Enforcement Infrastructure Service:
  - (1) operates in conformance with the Specification; and
  - (2) will be Date Compliant and Euro Compliant;
- (I) the Documentation provided by the Service Provider will be, and the Service Provider's Solution is, complete and accurate and suitable and sufficient to enable TfL and its appropriately trained, qualified and experienced Personnel, acting reasonably, to enjoy the full benefit of the Enforcement Infrastructure Service;
- (J) any and all information supplied in writing after the date of the OJEU Notice (Ref: 04/S 158-137553/EN) by or on behalf of the Service Provider to TfL or to any of its advisers, including but not limited to all responses to the clarification process of the procurement, in connection with the award to the Service Provider of this Agreement and in response to the Invitation to Negotiate for the provision of Services made by the Service Provider was, at the time it was provided, and at the date hereof, to the best of the Service Provider's knowledge, information and belief, true and accurate and it shall advise TfL of any fact, matter or circumstance of which it may become aware which would render any material statement or representation to be false or misleading;
- (K) it has not, prior to or on the date of execution of this Agreement, committed any of the acts referred to in clauses 54.1 or 54.2;
- (L) the provisions of the Agreement do not put the Service Provider in breach of any other agreements to which it is a party to the extent that it would make this Agreement or the provisions of the Guarantee invalid;
- (M) the execution of this Agreement does not contravene the terms of any licence, regulation or other restrictions applicable to the Service Provider; and
- (N) the Financial Model is, at the date of this Agreement or at the date on which it is updated and supplied to TfL by the Service Provider in accordance with or pursuant to this Agreement, in all material respects accurate and complete.

53.2 If the Service Provider is not the manufacturer of any element of the Enforcement Infrastructure, the Service Provider shall use its best endeavours to obtain the same warranties as specified in clauses 53.1(F), 53.1(G) and 53.1(H) from the manufacturer and the Service Provider shall make the benefit of such warranties available to TfL as if they had been given to TfL directly. The Service Provider shall at its own cost assist and cooperate with TfL in making claims under such warranties.

- 53.3 The warranties specified in clauses 53.1(F), 53.1(G), 53.1(H) and 53.2 shall survive any inspection, acceptance and payment in respect thereof by TfL and shall inure to the benefit of TfL, its agents, successors in interest and assigns.
- 53.4 If at any time the Service Provider becomes aware or TfL or the Core Service Provider notifies the Service Provider of a failure of all or any part of the Enforcement Infrastructure Service to comply with the warranties (a “**Failure**”), the Service Provider shall at its own cost promptly and in accordance with any timings set out in the Statement of Requirements:
- (A) prepare and submit a draft remedial action plan to end the Failure to TfL for comment;
  - (B) take into account any comments or requested amendments received from TfL in preparing a final remedial action plan; and
  - (C) implement the final remedial action plan with the object of ending any Failures.
- 53.5 For the purposes of construing the warranties and representations in this clause 53, references to the Services shall include any part of the Services. Each warranty and representation shall be construed as a separate warranty or representation and shall not be limited or restricted by any other term of this Agreement.

#### 54. **Corrupt Gifts or Payment and Fraud**

##### **Corrupt Gifts or Payment**

- 54.1 The Service Provider shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind, as an inducement or reward for doing or not doing anything or for showing favour or disfavour to any person in relation to the Services or any other Agreement with TfL.
- 54.2 The Service Provider shall not conspire with any person to do any of the acts mentioned in clause 54.1.
- 54.3 Any:
- (A) breach by Key Personnel or officers of the Service Provider of the foregoing provisions of this clause 54; or
  - (B) proven commission of any offence by the Service Provider or the Guarantor under the Prevention of Corruption Acts 1889-1916 in relation to this Agreement or any contract with any member of TfL Group, The Greater London Authority and/or other associated bodies; or
  - (C) failure by the Service Provider to take, or to procure that its Sub-Contractors take, prompt and appropriate disciplinary action and other appropriate actions in respect of any breach of the foregoing provisions of this clause 54 by any other member of the Service Provider’s Personnel; or
  - (D) breach by the Guarantor of clause 16 (Corrupt Gifts or Payments and Fraud) or breach of the warranty in clause 5.1(B) of the Guarantee,

shall entitle TfL to terminate this Agreement in accordance with clause 59 (Termination) and recover from the Service Provider the amount of value of any such gift, consideration or commission and any cost, loss, liability or damage incurred or suffered by TfL as a result of, or which would not have arisen but for, the breach of this clause.

54.4 The decision of TfL in relation to the foregoing provisions of this clause 54 shall be final and conclusive provided always that it shall have acted proportionately having regard to the nature of the breach by the Service Provider of this clause 54.

### **Fraud**

54.5 If any fraudulent activity comes to the attention of the Service Provider in relation to the Scheme or the Services, the Service Provider shall notify TfL by the most expeditious means available. The Service Provider shall then co-operate in the investigation of such fraudulent activity and shall implement any necessary changes to the procedures or working practices employed in the provision of the Services as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised.

54.6 In the event of any fraudulent activity on the part of the Service Provider, the Guarantor, their agents, employees or Sub-Contractors, TfL shall have the right to recover from the Service Provider any cost, loss, liability or damage incurred or suffered by TfL as a result of, or which would not have arisen but for, such fraudulent activity.

54.7 Without prejudice to TfL's rights under clause 54.3, in the event of any fraudulent activity on the part of the Service Provider, its agents, Key Personnel or Sub-Contractors, where the Service Provider has not complied with its obligations under clauses 54.4 and 54.5 or taken disciplinary action which in TfL's opinion, acting reasonably, is unsatisfactory, against the relevant employee, agent or Sub-Contractor, TfL shall have the right to terminate this Agreement in accordance with clause 59 (Termination).

## **PART 18: PREMISES AND ASSETS**

### 55. **Premises**

The parties shall comply with the provisions of schedule 18 (Premises).

### 56. **Assets**

56.1 A list of all parts of the Enforcement Infrastructure detailing the status of their ownership shall be maintained in the Asset Register in accordance with the provisions of schedule 13 (Asset Register), in particular indicating which are Assets.

56.2 The Service Provider shall ensure that, upon achievement of Milestone 7, title in the Assets shall immediately transfer to TfL at no cost to TfL.

56.3 If this Agreement is terminated:

(A) prior to the Operational Commencement Date in accordance with clause 59.2(B) or 59.2(D);

(B) on or after the Operational Commencement Date in accordance with clause 59.2(B) or 59.2(F) as a result of the Assets failing to function in all material respects in accordance with the requirements of the Agreement and as a consequence thereof the Service Provider being unable to provide the Services in accordance with this Agreement,

then:

(C) save as may be otherwise agreed by the parties in accordance with clause 56.3(E), no sums shall be payable by TfL to the Service Provider in respect of the Assets;

- (D) without limitation to TfL's other rights and remedies hereunder and subject to clause 56.3(E), the Service Provider shall promptly reimburse a proportion of all sums paid by TfL in respect of Assets, such proportion to be calculated as:

$$\frac{(100 - (20 \times A))}{100}$$

100

where:

A = the number of full years of operation from the Operational Commencement Date (and where termination occurs prior to the end of the first full year of operation, shall be zero) provided that if the above calculation results in a figure of less than zero, the amount to be reimbursed by the Service Provider shall be zero

- (E) if TfL notifies the Service Provider that it wishes to retain certain Assets the parties shall in good faith seek to agree an appropriate adjustment to the reimbursement figure which would otherwise be due to TfL and other arrangements relating to such Assets. Notwithstanding the foregoing, TfL shall at any time be entitled to retract such notice and demand reimbursement in accordance with clause 56.3(D);
- (F) any amount reimbursed in accordance with clause 56.3(D) shall be in addition to such other sums as TfL is entitled to recover herein and shall not be included in, or subject to the limitations of liability set out in clause 49 (Indemnities and Limitations of Liability);
- (G) the Service Provider shall promptly, at the Service Provider's cost, remove any such Assets (but excluding the poles and pole bases and such Assets as TfL is to retain as agreed in accordance with clause 56.3(E)) as are on TfL's premises or such other premises as shall fall within TfL's control as part of the Exit Plan. If the Service Provider fails to comply, TfL may take any action, which in TfL's sole opinion (acting reasonably) is necessary or desirable, to remove any such Assets from TfL's premises. TfL shall not be liable for any losses or liabilities incurred by the Service Provider or any Third Party as a result, directly or indirectly, of any removal of property from TfL's premises or of any action taken by TfL pursuant to this clause 56.3 and the Service Provider shall (subject to clause 49 (Indemnities and Limitations of Liability)) on written demand fully indemnify TfL and keep TfL indemnified against any loss, damage or liability which it may suffer or incur as a result of any such removal or action.

56.4 Save where otherwise expressly provided in this Agreement, risk in and liability in respect of the Assets shall remain with the Service Provider unless and until such time as TfL takes possession of the Assets pursuant to the Service Transfer Plan.

56.5 At no time shall the Service Provider:

- (A) employ any of the Assets for any use other than for the provision of the Services and under no circumstances shall they be subject to any form of shared use or use by the Service Provider for any other activities not related to the Services;
- (B) sell or offer for sale, transfer or assign, mortgage, encumber, pledge, underlet, lend or otherwise deal with the Assets or any interest in them;
- (C) allow the creation of any charge or lien over the Assets;

- (D) attach the Assets (other than the housing of the Outstations at the relevant roadside locations) to any land or premises so as to cause them to become a permanent or immovable fixture on such land or premises;
- (E) allow, perform or consent to any act or omission to act which would or might cause the Assets to be forfeited under any applicable law or which might jeopardise the Assets; or
- (F) until title in the Assets transfers to TfL in accordance with this clause 56, agree to create any floating charge unless the Service Provider has prior to such event obtained waivers satisfactory to TfL excluding the Assets from its effect or unless any such act does not affect the Assets in any way and is subject to the right of TfL to repossess the Assets at any time on termination of the Agreement (whether or not they or any part of them have become affixed to land or building) and for that purpose to enter upon such land or building and sever the Assets if affixed to it,

without the express prior written consent of TfL.

56.6 The Service Provider shall:

- (A) provide a full management service in respect of the Assets in accordance with the terms of this Agreement and Good Industry Practice;
- (B) ensure that all Assets are:
  - (1) at all times housed, maintained and operated in accordance with Good Industry Practice (subject to the provisions of clause 22.2(C)) and, without limiting the generality thereof, the relevant manufacturer's recommendations;
  - (2) each labelled appropriately with a unique identifying reference corresponding with the relevant entry in the Asset Register; and
  - (3) at all times kept and returned to TfL in good order, repair and condition subject to the provisions of clause 22.2(C) and fair wear and tear excepted;
- (C) upon reasonable written notice, provide to TfL (or its authorised representatives and agents) such access to the Assets as TfL may reasonably require;
- (D) ensure that all Assets that the Service Provider and its Sub-Contractors acquire or use are subject to appropriate written legally binding contracts (including but not limited to any relevant warranties, licences, equipment rental or lease agreements ("**Asset Agreements**")), which:
  - (1) permit the Service Provider to use such Assets for the purposes set out in this Agreement;
  - (2) provide all necessary maintenance and support in respect of the Assets to permit the Service Provider to comply with its obligations under this Agreement;
- (E) use all reasonable endeavours to procure that the Asset Agreements are transferable or assignable to TfL at no additional cost to TfL;
- (F) ensure that it takes all steps reasonably necessary to ensure that the Asset Agreements are not breached or terminated; and



- (G) if, notwithstanding the Service Provider's compliance with clause 56.6(F), any Asset Agreement is terminated, enter into or procure a suitable replacement for such Asset Agreement on similar terms in accordance with this Agreement to ensure that the Service Provider continues to receive no less a standard of maintenance and support as the Service Provider enjoyed under such Asset Agreement.
- 56.7 With effect from the date of transfer of title to the Assets to TfL, TfL shall grant to the Service Provider a licence to use the Assets for the purposes of providing the Services.
- 56.8 The Service Provider shall keep and maintain a record of configurations of cameras, equipment, routers, servers and similar Hardware and Systems used by it in the Enforcement Infrastructure ("**Configuration Records**"). The Service Provider shall promptly update and provide TfL with a copy of such Configuration Records:
- (A) on request; and
- (B) on the Termination Date or the Expiry Date (as appropriate) unless the Configuration Records have, prior to such date, been provided in accordance with the Service Transfer Plan.
- 56.9 The Configuration Records shall be maintained as part of the Asset Register.
- 56.10 In no event shall the Service Provider be entitled to claim relief from its obligations under this Agreement due to defective or unsatisfactory performance of the Assets, except where such defective or unsatisfactory performance is directly due to the occurrence of a TfL Event or where such relief is afforded to the Service Provider under clause 58.15.
- 56.11 The Service Provider shall be responsible for the procurement of all necessary spare parts and replacements for the Assets as part of the Enforcement Infrastructure Service and payment for all such spare parts and replacements shall, subject to clause 17A (TfL Events) be deemed to be included in the Charges.
- 56.12 All spare and replacement parts held by the Service Provider shall remain the property of the Service Provider unless and until they are used in accordance with this Agreement, whereupon title shall transfer to TfL and they shall be deemed to be Assets for the purposes of this Agreement. Title in parts replaced during the provision of the Enforcement Infrastructure Services shall revert to the Service Provider (or its relevant Sub-Contractor) at the same time as title in such spare and replacement parts transfers to TfL. Except in respect of such liabilities as TfL is not, under English law, entitled to exclude, TfL makes no warranty and shall not bear any liability to the Service Provider whatsoever in relation to such parts as revert to the Service Provider.
- 56.13 The Service Provider shall comply with relevant Laws when disposing of Assets and parts of Assets which it has replaced as part of the Enforcement Infrastructure Service.
- 56.14 In the event that repair or replacement of an Asset is required as a direct result of the occurrence of a TfL Event, TfL shall bear the reasonable cost of such repair or replacement, determined in accordance with the prices set out in Annex C to Schedule 9 (Change Control Request Procedure), within forty (40) days of receipt from the Service Provider of a valid invoice in respect of such costs together with such timesheets and/or other records as TfL may reasonably require to verify the accuracy of such invoice.
- 56.15 Without prejudice to clause 73 (Mutual Assistance) the parties shall provide such assistance and cooperation to each other as is necessary to give effect to the provisions of this clause, including but not limited to, where reasonably requested by either party,

agreeing any necessary Changes to the terms and conditions of this Agreement and the entering into of further documents.

## PART 19: FORCE MAJEURE

### 57. **Force Majeure**

- 57.1 Subject to clause 57.3 neither party to this Agreement shall be deemed to be in breach of this Agreement or otherwise liable to the other as a result of any delay or failure in the performance of its obligations under this Agreement, if and to the extent that such delay or failure is due to the occurrence of a Force Majeure Event.
- 57.2 If the Service Provider alone is affected by the Force Majeure Event, TfL shall be relieved from any obligation to make payments to be provided under this Agreement to the Service Provider for so long as the same continues, except in respect of Services which have been actually supplied.
- 57.3 The Service Provider will not be entitled to rely upon clause 57.1 if and to the extent that the Service Provider has failed to comply with the Disaster Recovery Plan (unless such failure itself is directly due to Force Majeure, a Relief Event or a TfL Event).
- 57.4 A party whose performance of its obligations under this Agreement is delayed or prevented by a Force Majeure Event:
- (A) shall forthwith notify the other party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event. As soon as possible following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effect of the Force Majeure Event and facilitate the continued performance of the Agreement;
  - (B) shall use all reasonable endeavours in accordance with Good Industry Practice to minimise the effect of the Force Majeure Event on its performance of its obligations under this Agreement including:
    - (1) compliance with the Disaster Recovery Plan (in the case of the Service Provider); and
    - (2) the making of any alternative arrangements for resuming the performance of its obligations which may be practicable without incurring material additional expense; and
  - (C) shall forthwith after the cessation of the Force Majeure Event, notify the other party thereof and resume full performance of its obligations under this Agreement.
- 57.5 If, on the expiry of ten (10) Working Days after occurrence of a Force Majeure Event where the Service Provider is the affected party, the Force Majeure Event is continuing and has a material adverse effect on the Service Provider's performance of all or substantially all of the Services then, for as long as such Force Majeure Event continues and has that effect, TfL may terminate this Agreement in its entirety in accordance with clause 59 (Termination).
- 57.6 If on the expiry of twelve (12) Months after the occurrence of a Force Majeure Event where TfL is the affected party and the Force Majeure Event is continuing and its effect throughout that period has been to prevent TfL from performing all or substantially all of its obligations under this Agreement, then for as long as such Force Majeure event continues and has that effect, the Service Provider may terminate this Agreement in its entirety in accordance with clause 59 (Termination).

57.7 To the extent that a Force Majeure Event causes, or is anticipated to cause, a delay in the Service Provider meeting any of the Milestones by the relevant Milestone Date or a delay to the Operational Commencement Date beyond the Planned Operational Commencement Date, the provisions of clause 16 (Delay Plans) shall apply (to the extent that they are applicable), provided that the Service Provider shall nevertheless also comply with the provisions of this clause 57.

## PART 20: STEP IN AND TERMINATION

### 58. Rights of TfL to Step-In

58.1 Without prejudice to any other right or remedy of TfL under this Agreement including, for the avoidance of doubt, TfL's right to terminate the Agreement under clause 59.2, TfL shall during the Operational Phase have the right to exercise Step-In Rights by providing all or part of the Services, either by itself or through its agents or sub-contractors, in accordance with the following provisions of this clause 58 where TfL reasonably believes that one or more of the following circumstances has arisen:

- (A) there is a Material Service Level Failure or Continuous Service Breach;
- (B) a serious risk exists to the health or safety of persons arising from or in connection with the provision of the Services by the Service Provider, or in relation to the obligations of the Service Provider pursuant to this Agreement due to an act or omission of the Service Provider;
- (C) at any time upon or after the occurrence of an Insolvency Event;
- (D) the Service Provider commits a material breach of this Agreement provided that, where TfL reasonably considers that such breach is capable of remedy, the Service Provider has failed to remedy that breach within ten (10) Working Days (or such other longer timeframe as specified in writing by TfL) from the date of written notice by TfL to the Service Provider giving details of the breach and requiring it to be remedied;
- (E) the Service Provider has materially failed to comply with the terms of the Exit Plan;
- (F) TfL needs to do so in order to discharge any part of its statutory duties or if there is a Force Majeure Event;
- (G) there is a Change in Law which renders performance of substantially all of the Service Provider's obligations under this Agreement illegal;
- (H) where TfL is expressly so entitled pursuant to:
  - (1) clause 47.6(E); and/or
  - (2) clause 47.6(F).

58.2 If TfL believes that any of the circumstances set out in clause 58.1 have arisen, TfL may serve notice in writing on the Service Provider (a "**Step-In Notice**") specifying:

- (A) which of the circumstances specified in clause 58.1 is or are applicable;
- (B) the action TfL intends to take and the reason for such action;

- (C) the date on which TfL intends to commence such action which may be the date that the Step-In Notice is served where the Step-In Right arose under clauses 58.1(B) to 58.1(F) (inclusive) but in all other circumstances may not be less than five (5) Working Days from the date of the Step-In Notice; and
- (D) the time period which it believes will be reasonably necessary for such action.

58.3 At any time after the date referred to in clause 58.2(C), TfL may itself take such action, or appoint one or more Third Parties to take such action (and any consequential additional action as it believes necessary) as TfL considers appropriate (acting reasonably). Without limitation to the generality of the foregoing, such action may include all or any of the following:

- (A) taking over any or all or any part of the Services as specified in the Step-In Notice. If and to the extent that TfL expressly in the Step-In Notice confirms that it is taking over such Services the obligation of the Service Provider to provide such Services shall be suspended, except as otherwise agreed by the Service Provider and TfL in writing from time to time during the period of the Step-In Action;
- (B) entering upon the Premises from which the Services or any part of them are being provided (and the Service Provider shall procure that TfL is able to enter upon the Premises at no cost to TfL);
- (C) having access to and the right to use any of the Systems and all records, documents (including but not limited to Documentation) and Data relevant to the provision of the Services;
- (D) using and accessing any Assets owned or controlled by the Service Provider or its Sub-Contractors, or for which the Service Provider or its Sub-Contractors are able to grant rights in respect of such Assets (including, without limitation, Third Party Software), and any premises, plant, equipment and facilities used by the Service Provider in connection with this Agreement and to use, test, operate and do all such things as may be reasonably required by TfL in respect of those Assets, premises, plant, equipment and facilities in order to carry out or facilitate the carrying out of those Services in respect of which a valid Step-In Notice has been issued. The Service Provider hereby grants to TfL and any Third Party engaged by TfL (and shall procure that its Sub-Contractors shall grant) such rights as are necessary for TfL or any Third Party to exercise its rights under this clause 58.3(D);
- (E) doing all other things that TfL deems necessary for the purposes of properly taking such Step-In Action,

provided that, in the event of a Step-In Notice in the circumstances set out in clauses 58.1(A), 58.1(B) or 58.1(D) to 58.1(H), TfL shall only be entitled to exercise its Step-In Rights in relation to that part of the Services, performance of which has given rise to the Step In Rights and only for such amount of time as is necessary to procure that the deficient aspect of the Services or circumstances giving TfL the right to Step-In, are remedied.

58.4 In the event that TfL wishes to engage the services of any Third Party to assist it in the performance of the Step-In Action, TfL shall notify the Service Provider of such Third Party and, in circumstances in which such Third Party is to be granted access to any Service Provider Confidential Information or any of the Service Provider's Intellectual Property Rights, TfL shall procure that the Third Party enters into a confidentiality agreement in favour of the Service Provider on terms substantially similar to those set out in schedule 19 (Deed of Confidentiality) prior to being engaged in any Step-In Action.

- 58.5 A Step-In Notice may be served and Step-In Action taken by TfL at any time, whether before, during or after the service of a notice of termination of this Agreement, subject to clauses 58.1 and 58.2.
- 58.6 The Service Provider shall co-operate fully with TfL throughout any period of Step-In, and shall provide all requested assistance for the purposes of or relating to the Step-In Action including, without limitation to the generality of the foregoing:
- (A) providing access to or copies of Data and such other financial, operational, management or other information as requested by TfL relevant to the provision of the Services; and
  - (B) procuring the prompt assistance and availability of all relevant Service Provider Personnel.
- 58.7 Where Step-In Action is taken:
- (A) pursuant to clauses 58.1(A) to 58.1(E) (inclusive), clause 58.1(H)(2) or, to the extent that the relevant Security Incident was caused by an act or omission of the Service Provider (or a Sub-Contractor), clause 58.1(H)(1), then, for so long as and to the extent that the Step-In Action is taken, the Service Provider shall compensate TfL on demand for all actual evidenced reasonable costs incurred by TfL in taking Step-In Action (including but not limited to reasonably allocated overheads and other internal costs and all advisers and legal fees) in each Month that it takes such action (provided TfL is acting in accordance with this clause 58) that are incurred by TfL or any other party appointed by it in:
    - (1) preparing for and issuing the Step-In Notice; and
    - (2) undertaking the Step-In Action.
- Where reimbursement of TfL's costs includes the costs of any Third Party appointed, such Third Party costs may include a reasonable profit element; or
- (B) pursuant to any of clauses 58.1(F), 58.1(G) or, to the extent that the relevant Security Incident was not caused by an act or omission of the Service Provider (or a Sub-Contractor), clause 58.1(H)(1), then, for so long as and to the extent that the Step-In Action is taken, TfL shall take any Step-In Action at its own expense and TfL shall reimburse the Service Provider for all reasonable costs incurred by the Service Provider in assisting TfL provided that, subject to clause 58.15, TfL shall otherwise have no liability whatsoever to the Service Provider or any Sub-Contractor as a result of any Step-In Action taken pursuant to this clause 58. Such reimbursement amounts shall be included in the Service Provider's Monthly Invoice, with each item requiring reimbursement separately identified.
- 58.8 Throughout the duration of the Step-In Action, the parties shall meet on a Monthly basis or as the parties may otherwise agree from time to time, to discuss the progress of the Step-In Action.
- 58.9 For so long as the Step-In Action is taken and the Service Provider complies with clauses 58.3(D) and 58.6, the Service Provider shall continue to be paid the Charges, plus any amounts due in accordance with clause 58.7(B) (if applicable), against which the following shall be set-off and deducted:
- (A) an amount of Service Credits (calculated as the average value of Service Credits which were payable in respect of the Services which are the subject of Step-In

Action in the six (6) Month period prior to the Step-In Action commencing), provided that, where the Step-In Action is taken pursuant to clauses 58.1(F) or 58.1(G) or, to the extent that the relevant Security Incident was not caused by the breach of this Agreement or negligence of the Service Provider (or a Sub-Contractor), clause 58.1(H)(1), if any period of Step-In Action continues for six Months or longer there shall be no such deduction in respect of Service Credits after the sixth full Month of such Step-In Action;

- (B) all other deductions which TfL is entitled to make from such Charges under this Agreement; and
- (C) all costs and expenses due in accordance with clause 58.7(A) (if applicable).

If and to the extent that the aggregate deductions referred to in clauses 58.9(A), 58.9(B) and 58.9(C) exceed the aggregate amount of Charges and any sums payable under clause 58.7(B) which are due, the Service Provider shall promptly upon demand pay to TfL a sum equal to the difference.

58.10 TfL shall have no liability to the Service Provider for any damage which has occurred prior to the date specified in TfL's Step-In Notice for commencement of Step-In Action, or which results from a breach by the Service Provider of its obligations under this Agreement, and, without prejudice to the generality of clause **Error! Reference source not found.**, the Service Provider shall on written demand fully indemnify TfL and keep TfL indemnified against all and any cost, loss, liability, claim or damage (including all legal fees and expenses on a solicitor and own client basis) which they incur or suffer as a consequence of, or would not have arisen but for, such damage and/or such breach by the Service Provider.

58.11 Without prejudice to TfL's right to exercise its Step-In Rights and/or its continuing right to remain stepped-in once Step-In Action has been taken:

- (A) the Service Provider shall, if requested to do so in the Step-In Notice or as notified to the Service Provider by TfL from time to time during the period of Step-In Action, promptly develop and put forward to TfL proposals demonstrating that the Service Provider is and will continue to be capable of providing the Services in respect of which Step-In Action has been, or may be, taken together with what steps, if any, the Service Provider proposes taking;
- (B) upon receipt of the Service Provider's proposals TfL may, subject to such conditions as TfL reasonably deems appropriate and in any event without prejudice to TfL's rights under this clause 58, permit the Service Provider to continue to perform or recommence, as appropriate, performance of all or part of the Services in respect of which the Step-In Action has been taken;
- (C) any permission given under clause 58.11(B) shall be set out in a notice to the Service Provider (a "**Step-Out Notice**") informing the Service Provider that from the date specified in such Step-Out Notice, the Service Provider shall continue to perform or recommence performance, as appropriate, of all or part of the Services in respect of which the Step-In Rights were exercised and TfL will withdraw its own personnel (and any personnel of Third Parties appointed by TfL as referred to in clause 58.3) from such parts of the Services as the Service Provider is to recommence performance. The Service Provider shall resume full performance of and responsibility for the provision of such parts of the Services from the date specified in the Step-Out Notice;
- (D) notwithstanding the foregoing TfL may:

- (1) pursuant to clause 58.12(B); or
- (2) at its sole discretion, decide at any time that it is inappropriate for TfL to continue with its Step-In Action or that the grounds for the exercise of its rights under clause 58.3 no longer exist in respect of all or any part of the suspended Services and may;

serve a Step-Out Notice specifying:

- (3) the parts of the Services in respect of which the Service Provider is to resume full performance; and
- (4) the date on which the Service Provider's provision of and responsibility for such Services is to resume, after which date Step-In cannot recommence unless TfL has a further right to Step-In as a result of an event listed in clause 57.1 occurring.

The Service Provider shall comply fully with the terms of any such Step-Out Notice. Nothing in this clause 58.11 shall prevent TfL from issuing more than one Step-Out Notice in relation to Services affected by a single Step-In Notice and TfL may (after consultation with the Service Provider) require the Service Provider to recommence the provision of suspended Services in their entirety or (where it is possible to do so without adversely affecting the provision of the Services) partially or gradually.

58.12 Without prejudice to any other rights TfL may have to terminate this Agreement:

- (A) subject to clause 58.12(B), once the total of all periods during which TfL exercises its Step-In Rights equals or exceeds twelve (12) Months in aggregate, TfL shall be entitled in its sole discretion to terminate this Agreement; and
- (B) where Step-In Action is taken in respect of all or substantially all of the Services for a consecutive period of nine (9) Months TfL shall, on the expiry of such nine (9) Month period, either:
  - (1) terminate this Agreement on such notice as TfL shall decide in its absolute discretion; or
  - (2) issue a Step-Out Notice.
- (C) where Step-In Action is taken in respect of a particular element of the Services, after a consecutive period of nine (9) Months, TfL shall consult with the Service Provider as to progress made under such Step-In Action and TfL's reasonable assessment as to if and when (subject to the provisions of this clause 58) TfL anticipates a Step-In Notice might be served in respect of such Services.

58.13 References (however worded) in this clause 58 to any steps or action being taken by TfL under this clause 58 are references to such steps or action being taken either by TfL itself or by persons engaged by TfL for that purpose.

58.14 The issuing of a Step-In Notice and taking of Step-In Action by TfL:

- (A) shall not give the Service Provider the right to terminate this Agreement; and
- (B) shall be without prejudice to TfL's right to terminate this Agreement in accordance with clause 59.2, whether the event permitting TfL to terminate this Agreement

arose before, on or after the date of the Step-In Notice provided TfL complies with its obligations under clause 59.3, subject to clause 59.8.

58.15 TfL shall not be liable for any cost, loss, damage or claim suffered or incurred by the Service Provider or any Sub-Contractor arising from any deterioration in any elements of the Assets and the Services operated by it whilst taking the Step-In Action except for any deterioration resulting directly from the occurrence of a TfL Event, in respect of which the provisions of clause 17A (TfL Events) shall apply.

58.16 TfL shall:

- (A) use reasonable endeavours; and
- (B) use reasonable endeavours to procure that any Third Party engaged by TfL in accordance with this clause 58 complies with Good Industry Practice,

in each case so as not to disturb or adversely affect the provision of the Services more than is required for the purposes of the Step-In Action.

## 59. **Termination**

### 59.1 **Termination by the Service Provider**

Without prejudice to the other rights or remedies it may have, the Service Provider may serve a notice in writing on TfL to terminate this Agreement with effect from forty-five (45) Working Days of receipt by TfL of such notice if:

- (A) the circumstances in clause 57.6 (Force Majeure) apply; or
- (B) TfL fails to comply with any of its payment obligations hereunder relating to any undisputed sum in excess of five hundred thousand pounds (£500,000) where payment has fallen due and payable and fails to remedy such breach within ninety (90) days after receipt of formal written notice from the Service Provider demanding payment.

The Service Provider may only give notice to TfL terminating this Agreement in accordance with the provisions of this clause 59.1 and must fully specify in such notice the details of the event which has occurred entitling the Service Provider to terminate.

### 59.2 **Termination by TfL**

Subject to clause 59.3 but without prejudice to any other rights or remedies it may have, TfL may serve a notice in writing on the Service Provider to terminate this Agreement upon the occurrence of any of the following events or circumstances:

- (A) a Change of Control of the Service Provider and/or the Guarantor (other than as a result of a consolidation, amalgamation, merger or solvent reconstruction of the Service Provider's Group);
- (B) the Service Provider and/or the Guarantor commits one or more material breaches or one or more Persistent Breaches of this Agreement or the Guarantee (as appropriate);
- (C) if any of the representations or warranties set out in clause 53 (Representations and Warranties) prove to have been inaccurate or incorrect when made or at the date



hereof, which have a material adverse effect on the provision of the Services or the operation of the Scheme;

- (D) in circumstances in which Milestone 6 (Ready for Service) is delayed by more than one hundred and five (105) calendar days whether:
  - (1) such delay is directly and principally caused by TfL or an Other Service Provider; or
  - (2) for any other reason (including but not limited to a Relief Event);
- (E) any falsification of Data or Personal Data, any material non-compliance with clause 51 (Data Protection and Freedom of Information), or failure to comply with a provision of this Agreement that causes Data to be materially or persistently corrupted, in each case by the Service Provider, its agents, employees or Sub-Contractors;
- (F) there is a Material Service Level Failure;
- (G) an Insolvency Event affecting the Service Provider or the Guarantor occurs unless, in the case of an Insolvency Event affecting the Guarantor, the Service Provider has provided to TfL such security in place of the Guarantee as TfL acting reasonably deems acceptable to it;
- (H) there is a Change in Law which renders operation of the Scheme wholly or partly illegal or if the Scheme is otherwise cancelled or terminated;
- (I) the CSA and/or the WSA (or any contract for similar services to those provided under, and which is also, for the avoidance of doubt, of similar geographical application to, the CSA and WSA (a “**Replacement Contract**”) entered into by TfL) is terminated at any time, save where a Replacement Contract is entered into on such termination;
- (J) TfL suffers or incurs any loss, damage, claims, demands, actions, costs, charges, expenses or liabilities (including additional administrative and management time, costs and expenses of TfL and legal fees and disbursements calculated on a solicitor and own client basis) that is not recoverable from the Service Provider solely as a result of the effect of limits or exclusions on the Service Provider’s liability specified in clause 49 (Indemnities and Limitations of Liability);
- (K) as expressly provided for in the following provisions:
  - (1) clause 4.7 (Commencement and Duration);
  - (2) clause 15.3(F) (Achievement of Milestones);
  - (3) clause 23.5 (System Failure);
  - (4) clause 47.6(F) (Security);
  - (5) clause 50.13 (Insurance);
  - (6) clause 54.3 (Corrupt Gifts or Payment);
  - (7) clause 54.6 (Fraud);

- (8) clause 57 (Force Majeure);
- (9) clause 58.12 (Right of TfL to Step-In);
- (10) clause 69.2 (Assignment);
- (11) clause 74.2 (Parent Company Guarantee); or
- (12) clause 75.3 (Conflict of Interest).

59.3 Upon the occurrence of a breach of this Agreement or other circumstances giving rise to a right of TfL to terminate under clause 59.2, TfL shall if (in TfL's opinion acting reasonably) the breach or other circumstance is capable of remedy, to serve a notice of default on the Service Provider requiring the Service Provider at the Service Provider's option either:

- (A) to remedy or procure the remedy of the breach or breaches of the Agreement or other circumstances as specified in such notice of default within ten (10) Working Days of such notice (or such longer period as may be agreed by TfL in its absolute discretion); or
- (B) to put forward within ten (10) Working Days of such notice (or such longer period as may be determined by TfL in its absolute discretion) a programme for the remedying of the breach or breaches of the Agreement or other circumstances, the programme to specify in detail the manner in which such breach, breaches or circumstances is or are proposed to be remedied and the latest date by which it is proposed that the breach, breaches or circumstances shall be remedied, and in this event the provisions of clause 59.6 shall apply,

59.4 Where the breach or other circumstance is not capable of remedy (in TfL's opinion, acting reasonably), TfL shall be entitled to terminate this Agreement immediately or upon such notice as it may, by notice, specify (either, as appropriate, the "**Termination Date**").

59.5 Where the Service Provider puts forward a programme in accordance with clause 59.3(B), TfL shall have twenty (20) Working Days within which to notify the Service Provider in writing that it does not accept the programme, failing which TfL shall be deemed to have accepted the programme. Where TfL notifies the Service Provider that it does not accept the programme, TfL and the Service Provider acting reasonably and in good faith shall endeavour within the following five (5) Working Days to agree any necessary amendments to the proposed programme, save that TfL shall be under no obligation to agree to such programme and may reject it at any time providing it does so on reasonable grounds and acting in good faith.

59.6 TfL may terminate this Agreement by notice having effect either immediately or on such date as TfL shall specify in such notice:

- (A) where the Service Provider has not put forward a programme pursuant to clause 59.3(B) and if the breach, breaches or other circumstances giving rise to a right of TfL to terminate this Agreement specified in a notice of default served under clause 59.3 is or are not remedied before the expiry of the period referred to in clause 59.3(A) (or such other period as may have been agreed by TfL); or
- (B) where the Service Provider puts forward a programme pursuant to clause 59.3(B) and:
  - (1) the programme has been accepted by TfL and the Service Provider fails to implement or comply with the programme; or

- (2) the programme as is put forward by the Service Provider pursuant to clause 59.3(B) is rejected by TfL acting reasonably and in good faith.

- 59.7 Acceptance by TfL of any programme proposed by the Service Provider pursuant to clause 59.3(B) shall not constitute a waiver by TfL of any of its rights or remedies under this Agreement, at common law or otherwise, provided that, save as in accordance with clause 59.6(B), TfL shall not terminate this Agreement for a breach, breaches or other circumstance in respect of which the Service Provider has put forward a programme pursuant to clause 59.3(B).
- 59.8 Notwithstanding that the provisions of clause 59.3 permit TfL to require the Service Provider to attempt to remedy a particular breach, TfL shall be entitled to exercise its rights under clause 58 (Right of TfL to Step-In) at any time if any of the circumstances in clause 58.1 apply provided that TfL shall not exercise such rights as a result of a breach, breaches or other circumstance in respect of which the Service Provider has put forward a programme pursuant to clause 59.3(B) save in the circumstances set out in clause 59.6(B).
- 59.9 If the Service Provider commits the same breach of this Agreement more than four (4) times in any one (1) Month period (and each such breach causes TfL damage, loss or to incur expenditure), then TfL may, without prejudice to any of its rights or remedies under this Agreement, or at common law, serve a notice on the Service Provider:
- (A) specifying that it is a formal warning notice;
  - (B) giving reasonable details of the breach; and
  - (C) stating that if such breach continues beyond twenty (20) Working Days after the date of service of the notice or recurs four (4) or more times during the Month after the date of service of the notice, TfL may terminate this Agreement.
- 59.10 The Service Provider shall, promptly upon becoming aware that one or more of the events or circumstances set out in clause 59.2 has, have or is or are likely to arise, notify TfL of this occurrence or likely occurrence with full details.

## 60. **Exit Management**

- 60.1 In addition to, and without limitation to, the generality of the following provisions of this clause 60, the parties shall comply with their obligations set out in schedule 16 (Exit Plan), including but not limited to the preparation of exit plans by the Service Provider.
- 60.2 The Service Provider acknowledges that, upon the termination or expiry of this Agreement, TfL may require the Services to be performed by TfL itself or by a New Service Provider. The Service Provider further acknowledges that, in order that the hand-over of the provision of the Services may be properly managed, the New Service Provider or TfL will need to obtain a detailed knowledge of the operation and management of the Premises, the Systems and the provision of the Services before taking over the performance of the Services, or services similar to the Services (the "**Successor Services**"). Accordingly, the Service Provider will be required to, and shall, co-operate on the hand-over procedure to a New Service Provider or to TfL in accordance with the terms of this Agreement.
- 60.3 In addition, the Service Provider acknowledges that TfL may require information to be provided by the Service Provider concerning the Premises, the Systems, the Enforcement Infrastructure Service and/or the provision of the Services in order to provide such information to Third Parties whom TfL has invited to tender for the provision of the Successor Services whether or not an agreement with TfL to provide the Successor Services has been entered into. The Service Provider shall provide all such information at

TfL's request provided that TfL has obtained a written confidentiality undertaking from any Third Party to whom it proposes providing the information in respect of any Service Provider Confidential Information.

- 60.4 Without prejudice to the terms of schedule 16 (Exit Plan) or the terms of the Exit Plan, TfL may provide in the notice of termination for a period, up to a maximum of nine (9) Months (or such longer period as may be required by TfL pursuant to the Change Control Request Procedure) from the date of such notice of termination, as TfL deems necessary to ensure a smooth hand-over of the Services (the "**Hand Back Period**"). Such Hand Back Period shall be specified to commence upon the date of notice of termination and shall cease on the last day of the period specified within the notice of termination, such day being the Termination Date.
- 60.5 In order that the transfer of the right and obligation to provide the Services may be properly managed:
- (A) without prejudice to the Service Provider's obligations set out in the Exit Plan, schedule 16 (Exit Plan) and elsewhere in this Agreement, the Service Provider shall throughout the Hand Back Period or the nine (9) Month period prior to the Expiry Date (as appropriate) provide such assistance to and co-operate with TfL and/or the Core Service Provider as TfL may require;
  - (B) the Service Provider shall be required to co-operate with and assist both TfL and, at the direction of TfL, a New Service Provider in any transition procedure for the New Services for a period of up to twelve (12) Months following the Termination Date or Expiry Date (as appropriate). The Service Provider shall comply with this provision notwithstanding that termination by TfL may have been immediate; and
  - (C) the Service Provider shall, if required by TfL, provide support and maintenance services in relation to the Enforcement Infrastructure for such period after the Termination Date or Expiry Date (as appropriate) as TfL may require, in accordance with the provisions of paragraph 12 of schedule 16 (Exit Plan),

provided that the Service Provider shall be entitled to payment in accordance with clause 60.6 in respect of any services provided or work or activity undertaken pursuant to this clause 60.5 and to schedule 16 (Exit Plan) after the Termination Date or Expiry Date (as appropriate) and to payment determined in accordance with the Change Control Request Procedure for any services required prior to such date over and above the Services, for which the Service Provider has not received payment through the Charges. For the avoidance of doubt the Service Provider shall not be entitled to any such payment in respect of the development, finalisation and any required amendments to the Exit Plan and/or the Service Transfer Plan, payment for which shall be deemed to be included in the Charges.

- 60.6 Any payment due to the Service Provider under clause 60.5(B) and (C) shall be calculated by reference to staff day-rates specified in Table 2 of Annex C to schedule 9 (Change Control Request Procedure), provided that the Service Provider shall be required to submit invoices to TfL in respect of such services, work or activity together with such timesheets and/or other records as TfL may reasonably require to verify the accuracy of such invoices (provided that TfL may not require more information than it would have been entitled to obtain under this Agreement had the Expiry Date or Termination Date not passed).

## 61. **Consequences of Termination or Expiry**

- 61.1 Where this Agreement is terminated, TfL shall, subject to clause 72:

- (A) pay the Service Provider the relevant Charges due and payable to the Service Provider under this Agreement up to the date of such termination; and
- (B) in the circumstances set out in schedule 6 (Termination Compensation), pay Termination Compensation to the Service Provider,

in each case in addition to any amounts payable pursuant to clauses 60.5(B) and 60.5(C).

61.2 On termination or expiry of this Agreement for any reason the Service Provider shall:

- (A) to the extent that title to the Assets is held by TfL, and to the extent that they have not already been delivered or handed over to TfL in accordance with the Service Transfer Plan, deliver or hand over the Assets to TfL, in accordance with TfL's reasonable instructions; and
- (B) to the extent that they have not already been removed in accordance with the Service Transfer Plan, promptly remove all assets and other items belonging to the Service Provider, except as otherwise required under this Agreement or expressly agreed in writing by the parties.

61.3 With effect from the Termination Date or the Expiry Date as appropriate, and subject to clause 62 (Survival of Clauses), the rights and obligations of the parties shall terminate and be of no future effect. This clause 61.3 is without prejudice to either parties' rights and remedies which may have accrued prior to the Termination Date or Expiry Date. Subject to clause 61.4, termination or expiry shall not affect or prejudice any right to damages or other remedy which, where relevant, the terminating party may have in respect of the circumstances which gave rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of this Agreement which existed at or before the Termination Date or Expiry Date subject always to clause 49 (Indemnities and Limitations of Liability) and clause 61.5.

61.4 The Service Provider shall have no claim against TfL in relation to the termination or expiry of this Agreement or the events directly giving rise to termination, where relevant, other than as expressly provided in this clause 61 and schedule 6 (Termination Compensation).

61.5 Following termination or expiry of this Agreement, each of the parties shall use all reasonable endeavours to mitigate any losses, expenditure and costs arising as a consequence of such termination for which they are to be compensated by the other parties. Where compliance with this clause will mean that the Service Provider will incur material expenditure, the Service Provider shall not incur such material expenditure without the express written approval of TfL, not to be unreasonably withheld or delayed.

61.6 Where TfL has served a notice to terminate this Agreement in accordance with clause 59.2, TfL shall, at any time before the expiry of the notice, be entitled to exercise, as soon as may be practicable within that period, such of the following powers as it considers expedient:

- (A) direct the Service Provider, where Services have not been provided, to refrain from providing such Services, provided that relief from Service Credits in respect of such Services shall be given with effect from the date on which such direction takes effect;
- (B) direct the Service Provider to complete in accordance with this Agreement the performance of all or any of the Services, or any part or component thereof which is ongoing at the expiry of the notice and to deliver the same at such time or times as may be mutually agreed on, or, in default of agreement, at the time or times required by TfL; and/or

- (C) direct that the Service Provider shall, as soon as may be practicable after the receipt of such notice:
- (1) take such steps as will ensure that the Services being provided by the Service Provider are reduced as rapidly as possible;
  - (2) as far as possible, and in a manner consistent with clause 61.6(C)(1), concentrate work on the completion of Services partly provided; and/or
  - (3) determine on the best possible terms such Sub-Contracts and orders for Services as have not been completed, observing in this connection any direction given under clauses 61.6(B), 61.6(C)(1) and 61.6(C)(2) as far as may be possible.

61.7 All activities carried out by the Service Provider pursuant to directions issued under clauses 61.6(B) and/or 61.6(C)(1) and/or 61.6(C)(2) shall be paid for through and as part of the Charges save to the extent that the Service Provider demonstrates to the reasonable satisfaction of TfL that its costs reasonably and properly incurred in complying with such directions exceed its costs of providing the Services that are covered by the Charges as shown in the Financial Model in which case TfL shall reimburse the Service Provider for such reasonably and properly incurred excess costs calculated in accordance with Annex C of schedule 9 (Change Control Request Procedure).

## 62. **Survival of Clauses**

62.1 Termination or expiry of this Agreement shall not affect the coming into force or the continuance in force of the following clauses and any provision which is expressly or by implication necessary for their proper interpretation:

- (A) clause 21 (Technology Compatibility);
- (B) clause 34 (Indemnities Relating to Employees);
- (C) clause 41 (Audit and Inspection);
- (D) clause 42 (Intellectual Property Rights);
- (E) clause 43 (Intellectual Property Rights Indemnity);
- (F) clause 44 (Source Code);
- (G) clause 47 (Security);
- (H) clause 49 (Indemnities and Limitations of Liability);
- (I) clause 50 (Insurance);
- (J) clause 51 (Data Protection and Freedom of Information);
- (K) clause 54 (Corrupt Gifts or Payment and Fraud);
- (L) clause 59 (Termination);
- (M) clause 60 (Exit Management);
- (N) clause 61 (Consequences of Termination or Expiry);

- (O) clause 62 (Survival of Clauses);
- (P) clause 64 (Entire Agreement);
- (Q) clause 66 (Notices);
- (R) clause 67 (Publicity);
- (S) clause 68 (Confidentiality);
- (T) clause 71 (Contracts (Rights of Third Parties) Act);
- (U) clause 72 (Recovery of Sums Due and Set-Off);
- (V) clause 74 (Parent Company Guarantee);
- (W) clause 77 (Dispute Resolution); and
- (X) clause 79 (Governing Law and Jurisdiction).

## PART 21: MISCELLANEOUS

### 63. **Waiver and Approvals**

- 63.1 The rights, powers, privileges and remedies provided in any provision of this Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided by any other provision of this Agreement, by law or otherwise.
- 63.2 No failure to exercise nor any delay in exercising by any party to this Agreement of any right, power, privilege or remedy under this Agreement shall impair or operate as a waiver thereof in whole or in part. Without prejudice to the generality of the foregoing the Service Provider acknowledges that exercise by TfL of its Step-In Rights shall not impair or constitute a waiver of any right, power, privilege or remedy of TfL under this Agreement.
- 63.3 No single or partial exercise of any right, power privilege or remedy under this Agreement shall prevent any further or other exercise thereof or the exercise of any other right, powers, privilege or remedy.
- 63.4 No consent, comment, acceptance or approval of TfL under this Agreement shall in any way relieve the Service Provider of its obligations under this Agreement.

### 64. **Entire Agreement**

- 64.1 Subject to clause 53.1(J), this Agreement, together with any documents referred to in it, constitutes the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 64.2 The Service Provider acknowledges that it has not been induced to enter into this Agreement by any representation or warranty other than those contained in this Agreement and, having understood and freely entered into this Agreement, the Service Provider agrees that it shall have no remedy in respect of any other such representation or warranty except

in the case of fraud. The Service Provider and acknowledges that its legal advisers have explained to it the effect of this clause 64.2.

64.3 Subject to clause 39 (Change Control Request Procedure) no variation to this Agreement shall be effective unless made in writing and duly executed on behalf of the parties.

65. **Severability**

If any provision of this Agreement shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction shall not be affected.

66. **Notices**

66.1 Any notice (which term shall in this clause include any other communication) required to be given under this Agreement or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing in the English language.

66.2 Any such notice shall be addressed as provided in clause 66.4 and may be:

- (A) personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address if it is delivered not later than 17.00 hours on a Working Day, or, if it is delivered later than 17.00 hours on a Working Day or at any time on a day which is not a Working Day, at 08.00 hours on the next Working Day;
- (B) if within the United Kingdom, sent by first class pre-paid post, in which case it shall be deemed to have been given two (2) Working Days after the date of posting;
- (C) if from or to any place outside the United Kingdom, sent by pre-paid airmail, or by air courier in which case it shall be deemed to have been given seven (7) Working Days after the date of posting in the case of airmail or two Working Days after delivery to the courier, in the case of air courier;
- (D) sent by facsimile, in which case it shall be deemed to have been given when despatched, subject to confirmation of uninterrupted transmission by a transmission report provided that any notice despatched by facsimile after 17.00 hours on any Working Day or at any time on a day which is not a Working Day shall be deemed to have been given at 08.00 on the next Working Day; or
- (E) Subject to clause 66.3, sent by electronic mail, in which case, it shall be deemed to be given when actually received but subject to the same provisions regarding receipt after 17.00 hours as apply to notices sent by facsimile.

66.3 The following provisions shall apply in respect of any notice sent by electronic mail:

- (A) The following notices, must, if sent by electronic mail, also be served simultaneously by one of the other methods referred to in clause 66.2:
  - (1) Notices of step-in or step-out under clause 57;
  - (2) Notices of termination under clause 59; and
  - (3) any Notice of Approval, Notice of Agreement to Operate and Notice of Business Acceptance.



- (B) Notices sent by electronic mail shall:
- (1) be in a form and context calculated to come to the recipient's immediate attention;
  - (2) be in immediately intelligible form and saveable to the relevant information systems; and
  - (3) comply with any other requirements specified in writing by TfL from time to time.
- (C) If any notice is received in an unintelligible or unrecognisable form, the recipient shall immediately notify the sender (if identifiable from such notice) and the sender shall re-send the notice and simultaneously serve a copy of the notice by one or other of the methods referred to in clause 66.2.

66.4 The addresses and other details of the parties referred to in clause 66.2 are, subject to clause 66.5:

***[INFORMATION REDACTED]***

66.5 A party to this Agreement may notify the other party of any change to the address or any of the other details specified in clause 66.4, provided that such notification shall only be effective on the date specified in such notice or five (5) Working Days after the notice is given, whichever is later and provided also that any new address shall be in the United Kingdom.

**67. Publicity**

67.1 Subject to clause 67.3 and whether or not any restriction contained in clause 68 (Confidentiality) applies, the Service Provider shall not, and shall procure that its Personnel and Sub-Contractors do not, make any announcement (including, without limitation, any communication to the public, to any clients or suppliers 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 TfL (including, without limitation TfL Confidential Information) (each an "Announcement") without the prior written approval of TfL.

67.2 TfL shall have the absolute discretion in deciding whether to give its consent as referred to in this clause 67.

67.3 Clause 67.1 shall not apply if and to the extent that such Announcement is required by Law or by any securities exchange or regulatory or Governmental body having jurisdiction over either party (including, but not limited to, the Financial Services Authority, the London Stock Exchange, The Panel on Takeovers and Mergers and the Serious Fraud Office) and whether or not the requirement has the force of law and provided that any such Announcement will be made only after consultation with TfL.

67.4 The obligations and restrictions contained in this clause 67 will survive termination of the Agreement and continue without limit of time.

**68. Confidentiality**

68.1 The Service Provider acknowledges that during the Term it may receive, obtain, prepare or create TfL Confidential Information. The Service Provider undertakes that:

- (A) it shall receive and/or maintain the TfL Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
- (B) it shall not use the TfL Confidential Information for any purposes whatsoever (and in particular shall not use the TfL Confidential Information to the detriment of TfL) other than for the purpose of the performance of the Services or compliance with its obligations under this Agreement;
- (C) it shall not disclose the TfL Confidential Information to any Third Party without the prior written consent of TfL except that it is entitled to the extent strictly necessary to disclose the TfL Confidential Information:
  - (1) to such of the Service Provider's Personnel who need to know the TfL Confidential Information for the performance of the Services provided that the Service Provider shall be responsible for any breach of its obligations occasioned by any act or omission of such Personnel and shall, before disclosing TfL Confidential Information to such persons, ensure that such persons have entered into written confidentiality undertakings in terms no less onerous than those set out in schedule 19 (Deed of Confidentiality) and provided further that the Service Provider shall procure that such persons do not make any copy, note or record of any TfL Confidential Information without clearly marking all such copies, notes and records "Transport for London – Strictly Private and Confidential"; or
  - (2) to the Service Provider's auditors and any other person or body having a legal right or duty to know the TfL Confidential Information in connection with the Service Provider's business provided that prior to such disclosure the Service Provider consults with TfL as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before TfL Confidential Information is disclosed;
- (D) it shall inform each of the persons referred to in clauses 68.1(C)(1) and 68.1(C)(2) to whom TfL Confidential Information is disclosed of the restrictions as to use and disclosure of the TfL Confidential Information and shall use its best endeavours to ensure that each of them observe such restrictions and enter into any written undertakings required by TfL;
- (E) it shall, at TfL's request, deliver to TfL or destroy all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the TfL Confidential Information and if instructed by TfL in writing, remove all electronically held TfL Confidential Information, including (without limitation) the purging of all disk-based TfL Confidential Information and the reformatting of all disks;
- (F) it shall not, except where provided in clause 68.1(C), or without the prior written consent of TfL, disclose to any Third Party the nature or content of any discussions or negotiations between the parties relating to the TfL Confidential Information;
- (G) it shall not at any time send such TfL Confidential Information by email or other form of electronic communication unless and until adequate security measures are in place to preserve the security and confidentiality of any such TfL Confidential Information sent by it and protect any such TfL Confidential Information against unauthorised disclosure, accidental loss, alteration, destruction or damage; and

- (H) it shall procure that its Sub-Contractors, employees and agents shall comply with the provisions of this clause 68 as if they were a party to this Agreement.

68.2 TfL acknowledges that during the Term it may receive or obtain Service Provider Confidential Information. TfL undertakes that:

- (A) it shall receive and/or maintain the Service Provider Confidential Information in strictest confidence and TfL acknowledges that such information is of a proprietary and confidential nature;
- (B) it shall not use the Service Provider Confidential Information for any purposes whatsoever other than for the purpose of receiving Services or for compliance with its obligations under this Agreement or compliance with its obligations to other Service Providers (and in particular, but subject to clause 68.2(C), in no circumstance shall it use the Service Provider Confidential Information to the detriment of the Service Provider);
- (C) it shall not disclose the Service Provider Confidential Information to any Third Party without the prior written consent of the Service Provider except that it is entitled to the extent strictly necessary to disclose the Service Provider Confidential Information:
- (1) to such of its Personnel who need to know the Service Provider Confidential Information, provided that TfL shall be responsible for any breach of its obligations occasioned by any act or omission of such Personnel and shall, before disclosing Service Provider Confidential Information to such persons, ensure that such persons have entered into written confidentiality undertakings in terms no less onerous than those set out in schedule 19 (Deed of Confidentiality); or
  - (2) to any other person or body having a legal right or duty to know the Service Provider Confidential Information provided that prior to such disclosure TfL consults with the Service Provider as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before Service Provider Confidential Information is disclosed;
- (D) it shall inform each of the persons referred to in clauses 68.2(C)(1) and 68.2(C)(2) to whom Service Provider Confidential Information is disclosed, of the restrictions as to use and disclosure of the Service Provider Confidential Information and shall use its reasonable endeavours to ensure that each of them observe such restrictions and enter into any written undertakings required by the Service Provider;
- (E) it shall not, except where provided in clause 68.2(C), or without the prior written consent of the Service Provider, disclose to any Third Party the nature or content of any discussions or negotiations between the parties relating to the Service Provider Confidential Information;
- (F) it shall not at any time send such Service Provider Confidential Information by email or other form of electronic communication unless and until adequate security measures are in place to preserve the security and confidentiality of any such Service Provider Confidential Information sent by it and protect any such Service Provider Confidential Information against unauthorised disclosure, accidental loss, alteration, destruction or damage; and
- (G) it shall procure that its employees and agents shall comply with the provisions of this clause 68 as if they were a party to this Agreement.

- 68.3 The obligations set out in clause 68.1 do not apply to any TfL Confidential Information which:
- (A) the Service Provider can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Service Provider by TfL;
  - (B) is lawfully disclosed to the Service Provider without any obligations of confidence, by a Third Party who has not derived it directly or indirectly from TfL;
  - (C) is or has come into the public domain through no fault of the Service Provider or its Personnel; or
  - (D) is required by law or by order of a court of competent jurisdiction to be disclosed.
- 68.4 The obligations set out in clause 68.2 do not apply to any Service Provider Confidential Information which:
- (A) TfL can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to TfL by the Service Provider;
  - (B) is lawfully disclosed to TfL without any obligations of confidence, by a Third Party who has not derived it directly or indirectly from the Service Provider;
  - (C) is or has come into the public domain through no fault of TfL or its Personnel;
  - (D) is required to be disclosed under the Data Protection Laws or FOI Legislation; or
  - (E) is required by any other law or by order of a court of competent jurisdiction to be disclosed.
- 68.5 The parties acknowledge that damages would not be an adequate remedy for any breach of clause 68.1 or clause 68.2 and that (without prejudice to all other remedies which a party may be entitled to as a matter of law) each party shall be entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this clause and no proof of special damages shall be necessary for the enforcement of the provisions of this clause.
- 68.6 **Ownership of TfL Confidential Information**
- The TfL Confidential Information shall be and shall remain the property of TfL.
- 68.7 **Ownership of Service Provider Confidential Information**
- The Service Provider Confidential Information shall be and shall remain the property of the Service Provider.
69. **Assignment**
- 69.1 The Service Provider shall not assign, transfer, charge, encumber, hold on trust or deal in any other similar manner whether in whole or in part with this Agreement or its rights under this Agreement or any other agreement entered into pursuant to this Agreement or in relation to the Scheme except that the Service Provider shall be entitled to assign the benefit of all of this Agreement to another member of the Service Provider Group with the express written consent of TfL (such consent not to be unreasonably withheld or delayed).

Further, TfL shall not unreasonably withhold or delay its consent of the novation of this Agreement to another member of the Service Provider Group.

69.2 In the event of breach of clause 69.1 by the Service Provider or breach by the Guarantor of clause 18 (Assignment) of the Guarantee, TfL shall be entitled to terminate this Agreement immediately on written notice to the Service Provider. In the event of a breach by the Guarantor of clause 18 (Assignment) of the Guarantee and the Service Provider fails to provide a suitable and equivalent security (in the opinion of TfL acting reasonably), TfL shall be entitled to terminate this Agreement immediately on written notice to the Service Provider.

#### 70. **Relationship**

70.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the parties nor, except as expressly provided to the contrary in this Agreement, shall it constitute or be deemed to constitute a party the agent of the other party for any purpose.

70.2 The Service Provider shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of TfL or bind TfL in any way.

#### 71. **Contracts (Rights of Third Parties) Act**

71.1 No person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

71.2 The consent of Third Parties shall not be required for the variation or termination of this Agreement, even if that variation or termination affects or rescinds the benefit conferred on a Third Party.

#### 72. **Recovery of Sums Due and Set-Off**

72.1 All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by TfL arising out of or attributable to this Agreement or any other contract between TfL and the Service Provider, may be deducted by TfL from monies due or which may become due to the Service Provider under this Agreement or under any other contract with any member of TfL Group or TfL may recover such amount as a debt.

72.2 All sums payable by the Service Provider under this Agreement shall be paid free and clear of any deductions, withholdings, set offs or counterclaims whatsoever.

#### 73. **Mutual Assistance**

Each party shall at its own expense execute all documents and do all acts and things reasonably required by the other to give effect to the terms of this Agreement. In addition, the parties shall execute all such further deeds and documents as may reasonably be required, or to the extent necessary for the provision of the Services, to document, secure, register, acknowledge and perfect the vesting, assignments and licences in relation to any Intellectual Property Rights arising under this Agreement in accordance with the terms of this Agreement.

#### 74. **Parent Company Guarantee**

74.1 The Service Provider shall within seven (7) days of the date of this Agreement, deliver to TfL a parent company guarantee in the form set out in schedule 17 (Agreed Form of

Guarantee), executed as a deed for and on behalf of the Guarantor by duly authorised representatives (the “**Guarantee**”).

74.2 Any failure by the Service Provider to deliver the Guarantee to TfL on the date of this Agreement shall entitle TfL to:

- (A) withhold the payment of any amount payable by TfL to the Service Provider under this Agreement until such time as the Guarantee is delivered to TfL; and
- (B) terminate this Agreement in accordance with clause 59 (Termination) if the Guarantee is not delivered to TfL within seven (7) days of the date of this Agreement.

## 75. **Conflict of Interest**

75.1 The Service Provider acknowledges and agrees that it does not have an interest in any matter where there is or is likely to be a conflict of interest with its providing the Services to TfL and that (except as provided below) it shall not act for any person, organisation or company where there is or is likely to be a conflict of interest with it providing the Services. 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:

- (A) not act for any such client in respect of any transactions between any member of TfL Group and such client; and
- (B) inform TfL of all such existing clients where there could be a conflict of interest and the steps that it is taking to ensure compliance with clauses 75.1(A) to 75.1(B) inclusive.

75.2 The Service Provider shall undertake ongoing and regular conflict of interest checks throughout the duration of the Agreement and shall notify TfL in writing.

75.3 Breach of clause 75.1 shall entitle TfL to terminate this Agreement and any other contracts between the Service Provider and any member of TfL Group immediately.

## 76. **Change of Control and Change of Ownership**

76.1 Without prejudice to clause 76.2, but subject to clause 76.3, the Service Provider shall immediately, or as soon as allowable in law (and in any event as soon as public disclosure is required by any relevant stock exchange or regulatory body having jurisdiction), inform TfL of any event that may give rise to a Change of Ownership affecting it and or a future Change of Ownership and shall provide such information as TfL requires in relation to such a Change of Ownership.

76.2 Subject to clause 76.3, the Service Provider shall notify TfL as soon as it becomes aware of a proposed Change of Control and shall provide TfL with all information (within its possession) relating to the proposed transferee that TfL reasonably requires.

76.3 The Service Provider's obligations under clauses 76.1 and 76.2 shall be subject to any conflicting terms in any reasonable confidentiality agreement it enters into in respect of a Change of Ownership or Change of Control provided that the Service Provider shall comply with clauses 76.1 and 76.2 promptly upon its providing the relevant information to any person who is not subject to such confidentiality agreement.

**PART 22: DISPUTE RESOLUTION, GOVERNING LAW AND JURISDICTION****77. Dispute Resolution**

- 77.1 Within one (1) Month following the signing of this Agreement, the parties shall appoint an expert to determine all disputes arising under this Agreement (the “**Expert**”).
- 77.2 In the event that the proposed Expert refuses to be appointed as the Expert under this Agreement or is incapable of acting as Expert for any reason, then either of the parties may request the Chief Executive of the Centre for Effective Dispute Resolution (CEDR) to appoint an Expert as soon as reasonably practicable. Any such request shall include a request that before appointing an Expert the Chief Executive of CEDR shall first solicit comments from both parties regarding the appropriate skills the Expert will require in order to determine disputes under this Agreement. The Chief Executive of CEDR shall be entitled to proceed to appoint an Expert if in his opinion such comments have not been received from one or other party within a reasonable period.
- 77.3 For the avoidance of doubt, the Expert shall sit as an expert not as an arbitrator.
- 77.4 Upon the proposed Expert consenting to his appointment as the Expert or upon the Chief Executive of CEDR notifying the parties of his choice of Expert (as applicable), the parties shall within ten (10) Working Days complete and sign the CEDR Model Expert Determination Agreement (2001 version) in the amended form set out in schedule 21 (CEDR Model Expert Determination Agreement) of this Agreement. The parties shall each use their best endeavours to procure that the Expert signs such agreement promptly thereafter.
- 77.5 Notwithstanding the appointment of the Expert, TfL and the Service Provider shall each use their best endeavours to resolve as soon as possible any dispute which arises between them out of or in relation to this Agreement. In respect of each such dispute:
- (A) either party may serve upon the other a written notice (the “**Dispute Notice**”) stating the nature of the dispute; and
  - (B) the parties shall then promptly attempt to settle the dispute by means of commercial negotiation between the Service Provider’s Executive Board Director responsible for the relationship between it and TfL, and TfL’s Director of Congestion Charging.
- 77.6 If the relevant parties fail to agree a mutually satisfactory resolution to their dispute within ten (10) Working Days following service of the Dispute Notice, any party to the dispute may refer the dispute to the Expert for determination.
- 77.7 When seeking to agree the procedural directions which will govern the conduct of the Expert Determination, each of the parties shall request the Expert to include directions whereby either party may request the Expert to issue declaratory relief, or to issue an interim determination which (if issued by the Expert) shall be binding on the parties until the Expert issues his final determination (which he shall be requested to do as soon as reasonably practicable).
- 77.8 In respect of any dispute and particularly (but without limitation to the generality of the foregoing) in respect of a dispute which is in any way concerned with the exercise of Step-In Rights or termination of this Agreement, or the implementation of the Exit Plan or otherwise relating to a New Service Provider being appointed for the supply of Services, when considering whether to issue declaratory relief or to make an interim determination the Expert shall be requested by the parties to take into account the fact that the Scheme is

a service provided to the public and as such it should continue to operate, and in a timely, economic, efficient and reliable manner.

77.9 The parties agree that in respect of any dispute arising under this Agreement:

- (A) either party may make an application to the Expert requesting that the Core Service Provider and any Other Service Provider(s) (including in each case their heirs successors and assignees) ("**Third Party Service Provider(s)**") be joined to proceedings before the Expert under this Agreement;
- (B) the Expert shall, on an application by any party, be entitled to join Third Party Service Provider(s) to proceedings between the parties under this Agreement in the event that he considers in his sole discretion that it is appropriate to do so and provided that such Third Party Service Provider(s) consent to be joined to such proceedings;
- (C) they shall amend the CEDR Model Expert Determination Agreement (set out in schedule 21 to this Agreement) to take account of a decision by the Expert to join Third Party Service Provider(s) to proceedings before the Expert under this Agreement; and
- (D) without prejudice to the foregoing provisions of this clause, Third Party Service Provider(s) may be joined to proceedings before the Expert under this Agreement by mutual consent of the parties which shall be communicated in writing to the Expert and which shall enclose a document signed for and on behalf of such Third Party Service Provider(s) confirming its/their consent to be joined to such proceedings. In the event that the parties agree to join Third Party Service Provider(s) to proceedings before the Expert under this Agreement they shall amend the CEDR Model Expert Determination Agreement (set out in schedule 21 to this Agreement) accordingly and shall use their best endeavours to procure the agreement of the Expert to such amendment.

77.10 Except as provided by this clause the Expert's final determination shall be final and binding on the parties save in the case of fraud or manifest error. Where the Expert's final determination relates to:

- (A) a dispute with a value in excess of five million pounds (£5,000,000) (as certified by the Expert in his final determination); or
- (B) a dispute arising out of or in connection with or in relation to the termination, actual or threatened repudiation or abandonment of this Agreement by either of the parties,

the parties reserve their rights to reject the final determination and to apply instead to the courts of England and Wales in order to resolve the dispute. In the event that a party wishes to exercise its right under this clause to reject the final determination, such party shall so inform the Expert and the other party or parties by notice in writing (the "**Rejection Notice**") and shall issue proceedings regarding the dispute before the court no later than thirty (30) Working Days following service of the final determination. If a party does not serve the Rejection Notice and issue proceedings within the time limit referred to in this clause, the final determination shall be final and binding on the parties save in the case of fraud or manifest error.

77.11 For the avoidance of doubt, the parties shall abide by any interim determination or declaratory relief issued by the Expert pending his final determination. In the event that a party exercises its right to reject the Expert's final determination under this clause, the



parties shall nevertheless abide by the Expert's final determination pending the court's decision in the matter, unless and until the court orders otherwise.

77.12 The Expert shall be entitled to appoint experts or other professional advisers to assist him in reaching his Determination. The fees of such experts or professional advisers shall be agreed by the parties in advance and treated as part of the fees and expenses of the Expert Determination.

78. **Counterparts**

This Agreement may be executed in any number of counterparts, which shall together constitute one Agreement. Either party may enter into this Agreement by signing any such counterpart.

79. **Governing Law and Jurisdiction**

79.1 This Agreement shall be governed by and construed in accordance with English law.

79.2 Subject to clause 77 the parties submit to the non-exclusive jurisdiction of the English courts.

AS WITNESS the hands of the duly authorised representatives of the parties on the date first before written

SIGNED for and on behalf of **TRANSPORT FOR LONDON**

***[INFORMATION REDACTED]***

SIGNED for and on behalf of **SIEMENS PLC**

***[INFORMATION REDACTED]***