

Private & Confidential

DATED 2009

TRANSPORT TRADING LIMITED ("TTL") (1)
AND
SERCO LIMITED (the "Service Provider") (2)

AGREEMENT

Relating to

provision of services for the London Cycle
Hire Scheme

Wragge&Co

Birmingham London Brussels

Tel +44 (0)870 903 1000 Fax +44 (0)870 904 1099 mail@wragge.com www.wragge.com

CONTENTS

Clause	Heading	Page
PART 1: PROVISIONS RELATING TO THIS AGREEMENT		2
1	Definitions and Interpretation	2
PART 2: DURATION AND SERVICE PROVISION.....		4
2	Duration	4
3	Value for Money Review.....	4
4	Scope of Services, LCHS Assets and Service Systems	5
5	Standard of Services and quality of LCHS Assets	5
6	Suspension of the Operational Services	7
PART 3: DESIGN MATTERS.....		8
7	Service Provider Solution	8
PART 4: IMPLEMENTATION		9
8	Implementation Plan	9
9	Progress Monitoring of the Implementation Phase.....	10
PART 5: DOCUMENT APPROVAL, TESTING, ACHIEVEMENT OF MILESTONES AND DELAY		10
10	Documentation	10
11	Testing of LCHS Assets and Service Systems	11
12	Responsibility for achievement of Milestones and Milestone Dates	11
13	Delay of the Operational Commencement Date.....	12
14	Delay 13	
15	Failure to Achieve Milestones	14
PART 6: CO-OPERATION		15
16	Co-operation with TTL, Interested Parties, Other Service Providers, the Insurance Provider, Sponsor and Third Parties	15
PART 7: OPERATIONAL PHASE: LCHS ASSETS AND SERVICE SYSTEMS.....		17
17	Service Systems, TTL Systems and Other Service Provider Systems	17
18	LCHS Assets and Service Systems	17
19	System Failure	17
20	Continuous Improvement and Cost Reduction	19
21	Training.....	19
PART 8: ADDITIONAL SERVICES.....		21
22	Additional Services.....	21
PART 9: FINANCIAL MATTERS		21
23	Charges and Payment.....	21
24	Gainsharing	23
25	Commercial Exploitation of Bicycle Assets and Docking Station Assets	23
26	Interest	23
27	Revenue.....	23
PART 10: RESPONSIBLE PROCUREMENT		24
28	Timber Standards	24
29	Deleterious Materials	24
30	Ethical Sourcing Principles.....	24
31	Equality and Diversity	25
32	London Living Wage.....	25
33	Strategic Labour Needs and Training	26
PART 11: SERVICE PROVIDER PERSONNEL AND SUB-CONTRACTORS		26
34	Service Provider Personnel	26
35	Compliance with TfL Group Policies	26
36	Key Sub-Contractors and Sub-Contractors	27
PART 12: ADDITIONAL OBLIGATIONS		29
37	Additional Service Provider Obligations	29
38	TTL Obligations.....	30

- PART 13: CHANGES AND CHANGE MANAGEMENT 30
 - 39 Change Control Request Procedure 30
- PART 14: CONTRACT MANAGEMENT, MONITORING AND AUDIT 31
 - 40 Contract Management and Incident Management..... 31
 - 41 TTL Monitoring Staff 31
 - 42 Audit and Inspection..... 32
 - 43 Open Book 37
- PART 15: CONTRACT RISK MANAGEMENT 37
 - 44 Intellectual Property Rights 37
 - 45 Novation or Management of Supply Contracts..... 37
 - 46 Business Continuity 40
 - 47 Security Policy 40
 - 48 Liability 42
 - 49 Insurance 47
 - 50 Information Compliance..... 50
 - 51 Health and Safety 50
 - 52 Representations and Warranties 52
 - 53 Corrupt Gifts or Payment and Fraud 57
- PART 16: PREMISES AND LCHS ASSETS 58
 - 54 Premises 58
 - 55 LCHS Assets..... 58
- PART 17: SUPERVENING EVENTS 63
 - 56 Compensation Events 63
 - 57 NOT USED..... 65
 - 58 NOT USED..... 65
 - 59 Relief Events 65
 - 60 Force Majeure 66
- PART 18: STEP-IN AND TERMINATION 67
 - 61 Step-in Rights 67
 - 62 Termination 74
 - 63 Exit Management 80
 - 64 Consequences of Termination, Partial Termination or Expiry 81
 - 65 Survival of Clauses and Schedules 85
- PART 19: MISCELLANEOUS 86
 - 66 Waiver and Approvals..... 86
 - 67 Entire Agreement 86
 - 68 Illegality and Severability..... 87
 - 69 Notices 87
 - 70 Publicity 89
 - 71 Confidentiality..... 89
 - 72 Assignment 92
 - 73 Relationship of the Parties 93
 - 74 Contracts (Rights of Third Parties) Act 93
 - 75 Recovery of Sums Due and Set-Off 93
 - 76 Mutual Assistance 94
 - 77 Parent Company Guarantee 94
 - 78 Conflict of Interest..... 94
 - 79 Change of Control and Change of Ownership 95
 - 80 Counterparts 95
- PART 20: DISPUTE RESOLUTION PROCEDURE, GOVERNING LAW AND JURISDICTION 95
 - 81 Dispute Resolution Procedure 96
 - 82 Governing Law and Jurisdiction..... 100

Schedules

Schedule 1	Definitions
Schedule 2	Statement of Requirements
Schedule 3	Milestones and Deliverables
Schedule 4	Testing Regime
Schedule 5	Service Level Agreement
Schedule 6	Termination Compensation
Schedule 7	Charging
Schedule 8	NOT USED
Schedule 9	Change Control Request Procedure
Schedule 10	Contract Management and Reporting
Schedule 11	Key Personnel
Schedule 12	Asset Management
Schedule 13	Service Provider Confidential Information
Schedule 14	Security Policy
Schedule 15	Information Compliance
Schedule 16	Exit Plan
Schedule 17	Agreed Form of Guarantee
Schedule 18	Premises
Schedule 19	Strategic Labour Needs Training
Schedule 20	Management Services
Schedule 21	CEDR Model Expert Determination Agreement
Schedule 22	Collateral Deed
Schedule 23	Gainsharing
Schedule 24	Equality and Diversity
Schedule 25	Business Continuity
Schedule 26	Key Sub-Contractors
Schedule 27	Deed of Novation
Schedule 28	Service Provider Solution
Schedule 29	Escrow Software
Schedule 30	Open Book
Schedule 31	NOT USED
Schedule 32	Revenue Collection and Payment
Schedule 33	Additional Services
Schedule 34	TfL Group Policies
Schedule 35	NOT USED
Schedule 36	Value for Money Review Process
Schedule 37	Docking Station Installation and Traffic Management
Schedule 38	2012 Games - No Marketing Rights
Schedule 39	Service Provider Personnel
Schedule 40	NOT USED
Schedule 41	Intellectual Property Rights

THIS AGREEMENT is dated _____ 2009 and made

BETWEEN:

- (1) **TRANSPORT TRADING LIMITED**, a company registered in the United Kingdom with company number 03914810 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (“TTL”); and
- (2) **SERCO LIMITED** a company registered in England and Wales with company number 00242246 and having its registered office at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire RG27 9UY (the “Service Provider”).

Background:

- (A) Transport for London (“TfL”) invited bidders to submit proposals for the design, build, operation and maintenance of a cycle hire scheme comprising a fleet of bicycles, docking stations and supporting infrastructure, business processes and services to operate in London (the “London Cycle Hire Scheme”).
- (B) Following a comprehensive procurement exercise, TfL selected the Service Provider to design, build, test, operate and maintain a system and supporting business processes for the provision of services in relation to the London Cycle Hire Scheme to its subsidiary, Transport Trading Limited (“TTL”), subject to the terms and conditions of this Agreement.
- (C) The Service Provider is one of the world’s leading service companies helping governments improve services across many areas of public life, from justice to healthcare, education to transport.
- (D) 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, unless the context dictates otherwise, the definitions set out in Schedule 1 (*Definitions*) will apply.

1.2 Construction of certain references

In this Agreement, unless the context dictates otherwise:

- (a) words and phrases the definitions of which are contained or referred to in Part 26 of the Companies Act 2006, will be construed as having the meanings so attributed to them in that part of the Companies Act 2006;
- (b) 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;
- (c) 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;
- (d) references to Clauses, Schedules, Annexes and Appendices are references to Clauses, Schedules, Annexes and Appendices of and to this Agreement, and references to paragraphs are, unless otherwise stated, references to paragraphs of the Schedule in which the reference appears;
- (e) references to the singular includes the plural and vice versa;
- (f) references to any gender includes all genders;
- (g) references to a “**person**” include any individual, company, body corporate, corporation sole or aggregate, government, state or agency of a state, supranational body, firm, partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists) and a reference to any of them shall include a reference to the others;
- (h) references to TTL 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 TTL’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 TTL’s rights will include the novated rights to which another person is entitled as a result of that event);
- (i) 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;
- (j) 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; and

- (k) references to the words “including”, “includes” and “included” will be construed without limitation.

1.3 Headings

The headings and sub-headings are inserted for convenience only and will not affect the interpretation or 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 Gross-up

If any amount paid or due to TTL from the Service Provider under this Agreement, but excluding any Liquidated Damages or any amount which might become payable under:

- (a) Clause 55.13 (*LCHS Assets*);
- (b) Clause 64.2 (*Consequences of Termination, Partial Termination or Expiry*); or
- (c) Schedule 23 (*Gainsharing*),

is a taxable receipt of TTL, the amount so paid or due (the “Net Amount”) shall be increased to an amount which, after subtraction of the amount of any tax on such increased amount which arises and taking account of any relief from tax available in respect of the matter requiring payment to TTL, shall equal the Net Amount, provided that if any payment is initially made on the basis that the amount due is not taxable in the hands of TTL or that TTL is not entitled to any such relief and it is subsequently determined that it is, or vice versa, appropriate adjustments shall be made between TTL and the Service Provider.

1.6 Precedence

In the event of any conflict or inconsistency between any provision contained in the Clauses of this Agreement and any of the Schedules, Annexes or Appendices or any other documents incorporated herein by reference, the following order of precedence will apply (starting with the highest precedence and then descending), but only in so far as is necessary to resolve that conflict or inconsistency:

- (a) the Clauses to this Agreement;
- (b) Schedule 1 (*Definitions*) to this Agreement;
- (c) the other Schedules to this Agreement, except for Schedule 28 (*Service Provider Solution*);
- (d) an Annex or an Appendix to a Schedule, except for an Annex or Appendix to Schedule 28 (*Service Provider Solution*);
- (e) Schedule 28 (*Service Provider Solution*);
- (f) an Annex or an Appendix to Schedule 28 (*Service Provider Solution*); and
- (g) any other documents incorporated into this Agreement by reference.

1.7 Obligation on TTL, TTL Personnel or any member of the TfL Group to act reasonably

Any reference to TTL, TTL Personnel or any member of the TfL Group being required to act reasonably or to exercise its discretion acting reasonably shall be construed as if the terms “reasonably” and “reasonable” were an objective test of the reasonableness on TTL, TTL Personnel or any member of the TfL Group, but subject always to the following exception, namely that TTL, TTL Personnel or any member of the TfL Group shall be entitled to take into account, and to give such weight as it shall in good faith consider proper as to the requirement (which shall be regarded as paramount for the TfL Group) to discharge the statutory functions of the TfL Group and deliver safe, integrated, reliable, efficient and economic transport facilities and services to, from and within Greater London, provided that such exception shall not be used by TTL, TTL Personnel or any member of the TfL Group to unreasonably impose on the Service Provider any additional obligations that are not set out in this Agreement.

PART 2: DURATION AND SERVICE PROVISION

2 Duration

2.1 This Agreement will come into force on the Effective Date and shall, subject to:

- (a) extension pursuant to Clause 2.2 below; or
- (b) termination in accordance with Clause 62 (*Termination*),

continue until midnight on the date five (5) years following the Operational Commencement Date (the “Initial Term”).

2.2 TTL shall be entitled, at its sole option:

- (a) by giving notice to the Service Provider of at least twelve (12) Months prior to the expiry of the Initial Term, to extend this Agreement in whole or part in respect of one or more Service Elements (as specified in such notice) for a period of up to two (2) years following the date of expiry of the Initial Term (as specified in such notice); and
- (b) thereafter, on one or more occasions to further extend the term of this Agreement in whole or part in respect of one or more Service Elements (as specified in such notice) by giving further notice of at least six (6) Months prior to expiry of such extended term,

provided that the total period of extension shall not exceed two (2) years from the date of expiry of the Initial Term (such period being the “Extended Term”).

2.3 For the avoidance of doubt, TTL may elect pursuant to Clause 2.2 above to extend this Agreement for different periods in respect of the different Service Elements.

3 Value for Money Review

3.1 TTL shall be entitled, at its sole option and no more than once during the Term, to require the Service Provider to undertake a value for money review in accordance with Schedule 36 (*Value for Money Review Process*), by giving notice to the Service Provider on or before the fourth anniversary of the Operational Commencement Date.

3.2 In the event that TTL serves notice in accordance with Clause 3.1 above, both Parties shall comply with their obligations set out in Schedule 36 (*Value for Money Review Process*).

4 Scope of Services, LCHS Assets and Service Systems

4.1 The Service Provider shall provide the Services, LCHS Assets and Service Systems to TTL as follows:

- (a) from the Effective Date, the Service Provider shall provide the Design Services, the Build Services, LCHS Assets and Service Systems in accordance with:
 - (i) the Statement of Requirements;
 - (ii) Schedule 3 (*Milestones and Deliverables*);
 - (iii) Schedule 4 (*Testing Regime*);
 - (iv) Schedule 7 (*Charging*); and
 - (v) Schedule 37 (*Docking Station Installation and Traffic Management*);
- (b) from the Operational Commencement Date (or such earlier date as expressly stated in the Statement of Requirements), the Service Provider shall provide the Operational Services in accordance with:
 - (i) Statement of Requirements;
 - (ii) Schedule 5 (*Service Level Agreement*); and
 - (iii) Schedule 7 (*Charging*);
- (c) Additional Services from time to time in accordance with:
 - (i) Clause 22 (*Additional Services*);
 - (ii) Schedule 3 (*Milestones and Deliverables*);
 - (iii) Schedule 4 (*Testing Regime*);
 - (iv) Change Control Request Procedure; and
 - (v) Schedule 33 (*Additional Services*);
- (d) further Services as may be agreed from time to time in accordance with the Change Control Request Procedure;
- (e) in the event of a Business Continuity Event, the Business Continuity Services; and
- (f) in the event of expiry or termination of this Agreement or Partial Termination, the Exit Management Services.

4.2 The Service Provider acknowledges and accepts that the Service Provider Assets (including the Cycle Assets) shall be used during the Term in the provision of the London Cycle Hire Scheme. Accordingly, during the Term, the Service Provider hereby authorises TTL to agree to procure the rental of Cycle Assets to Customers as part of the London Cycle Hire Scheme.

5 Standard of Services and quality of LCHS Assets

5.1 The Service Provider shall provide:

- (a) the Design Services and Build Services, and conduct all related Tests, in accordance with:
 - (i) Schedule 3 (*Milestones and Deliverables*); and
 - (ii) Schedule 4 (*Testing Regime*);
- (b) the Services, LCHS Assets and Service Systems:
 - (i) in accordance with the:
 - (A) Statement of Requirements; and
 - (B) terms and conditions of this Agreement; and
 - (ii) in a manner that is not, or is not likely to be, injurious to health or cause damage to property (unless such damage is contemplated by the Statement of Requirements and/or Schedule 37 (*Docking Station Installation and Traffic Management*) (for example, arising from Docking Station installation) and is necessary in order for the Service Provider to fulfil the Statement of Requirements and/or its obligations under Schedule 37 (*Docking Station Installation and Traffic Management*);
- (c) without prejudice to Clause 5.1(a) above, the Services, LCHS Assets and Service Systems so as to ensure that:
 - (i) the Milestones are achieved by the Milestone Dates; and
 - (ii) the provision of Operational Services commences on the Planned Operational Commencement Date; and
 - (iii) Operational Services achieve no less than the Acceptable Service Levels, where such Operational Services are or become subject to the performance regime in accordance with Schedule 5 (*Service Level Agreement*).

5.2 In the event that TTL requires the Service Provider to provide any Additional Services and/or further Services and/or LCHS Assets (in accordance with the Change Control Request Procedure), the Service Provider shall:

- (a) provide the Design Services and Build Services (or any required parts thereof as dictated by the scope of the Additional Services or such further Services and/or LCHS Assets requested by TTL);
- (b) conduct all related Tests in order to meet the relevant Milestones and Milestone Dates agreed in accordance with the Change Control Request Procedure; and
- (c) provide the Operational Services (or any required parts thereof as dictated by the scope of the Additional Services or such further Services and/or LCHS Assets requested by TTL).

Failure to achieve Service Levels

5.3 In the event that the Service Provider fails to achieve the Service Levels:

- (a) whether resulting from greater or lesser demand for service or greater or lesser volumes of transactions than the Service Provider anticipated or otherwise, notwithstanding any other provision in this Agreement, the Service Provider shall promptly:

- (i) arrange and/or provide all such additional resources as are necessary; and
- (ii) take all necessary remedial actions to correct such failure to meet any of the Service Levels,

at no additional charge to TTL;

(b) Service Failure Deductions shall:

- (i) accrue in accordance with Schedule 5 (*Service Level Agreement*); and
- (ii) be deducted from the Service Charges in accordance with Schedule 7 (*Charging*).

5.4 The Parties agree that:

- (a) Service Failure Deductions shall be an abatement of the Service Charges. Before applying Service Failure Deductions, the Parties shall discuss in good faith what steps, if any, the Service Provider took to avoid the accrual of Service Failure Points in accordance with the Business Continuity Plan; and
- (b) the purpose of the Service Failure Deductions 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 the losses of TTL or the TfL Group in relation to the Service Provider's failure to meet or exceed the Service Levels.

5.5 The Service Provider shall, subject to the terms and scope of this Agreement and obligations of TTL and Third Parties outside the control of the Service Provider:

- (a) undertake all necessary actions; and
- (b) provide all incidental and ancillary services,

so as to ensure that the:

- (i) LCHS Assets and Operational Services are, and remain, fully operational at all times in accordance with the Agreement; and
- (ii) reputation of the London Cycle Hire Scheme and Customers are not adversely affected by the provision of the Operational Services.

6 Suspension of the Operational Services

6.1 At any time after the Operational Commencement Date, TTL shall, at its sole option, be entitled to give notice to the Service Provider requiring the Service Provider to suspend provision of the Operational Services and availability of the London Cycle Hire Scheme (in part or whole) from and to the date and time set out in such notice (the "**Suspension Notice**"). The deemed time of delivery of notices set out as Clause 69.2 (*Notices*) shall not apply to such notice and the Suspension Notice shall have immediate effect on the Service Provider's actual receipt of such notice.

6.2 On receipt of a Suspension Notice, the Service Provider shall:

- (a) take all steps necessary to suspend provision of the Operational Services in accordance with the provisions of the Suspension Notice; and
- (b) confirm in writing to TTL, the date and time from which the Operational Services were suspended and subsequently resumed.

- 6.3 Where it is not possible for TTL to reasonably provide a date and time for the Operational Services to resume:
- (a) the Parties shall maintain regular contact throughout the period that the Operational Services are suspended; and
 - (b) the Service Provider shall resume provision of the Operational Services in accordance with instructions of the TTL Authorised Officer.
- 6.4 During the period from the time and date of suspension of the Operational Services to the time and date that the Operational Services are resumed (the “**Suspension Period**”), the Service Provider shall be:
- (a) relieved from its obligations to perform those affected Operational Services, as detailed in the Suspension Notice; and
 - (b) entitled to levy the Service Charges during the Suspension Period in accordance with the provisions of Schedule 7 (*Charging*).

PART 3: DESIGN MATTERS

7 Service Provider Solution

- 7.1 The Service Provider’s solution for the London Cycle Hire Scheme and provision of Services, LCHS Assets and Service Systems is set out in the documents comprising Schedule 28 (*Service Provider Solution*) (the “**Service Provider Solution**”).
- 7.2 The Service Provider acknowledges and accepts that, notwithstanding that TTL has provided the Statement of Requirements and Terminal Design:
- (a) the Service Provider Solution and any other ideas, methods, concepts or theories (including any “**proof of concept**” synopsis, Milestone or feasibility demonstration in connection with the Services):
 - (i) will be verifiable, verified, demonstrable, demonstrated and capable of use and used for the purposes of this Agreement; and
 - (ii) satisfy TTL’s requirements, as evidenced by Annex 1 (*Compliance Matrix*) to Schedule 2 (*Statement of Requirements*); and
 - (b) the LCHS Assets and Service Systems provided under this Agreement will be Fit for Purpose for the provision of the London Cycle Hire Scheme and related Services.
- 7.3 Subject to Clause 7.4 below, the Service Provider acknowledges and accepts that, notwithstanding that TTL has provided the Statement of Requirements and Terminal Design:
- (a) the Service Provider has full knowledge and understanding of the Statement of Requirements and Terminal Design and warrants that the Statement of Requirements and Terminal Design (each as may be varied pursuant to the Change Control Request Procedure from time to time) are Fit for Purpose for the provision of the:
 - (i) successful design, build and operation of the London Cycle Hire Scheme;
 - (ii) LCHS Assets required for provision of the London Cycle Hire Scheme;

- (iii) Works relating to the installation and commissioning of the Docking Station Assets and On-street Assets; and
 - (iv) Services required under this Agreement;
 - (b) no fault, error or defect in the Statement of Requirements or the Terminal Design shall absolve the Service Provider from its obligations to provide the Services, LCHS Assets and Service Systems in accordance with the provisions of this Agreement and so as to design, build and operate the London Cycle Hire Scheme.
- 7.4 The Service Provider will not have any liability under Clause 7.3 above to the extent that the Service Provider:
- (a) could not reasonably (as an experienced provider of solutions for the public sector and municipal cycle hire schemes) be expected to have identified defects in the Statement of Requirements or the Terminal Design; and/or
 - (b) has notified TTL of defects in writing before the Effective Date.

PART 4: IMPLEMENTATION

8 Implementation Plan

- 8.1 Without prejudice to Clauses 5.1 or 5.2 (*Standard of Services and Quality of LCHS Assets*), the Service Provider shall:
- (a) submit a draft Implementation Plan to TTL for Approval by the relevant Milestone Date; and
 - (b) comply with the provisions of the Implementation Plan (including the Milestones and Milestone Dates), once it has been Approved.
- 8.2 The Service Provider shall ensure that:
- (a) all Design Deliverables are submitted to TTL and Approved in accordance with the Implementation Plan;
 - (b) all Build Deliverables and work (which, for the avoidance of doubt, shall include the development, manufacture, installation and Testing of the LCHS Assets) are completed, Tested and fully operational in accordance with the:
 - (i) Implementation Plan; and
 - (ii) Schedule 37 (*Docking Station Installation and Traffic Management*);
 - (c) in terms of the Premises, that the:
 - (i) Depot Assets are installed and fully operational;
 - (ii) Contact Centre Assets are installed and fully operational;
 - (iii) System Assets are implemented, Tested and fully operational;
 - (d) Cycle Assets are built and available for use;
 - (e) Docking Station Assets are installed and commissioned; and
 - (f) On-street Assets are installed and operational;

- (g) the Service Systems are developed, implemented, Tested and Approved in accordance with the Implementation Plan, including:
- (i) performing Testing of Service Systems and Data processing in accordance with Clause 11 (*Testing of LCHS Assets and Service Systems*);
 - (ii) carrying out Data input, checking, verification, review, quality analysis and assurance and integrity testing in accordance with the Statement of Requirements in order to ensure that:
 - (A) Data or Data extracts from any Other Service Providers, the Insurance Provider or Third Parties are Tested by the relevant Milestone Date, or date otherwise agreed in writing by the Parties in accordance with the Change Control Request Procedure;
 - (B) all Data entered into the Service Systems is accurate (insofar as it is possible for the Service Provider to verify such accuracy, including by meeting, as a minimum, the requirements of the Statement of Requirements and Service Provider Solution in this regard), up to date and complete; and
 - (C) all Data is Fit for Purpose for its use and processing in connection with the Services and London Cycle Hire Scheme by:
 - 1) Customers;
 - 2) TTL Personnel;
 - 3) Interested Parties;
 - 4) Other Service Providers;
 - 5) the Insurance Provider;
 - 6) Third Parties; and
 - (iii) carrying out all development work in respect of the Interfaces, including completing all design, build, development, delivery, installation, Testing and Approval by the relevant Milestone Dates.

9 Progress Monitoring of the Implementation Phase

Each Party shall have the relevant rights and shall comply with the obligations set out in Schedule 10 (*Contract Management and Reporting*) in relation to progress monitoring of the Implementation Phase.

PART 5: DOCUMENT APPROVAL, TESTING, ACHIEVEMENT OF MILESTONES AND DELAY

10 Documentation

- 10.1 Each Party shall have the relevant rights and shall comply with the obligations set out in Part C (*Documentation*) of Schedule 3 (*Milestones and Deliverables*) in relation to the preparation, submission and Approval of Documentation.
- 10.2 In this Agreement, where there is a reference to Documentation, the Service Provider shall at all times (subject to any specific requirements under this Agreement in respect of the periodic updating of specific Documentation) ensure that:
- (a) each such Documentation is accurate, up to date and complete; and

- (b) all Changes to Documentation are submitted to TTL for Approval in accordance with the Change Control Request Procedure.

10.3 The Service Provider shall comply with the terms of all Documentation once it has been Approved and/or amended in accordance with the Change Control Request Procedure.

11 Testing of LCHS Assets and Service Systems

11.1 Each Party shall have the relevant rights and shall comply with the obligations set out in Schedule 4 (*Testing Regime*) in respect of Testing of the:

- (a) LCHS Assets; and
- (b) Service Systems.

11.2 The Service Provider shall perform Testing of the LCHS Assets and Service Systems to ensure that the LCHS Assets and Service Systems (and relevant parts thereof) deliver the features, functions and required performance criteria and Service Levels set out in the Statement of Requirements, in accordance with:

- (a) Schedule 4 (*Testing Regime*);
- (b) the relevant Testing Documents; and
- (c) the Implementation Plan,

as amended by the Change Control Request Procedure.

12 Responsibility for achievement of Milestones and Milestone Dates

12.1 Each Party shall have the relevant rights and shall comply with the obligations set out in Schedule 3 (*Milestones and Deliverables*) in relation to the achievement of Milestones and Milestone Dates subject to the provisions of this Agreement (including Part 17 (*Supervening Events*)).

12.2 The Service Provider agrees that:

- (a) all Testing shall be the responsibility of, and carried out at the cost and expense of, the Service Provider;
- (b) without limiting Clause 66.4 (*Waiver and Approvals*):
 - (i) there shall be no transfer of risk by the Service Provider to TTL or the TfL Group in connection with the Services, LCHS Assets and Service Systems (or any parts thereof) or other fulfilment of this Agreement, arising from:
 - (A) Terminal Design; or
 - (B) any Testing and/or Test Witnessing; or
 - (C) issue by TTL of a:
 - 1) notice that TTL Approves any Documentation; and/or
 - 2) Milestone Notice; and

all risk in the Services, LCHS Assets and Service Systems shall remain with the Service Provider at all times;

- (ii) the issue of a notice that TTL Approves any Documentation and/or a Milestone Notice shall not affect TTL's right to later withdraw any such notice (in circumstances where TTL Personnel subsequently become aware of facts or circumstances that would have entitled TTL to withhold the relevant Approval or Milestone Notice) and:
 - (A) any resulting change shall not result in any increase in the Service Charges, whether pursuant to the Change Control Request Procedure or otherwise;
 - (B) the Service Provider shall at its own cost promptly take all steps necessary to rectify the applicable Services, LCHS Assets or Service Systems or Documentation and, where applicable, seek the Approval of TTL and/or achieve the Milestone; and
 - (C) if TTL has pursuant to this Clause 12.2(b)(ii) withdrawn Approval of a Milestone Notice relating to a Key Milestone, Liquidated Damages pursuant to Clause 15 (*Failure to Achieve Milestones*) shall apply from the later of the applicable Milestone Date or the withdrawal by TTL of this Approval;

- (c) Milestones and Milestone Dates must be achieved in sequence unless:
 - (i) expressly provided to the contrary in Schedule 3 (*Milestones and Deliverables*); or
 - (ii) otherwise agreed pursuant to the Change Control Request Procedure;
- (d) the final Key Milestone, as set out in Schedule 3 (*Milestones and Deliverables*), cannot be fulfilled unless all other Milestones have been achieved (and the Milestone Notices for such Milestones have not pursuant to Clause 12.2(b)(ii)(B) above been subsequently withdrawn); and
- (e) any termination by TTL pursuant to Part B (*Milestone Achievement*) of Schedule 3 (*Milestones and Deliverables*) shall be deemed to be for a material breach of this Agreement by the Service Provider.

12.3 If the Service Provider fails to achieve a Milestone by the relevant Milestone Date, the provisions of Clause 15 (*Failure to Achieve Milestones*) shall apply.

13 Delay of the Operational Commencement Date

13.1 TTL shall be entitled, in its absolute discretion, by notice to the Service Provider, to delay the Operational Commencement Date on one or more occasions, by up to twelve (12) Months in aggregate from the date that the Operational Commencement Date would otherwise be in accordance with this Agreement.

13.2 In the event that, pursuant to Clause 13.1 above, TTL delays the Operational Commencement Date for more than thirty (30) calendar days, the Service Provider shall comply with the provisions of Clause 14 (*Delay*) in relation to such delay.

13.3 The Service Provider shall take all practicable steps to mitigate its loss and the losses of TTL and the TfL Group, expenditure and costs arising due to any delay of the Operational Commencement Date.

13.4 Subject to:

- (a) the Service Provider's compliance with Clauses 13.2 and 13.3 above; and

(b) the provisions of any Delay Plan Approved in accordance with Clause 14 (*Delay*), as appropriate, TTL shall bear the properly and reasonably incurred unavoidable costs of the Service Provider, which have been reasonably and necessarily incurred, arising directly from the date of the delay notified by TTL in accordance with Clause 13.1 above.

13.5 Without prejudice to Clause 14 (*Delay*), if TTL wishes to delay the Planned Operational Commencement Date by more than twelve (12) Months, the delay shall be subject to the Change Control Request Procedure.

14 Delay

14.1 Notwithstanding that the following provisions may apply:

- (a) Clause 56 (*Compensation Events*);
- (b) Clause 59 (*Relief Events*); and/or
- (c) Clause 60 (*Force Majeure*),

the Service Provider shall comply with its obligations under this Clause 14.

14.2 In the event of any actual, likely or unavoidable delay:

- (a) in the Milestones being achieved by the relevant Milestone Dates; or
- (b) in meeting the Planned Operational Commencement Date,

the Service Provider shall:

- (i) notify TTL as soon as practicable of such circumstances; and
- (ii) take all practicable steps to mitigate its and TTL's losses, expenditure and costs, pending development and Approval of a Delay Plan in accordance with the following provisions of this Clause 14.

14.3 Subject to Clause 14.8 below, if a delay arises in respect of the achievement of one or more Milestones or the Planned Operational Commencement Date, the Service Provider shall promptly provide a delay plan to TTL (and in any event within ten (10) Working Days of receipt of notice from TTL stating that such a delay has occurred or will occur or from when the Service Provider first became aware of the delay, whichever is the earlier) (the "Delay Plan"). The Delay Plan shall set out:

- (a) the cause of such delay;
- (b) the steps that the Service Provider:
 - (i) has taken to remedy the delay; and
 - (ii) intends to take to mitigate its and TTL's losses (including in the case of TTL, any losses or likely losses notified by TTL to the Service Provider), expenditure and costs; and
- (c) how the delay is to be remedied (if applicable) and the timescales for such remediation so that the relevant Milestones can be achieved by its respective Milestone Dates.

14.4 TTL shall have the right to Approve, and (acting reasonably) require 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 to the Service Provider, which changes the Service Provider shall adopt. Such changes shall be incorporated in the Delay Plan by the Service Provider within five (5) Working Days (or such other period as may be expressly agreed in writing between the Parties) of TTL notifying such changes to the Service Provider.

14.5 Unless otherwise expressly agreed in writing by TTL, the cost of preparing and implementing the Delay Plan shall be borne as follows:

- (a) where the delay was directly caused by a Compensation Event, and the Service Provider has fully complied with Clause 56 (*Compensation Events*), by TTL; and
- (b) in all other circumstances, by the Service Provider at its sole expense.

14.6 Once Approved by TTL, the Service Provider shall:

- (a) carry out its obligations in the Delay Plan promptly (including such changes as TTL may require in accordance with Clause 14.4 above); and
- (b) commence such work within one (1) Working Day of such Approval by TTL, unless otherwise set out in the Delay Plan or otherwise agreed in writing between the Parties; and
- (c) keep a record, supported by relevant documentation, of the steps the Service Provider has taken to mitigate its and TTL's losses pursuant to the Delay Plan and such records and documentation shall be supplied to TTL promptly upon demand.

14.7 Save as provided for in:

- (a) Clause 56 (*Compensation Events*);
- (b) Clause 59 (*Relief Events*); and
- (c) Clause 60 (*Force Majeure*),

TTL shall be under no obligation to give any extension of time in respect of any delay which affects:

- (i) the Operational Commencement Date;
- (ii) the Services;
- (iii) one or more Milestone Dates; or
- (iv) any of the Service Provider's other obligations under this Agreement.

14.8 Any delays caused due to the Service Provider's failure to achieve a Milestone in accordance with Schedule 3 (*Milestones and Deliverables*) shall be dealt with in accordance with and subject to the provisions of that Schedule 3 (*Milestones and Deliverables*).

15 Failure to Achieve Milestones

15.1 In the event that the Service Provider fails to achieve a Key Milestone by the relevant Milestone Date, the Service Provider shall pay (but subject to any relief stipulated in Part 17 (*Supervening Events*) of this Agreement) to TTL Liquidated Damages in accordance with paragraph 5 (*Implementation Services - Milestone Payments and Liquidated Damages*) of Schedule 7 (*Charging*) in respect of that Key Milestone for the applicable LD Period.

- 15.2 Without prejudice to TTL's right to terminate this Agreement and/or exercise its Step-in Rights as set out in this Agreement, the Parties acknowledge that:
- (a) the Liquidated Damages are a genuine pre-estimate of the loss that TTL is likely to suffer during the LD Period in the event of delay to the relevant Key Milestone; and
 - (b) in the event that the delay to the achievement of a Key Milestone continues beyond the expiry of the maximum thirty (30) calendar day LD Period, TTL shall be entitled to exercise any or all of its rights, whether under this Agreement, at law or otherwise, provided that in respect of the LD Period only, Liquidated Damages shall be TTL's sole financial remedy.

PART 6: CO-OPERATION

16 Co-operation with TTL, Interested Parties, Other Service Providers, the Insurance Provider, Sponsor and Third Parties

16.1 Without prejudice to Clauses 44 (*Intellectual Property Rights*), 50 (*Information Compliance*) and 71 (*Confidentiality*), the Service Provider shall (and shall procure that its Sub-Contractors shall) co-operate promptly with TTL, TTL Personnel and, where requested by TTL Personnel, Interested Parties, Other Service Providers, the Insurance Provider and Sponsor to the extent it is within the scope of this Agreement in relation to all activities relating to the London Cycle Hire Scheme and any points of integration, interoperability or interface between:

- (a) the Services, LCHS Assets and/or Service Systems; and
- (b) the services, assets or resources to be provided to the TfL Group by Interested Parties, Other Service Providers, the Insurance Provider and Sponsor,

in each case, including:

- (i) during the development of the Documentation;
- (ii) during the design, build, operation and maintenance of any Interfaces with any Interested Party, Other Service Provider, Insurance Provider or Sponsor;
- (iii) during Testing or any other testing by an Other Service Provider and/or Insurance Provider; or
- (iv) communicating notice and resolution of Service Failures or other errors, issues, faults, support or maintenance;
- (v) measuring and monitoring performance of the Services in accordance with the Service Levels; and
- (vi) delivering and Testing of the Business Continuity Plan and any other business continuity or disaster recovery services and business continuity or disaster recovery plans of any Other Service Provider and/or Insurance Provider.

16.2 The Service Provider shall, in addition to the co-operation referred to in Clause 16.1 above, also promptly provide (and in respect of Sub-Contractors, procuring the prompt provision of) TTL, TTL Personnel and, where applicable, Interested Parties, Other Service Providers and/or Third Parties with:

- (a) information reasonably requested by TTL Personnel;
 - (b) reasonable access to the Service Provider Personnel (or personnel of relevant Sub-Contractors) with operational and technical expertise to answer any questions arising;
 - (c) participation in any joint-testing initiatives which are within the scope of this Agreement; and
 - (d) the provision of such information and assistance in relation to the Service Provider's elements of any the Interfaces (or parts thereof).
- 16.3 Subject to Clauses 44 (*Intellectual Property Rights*), 50 (*Information Compliance*) and 71 (*Confidentiality*), the Service Provider shall (and shall procure that its Sub-Contractors shall) promptly co-operate with all reasonable requests of TTL and TTL Personnel and, where applicable, Interested Parties, Other Service Providers and/or Third Parties in relation to:
- (a) the Testing of any Interfaces, interactions and Data flows between:
 - (i) the Services and/or Service Systems provided by the Service Provider (if applicable) and services to be provided by one or more Interested Party, Other Service Provider or Third Party (as appropriate); and
 - (ii) all services provided by or for any Interested Party, Other Service Provider or Third Party (as appropriate), which interface with or are directly impacted by the Services and/or Service Systems, including, promptly and accurately providing all Data and information required by the Interested Party, Other Service Provider or Third Party (as appropriate), for:
 - (A) the Interested Party, Other Service Provider or Third Party (as appropriate) to comply with any obligations to TTL or the TfL Group; or
 - (B) TTL or the TfL Group to comply with its obligations to the Interested Party, Other Service Provider or Third Party (as appropriate),
- in each case to the extent that provision of such Data and information is within the Service Provider's control or possession; and
- (b) compliance by members of the TfL Group, and, where applicable, Interested Parties, Other Service Providers and Third Parties with all applicable Laws, standards, codes of practice, guidance, policies and procedures from time to time; and
 - (c) fulfilment by members of the TfL Group of contractual agreements between any member of the TfL Group and Interested Parties, Other Service Providers or Third Parties which the Service Provider has been notified of prior to the Effective Date.
- 16.4 In performing the Services, the Service Provider shall (and shall procure that its Sub-Contractors shall) take all reasonable steps to avoid prejudicing TTL's or any member of the TfL Group's relationship with any Interested Party, Other Service Provider or Third Party.
- 16.5 Without limiting the Service Provider's obligations to provide the Services, TTL shall, and shall use reasonable endeavours to procure that Interested Parties, Other Service

Providers or Third Parties shall, co-operate with the Service Provider to the extent necessary for the Service Provider to provide the Services.

PART 7: OPERATIONAL PHASE: LCHS ASSETS AND SERVICE SYSTEMS

17 Service Systems, TTL Systems and Other Service Provider Systems

17.1 The Service Provider shall provide all elements of the Service Systems, including the:

- (a) Hardware;
- (b) Software; or
- (c) Systems,

for use in the Service Systems.

17.2 Subject to written notice from TTL Personnel of TTL's or a member of the TfL Group's requirements, the Service Provider may at any time during the Term be required (subject to fulfilling the Service Provider's reasonable requirements, but at no cost to TTL) to allow TTL Systems and/or Other Service Provider Systems to be sited or situated on the Premises for the purpose of interconnecting the Service Systems to the TTL Systems and/or Other Service Provider Systems.

17.3 In relation to any TTL Systems and/or Other Service Provider Systems, the Service Provider shall:

- (a) provide TTL Personnel and/or the Other Service Provider with physical access to the Premises from time to time on reasonable notice in order to enable TTL and/or the Other Service Provider to install, support, maintain and remove the relevant TTL System and/or Other Service Provider System at the Premises;
- (b) at its own cost and expense, provide a suitable operating environment (including air temperature and humidity, heat extraction, electricity and other features, functions and facilities reasonably required by TTL Personnel and/or the Other Service Provider) at the Premises for the TTL Systems and/or Other Service Provider Systems; and
- (c) at all times, ensure that it does not do, omit to do, or permit any Sub-Contractor and/or Third Party to do or omit to do, anything which:
 - (i) prevents TTL Personnel and/or an Other Service Provider from logically accessing (by way of connectivity) the relevant TTL Systems and/or Other Service Provider Systems (including by electronic remote management) or otherwise; or
 - (ii) otherwise terminates or disrupts the connectivity of the TTL Systems and/or Other Service Provider Systems with the Service Systems.

18 LCHS Assets and Service Systems

The Parties shall have the relevant rights, and shall comply with the obligations, set out in the Statement of Requirements in relation to the support and maintenance of LCHS Assets and Service Systems.

19 System Failure

- 19.1 The Service Provider shall notify TTL 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.
- 19.2 In the event of a System Failure, the Service Provider shall:
- (a) immediately comply with the provisions of the Service Provider's escalation procedure produced in accordance with the:
 - (i) Statement of Requirements; and
 - (ii) Service Provider Solution.
 - (b) in the event that such System Failure causes, or is likely to cause, the Service Provider to fail to meet the Service Levels on any calendar day on which such Service Levels apply:
 - (i) invoke the Business Continuity Plan; and
 - (ii) provide Business Continuity Services to minimise disruption of such failure to the TfL Group and its Customers;
 - (c) immediately conduct a comprehensive examination of the LCHS Assets and Service Systems (or part(s) thereof) in order to locate the cause of the System Failure;
 - (d) at its own cost, devote such additional time, effort and resources to:
 - (i) resolve the System Failure as soon as possible; and
 - (ii) avoid the recurrence of such System Failure;
 - (e) at its own cost and at the request of TTL Personnel, promptly provide TTL Personnel with:
 - (i) all relevant Data and information in connection with the:
 - (A) LCHS Assets; and
 - (B) Service Systems, including failure reports, test data, Hardware, Software and System performance reports and such other information as may be required by TTL and/or relevant member of the TfL Group; and
 - (ii) all volumetric information and operational reports (both historical and current) as may be required by TTL and/or relevant member of the TfL Group,

to facilitate TTL's and/or the relevant member of the TfL Group's understanding the steps taken by the Service Provider to resolve the Service Failure and how to prevent such failure from recurring.
- 19.3 Without prejudice to the provisions of Part 17 (*Supervening Event*) where the relevant System Failure is caused by an Interested Party, Other Service Provider, the Insurance Provider or Third Party, the Service Provider shall co-operate fully and expeditiously with the relevant Interested Party, Other Service Provider, Insurance Provider or Third Party (as appropriate) to resolve the relevant System Failure.
- 19.4 A material failure by the Service Provider to provide the Data and information requested by TTL Personnel in accordance with this Clause 19 within five (5) Working Days (or such

other period as the Parties may expressly in writing agree) of such request, will subject to the provisions of Part 17 (*Supervening Events*) give rise to a right for TTL to:

- (a) exercise its:
 - (i) Step-in Rights; and/or
 - (ii) rights under Clause 42 (*Audit and Inspection*),in each case amended as necessary to account for this Clause 19.4; and/or
- (b) where such Data or information is:
 - (i) in the control of the Service Provider or its Sub-Contractors (or would be reasonably anticipated by TTL to be in the control of the Service Provider or its Sub-Contractors) terminate this Agreement or Partially Terminate by notice to the Service Provider; or
 - (ii) not in the control of the Service Provider or its Sub-Contractors, the Service Provider shall use its best endeavours to obtain such Data or information within five (5) Working Days and, failing that, as soon as possible.

20 Continuous Improvement and Cost Reduction

20.1 Throughout the Term, the Service Provider shall identify:

- (a) improvements to the LCHS Assets, Service Systems, Operational Services to reflect the requirements of then current Good Industry Practice; and
- (b) continuous improvements of the LCHS Assets, Service Systems, Operational Services, Service Levels and Service Charges,

(the "GIP Improvements") and report the same to TTL in accordance with Schedule 10 (*Contract Management and Reporting*).

20.2 As part of identifying GIP Improvements, the Service Provider shall, quarterly in the first twelve (12) Months from the Operational Commencement Date and every six (6) Months thereafter for the remaining Term:

- (a) identify and advise TTL in writing of new or potential improvements to the LCHS Assets, Service Systems and Operational Services which, if implemented, would result in cost savings and reduced Service Charges for TTL; and
- (b) inform TTL in writing of other new or emerging technology and/or equipment that could be used for delivering the LCHS Assets, Service Systems and Operational Services and of potential new services,

which would in each case improve the operational efficiency and cost savings of the Operational Services if implemented.

21 Training

21.1 The Service Provider shall provide:

- (a) introductory training for TTL Personnel (including PMAs and TTL Monitors), Interested Parties, Other Service Providers and Third Parties, in the use and operation of the LCHS Assets and Service Systems as set out in the:

- (i) Statement of Requirements; and
 - (ii) Implementation Plan;
- (b) at the request of TTL Personnel, and at the Service Provider's own cost and expense:
- (i) ongoing training on a regular basis to TTL Personnel in relation to the operation and use of the LCHS Assets and Service Systems, as set out in the Statement of Requirements;
 - (ii) if TTL has in accordance with the Change Control Request Procedure (or otherwise) requested an upgrade or replacement of the LCHS Assets and/or Service Systems, introductory and ongoing training for:
 - (A) Service Provider Personnel; and
 - (B) TTL Personnel,in relation to such LCHS Assets and Service Systems; and
- (c) introductory and ongoing training for Service Provider Personnel (and personnel of its Sub-Contractors, where appropriate), in order to ensure that all Service Provider Personnel (and relevant Sub-Contractors) are trained as applicable to their respective roles in the:
- (i) use and operation of the LCHS Assets and Service Systems; and
 - (ii) Service Provider's obligations under this Agreement, including those set out at:
 - (A) Schedule 14 (*Security Policy*);
 - (B) Schedule 15 (*Information Compliance*); and
 - (C) Schedule 25 (*Business Continuity*).

21.2 Without prejudice to Clause 21.1(b)(i) above, the Service Provider shall, in fulfilling its obligations under this Clause 21, ensure that it does so in accordance with the requirements and frequency specified in the:

- (a) Statement of Requirements; and
- (b) Implementation Plan.

21.3 In terms of training to TTL Personnel, Interested Parties, Other Service Providers, the Insurance Provider and Third Parties, the Service Provider shall provide such training during Working Hours, at a time and location to be approved by TTL.

21.4 The Service Provider shall, and shall procure that its Sub-Contractors shall:

- (a) provide suitably qualified and trained Personnel to deliver the training referred to in this Clause 21; and
- (b) ensure that all of Service Provider Personnel are appropriately trained to provide the Services in accordance with the Statement of Requirements.

PART 8: ADDITIONAL SERVICES

22 Additional Services

- 22.1 TTL shall have the right to require the Service Provider to provide Additional Services in accordance with:
- (a) the Statement of Requirements;
 - (b) Schedule 33 (*Additional Services*); and
 - (c) the terms and conditions of this Agreement.

PART 9: FINANCIAL MATTERS

23 Charges and Payment

- 23.1 In consideration of the provision of the Services by the Service Provider in accordance with terms and conditions of this Agreement, TTL shall pay the:
- (a) Milestone Payments;
 - (b) Operational Charges; and
 - (c) Pass Through Costs,
- (as appropriate) to the Service Provider as provided for in, and subject to, the provisions of Schedule 7 (*Charging*).

Milestone Payments

- 23.2 The Service Provider shall Invoice TTL for payment of Milestone Payments in accordance with the provisions of Schedule 7 (*Charging*) and after successful achievement of the relevant Milestone and/or Key Milestone (as appropriate).

Operational Charges and Pass Through Costs

- 23.3 The Service Provider shall Invoice TTL for payment of the:
- (a) Operational Charges; and
 - (b) Pass Through Costs,
- on a Monthly basis in accordance with the provisions of Schedule 7 (*Charging*) within ten (10) Working Days of the last Performance Indicator Report Date in the relevant Month.

VAT

- 23.4 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 due for that supply, pay to the supplier such VAT as is chargeable in respect of the supply at the same time as payment is made 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; and

- (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.

Payment of Invoices

23.5 Subject to Clause 23.6 below, TTL shall pay the amount set out in a correct and complete Invoice by the Final Date for Payment. TTL shall, no later than five (5) calendar days after the Due Date for Payment, give notice to the Service Provider specifying:

- (a) the amount that TTL proposes to pay;
- (b) to what that payment relates; and
- (c) the basis on which the amount is calculated.

The Parties agree that if the amount specified in such notice does not accord with the amount set out in the Invoice, the Parties will not be in dispute over the amount payable unless and until TTL gives the Service Provider a notice to withhold payment in accordance with the provisions of Clause 23.6 below.

23.6 If TTL intends to withhold all or any part of the amount set out in an Invoice, TTL shall not later than one (1) Working Day before the Final Date for Payment, give notice to the Service Provider to that effect, which notice must specify:

- (a) the amount proposed to be withheld and the ground for withholding payment; and
- (b) if there is more than one ground, each ground and the amount attributable to it.

23.7 Without prejudice to either Party's right to refer a dispute to adjudication at any time in accordance with Clause 81.15 (*Dispute Resolution Procedure*) and subject to Clause 81.2 (*Dispute Resolution Procedure*), if any dispute arises in relation to an Invoice or a Milestone Payment, Retention Monies, Service Charges or Pass-Through Costs under such Invoice 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 thirty (30) calendar 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, TTL shall pay such amount within thirty (30) calendar days of such determination, provided that for the purposes of Clause 26 (*Interest*), interest on such amount shall be calculated from the date that the relevant Invoice originally fell due and payable.

Contract Payments (CIS Regulations)

23.8 Where a payment is a Contract Payment, any such payments to be made on or after the CIS Effective Date shall (subject to Clause 23.9 below) be made in accordance with any Verification.

23.9 If TTL receives a Change of Status Notice, any payments made after the date specified in such notice shall be made in accordance with the Change by TTL of Status Note (and this Clause 23.9 shall apply equally to any further Change of Status Notice(s) which may be received by TTL).

Variation of Service Charges

23.10 The Service Charges shall only be varied in accordance with:

- (a) Schedule 7 (*Charging*); or
- (b) Schedule 9 (*Change Control Request Procedure*).

23.11 For any payments payable by the Service Provider, TTL shall have, at its sole discretion, the option to receive such payments in either pounds Sterling or Euro (€), provided that TTL can only receive such payments in a currency that is legal tender in the UK (or any part thereof) at the time of payment.

24 Gainsharing

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

25 Commercial Exploitation of Bicycle Assets and Docking Station Assets

25.1 The Service Provider shall:

(a) use its reasonable endeavours to identify opportunities for commercial exploitation (by members of the TfL Group, the Service Provider or any Third Party) of:

- (i) TTL Commissioned IPR; and
- (ii) within the Greater London Area, the Service Provider IPR that relates to the Docking Station Assets and Cycle Assets; and

(b) discuss an appropriate strategy for pursuing such opportunities with TTL.

25.2 The Service Provider shall not enter into any agreements in relation to, or otherwise exploit, any such opportunities envisaged by Clause 25.1 above unless and until it has agreed in writing with TTL:

- (a) the basis on which such opportunities shall be exploited; and
- (b) TTL's rights in relation to those opportunities.

26 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.

27 Revenue

27.1 The Service Provider shall comply with its obligations set out in:

- (a) Schedule 32 (*Revenue Collection and Payment*); and
- (b) the Statement of Requirements,

in respect of Revenue Collection.

27.2 The Service Provider agrees that all Revenue belongs to TTL.

PART 10: RESPONSIBLE PROCUREMENT

28 Timber Standards

- 28.1 The Service Provider shall ensure, so far as reasonably practicable, that any timber used in the delivery of the Services is:
- (a) recycled;
 - (b) reclaimed; or
 - (c) certified as having come from a sustainable source by the:
 - (i) Forest Stewardship Council;
 - (ii) Canadian Standards Association;
 - (iii) Programme for the Endorsement of Forest Certification;
 - (iv) Sustainable Forestry Initiative,or equivalent.
- 28.2 For the purposes of this Clause 28, timber shall not include products derived from timber where the manufacturing process has obscured the wood element, such as paper.
- 28.3 The Service Provider shall retain in accordance with Clause 42 (*Audit and Inspection*) documentary evidence of the source of any timber used.

29 Deleterious Materials

- 29.1 The Service Provider shall not:
- (a) specify for use or use or permit to be used in the Works any products or materials which:
 - (i) do not conform with British Standards or Codes of Practice or good building practice; and/or
 - (ii) are generally known to be deleterious, in the particular circumstances in which they are specified for use, to:
 - (A) health and safety; and/or
 - (B) the durability of buildings or structures,(the "Deleterious Materials")
 - (b) use Deleterious Materials in the design, construction and implementation of any LCHS Assets provided under this Agreement.

30 Ethical Sourcing Principles

- 30.1 The TfL Group is committed to ensuring that workers employed in its supply chains throughout the world are treated fairly, humanely and equitably. In the course of complying with this Agreement, the Service Provider shall comply with, and shall procure that its Sub-Contractors comply with, those principles of the Ethical Trading Initiative ("ETI") Base Code, as are detailed in Appendix 5 (*Ethical Trading Initiative (ETI) Base Code*) of Schedule 34 (*TfL Group Policies*), or an equivalent code of conduct (the "Ethical

Sourcing Principles”) in relation to the provision of the goods and services under this Agreement.

- 30.2 As soon as practicable following the Effective Date, the Service Provider shall, and shall ensure that its Sub-Contractors are, be registered with an ethical supplier database, such as SEDEX (Supplier Ethical Data Exchange). The Service Provider agrees that for the Term, it shall permit, and shall procure that its Sub-Contractors permit, and enable TTL Personnel to have access to the information relating to the Service Provider and its Sub-Contractors that subsists in such ethical supplier database.
- 30.3 Throughout the Term, if TTL has reasonable cause to believe that the Service Provider is not complying with any of the Ethical Sourcing Principles:
- (a) TTL shall notify the Service Provider; and
 - (b) the Parties shall agree an action plan with appropriate timeframes for compliance by the Service Provider,
- (the “Action Plan”). Such Action Plan to be agreed by the Parties no later than twenty (20) Working Days from the date of TTL notifying the Service Provider that remedial action is required, or such other period as the Parties may otherwise agree in writing. The costs of the creation and implementation of the Action Plan shall be borne by the Service Provider.
- 30.4 Following the agreement of the Action Plan, TTL reserves the right to conduct one or more audits (either by itself or a member of the TfL Group or Third Party auditor appointed by the TfL Group) in accordance with Clause 42 (*Audit and Inspection*), in relation to compliance by the Service Provider with the Action Plan. The costs of any such audits and any subsequent follow-up audits required shall be borne equally by the Parties, unless otherwise agreed in writing.
- 30.5 For the avoidance of doubt, the right of audit contained in this Clause 30 shall include the right of TTL (or a member of the TfL Group or Third Party auditor appointed by the TfL Group) acting reasonably to undertake physical inspections of relevant Service Provider Premises and other locations and factories used by the Service Provider and its Sub-Contractors, to conduct interviews with relevant personnel and to inspect relevant documents. The Service Provider shall co-operate, and shall procure that its Sub-Contractors shall co-operate, with TTL Personnel (a member of the TfL Group or Third Party auditor appointed by the TfL Group) in relation to all aspects of any audit.

31 Equality and Diversity

The Service Provider shall, shall procure that all the Service Provider’s Personnel and its Sub-Contractors shall, at no additional cost to TTL, comply with the provisions of Schedule 24 (*Equality and Diversity*).

32 London Living Wage

- 32.1 Without prejudice to any other provision of this Agreement, the Service Provider shall, and shall ensure that its Sub-Contractors shall:
- (a) ensure that none of the London Living Wage Employees is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - (b) ensure that none of the London Living Wage Employees is paid less than the amount to which they are entitled in accordance with their respective contracts of employment;

- (c) provide to TTL Personnel such information concerning the London Living Wage as TTL Personnel may reasonably require from time to time;
- (d) disseminate on behalf of the TfL Group to the London Living Wage Employees such perception questionnaires as TTL Personnel may reasonably require from time to time and promptly collate and return to TTL responses to such questionnaires; and
- (e) co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

32.2 The Service Provider acknowledges that the London Living Wage may be increased from time to time and that TTL shall have the right from time to time, as a Mandatory Change in accordance with the Change Control Request Procedure, to require the Service Provider to comply with its obligations under this Agreement in relation to such increased London Living Wage.

32.3 If the London Living Wage is increased so that it exceeds the London Living Wage in effect on the Effective Date (before tax, other deductions and any increase for overtime), the Service Provider may recover a proportion of its additional costs in complying with Clause 32.1 (*London Living Wage*) above calculated as follows:

$$I = NLLW - X - Y$$

where:

I = the amount (in pounds sterling and pence) by which the relevant Service Charges shall be increased;

NLLW = the amount of the London Living Wage;

X = the greater of:

- (a) the London Living Wage in effect on the Effective Date; and
- (b) the then current mean hourly rate payable in London to the appropriate category of employees, as reasonably determined by TTL; and

Y = the aggregate amount of any previous increases calculated in accordance with this Clause 32.3.

33 Strategic Labour Needs and Training

The Service Provider shall procure that all the Service Provider's Personnel and its Sub-Contractors shall, at no additional cost to TTL, comply with the provisions of Schedule 19 (*Strategic Labour Needs and Training*).

PART 11: SERVICE PROVIDER PERSONNEL AND SUB-CONTRACTORS

34 Service Provider Personnel

Each Party shall have the relevant rights and shall comply with the obligations set out in Schedule 39 (*Service Provider Personnel*) in relation to Service Provider Personnel.

35 Compliance with TfL Group Policies

35.1 The Service Provider shall procure that all the Service Provider's Personnel and its Sub-Contractors shall comply with:

- (a) at no additional cost to TTL, the Tfl Group Policies provided to the Service Provider by the Effective Date;
- (b) the Tfl Group Policies provided to the Service Provider after the Effective Date and/or amended after the Effective Date (save that where, following the issuance of a new or amended Tfl Group Policy there are cost, scope, timetable or other implications, these shall be dealt with in accordance with the Change Control Request Procedure); and
- (c) without limiting the generality of this Clause 35.1, all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities.

35.2 The costs of compliance with this Clause 35 shall be borne solely by the Service Provider.

35.3 TTL shall provide the Service Provider with copies of the policies, procedures and standards referred to in this Clause 35 on request.

35.4 In providing the Services (which include the Design Services and Build Services in respect of the LCHS Assets), the Service Provider shall, taking into account best available techniques not entailing excessive cost, have appropriate regard (insofar as the Service Provider's activities may impact on the environment) of the need to:

- (a) preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
- (b) enhance the environment and have regard to the desirability of achieving sustainable development;
- (c) conserve and safeguard flora, fauna and geological or physiological features of special interest; and
- (d) sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

36 Key Sub-Contractors and Sub-Contractors

Key Sub-Contractors

36.1 The initial list of Key Sub-Contractors is set out in Schedule 26 (*Key Sub-Contractors*).

36.2 From time to time, TTL shall be entitled to designate Sub-Contractors as being Key Sub-Contractors in accordance with the Change Control Request Procedure, provided that if the person to be added as a Key Sub-Contractor was a Sub-Contractor as at the Effective Date but is either:

- (a) not referred to in Schedule 28 (*Service Provider Solution*); or
- (b) the scope of their role is not set out in sufficient detail in Schedule 28 (*Service Provider Solution*) to enable TTL, acting reasonably, to determine whether they should be a Key Sub-Contractor,

and the identity of the Sub-Contractor or the nature of the goods or services supplied by the Sub-Contractor would reasonably be considered by TTL to be material, the costs associated with designating the Sub-Contractor as a Key Sub-Contractor shall be borne solely by the Service Provider. The Service Provider shall promptly thereafter comply with this Clause 36 in respect of such Key Sub-Contractor.

36.3 TTL shall have the right to approve the:

- (a) material terms of any Key Sub-Contract before the Service Provider enters into any legally binding contracts with the Key Sub-Contractors; and
- (b) terms of any material amendments to Key Sub-Contracts.

For the purposes of this Clause 36.3, "material terms" and "material amendments" shall include:

- (i) financial terms of the Key Sub-Contract;
- (ii) terms relating to liability of either party under such Key Sub-Contract; and
- (iii) terms that are expressly required, pursuant to this Agreement, to be included in such Key Sub-Contract.

36.4 The Service Provider undertakes to TTL that it shall ensure that:

- (a) a certified copy of any Key Sub-Contract (excluding any contract of employment) entered into by the Service Provider is provided to TTL fourteen (14) calendar days after the Key Sub-Contract is entered into; and
- (b) the certified copy will be accompanied by a collateral deed by the party or parties contracting with the Service Provider, which:
 - (i) is directly enforceable by TTL (or its nominee) and in the form set out at Schedule 22 (*Collateral Deed*); and
 - (ii) does not contain any terms which would have the effect of depriving TTL (or its nominee) of all or a substantial part of the benefit of the collateral deed referred to in Clause 36.4(b)(i) above.

Sub-Contractors

36.5 The Service Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of TTL, such request for consent to identify the relevant sub-contractor, which may be refused or granted subject to such conditions as TTL reasonably requires and the Service Provider's compliance with Clauses 36.6 and 36.7 below.

36.6 When placing Sub-Contracts, the Service Provider shall:

- (a) carry out, and be responsible for, the placing of Sub-Contracts to:
 - (i) meet the requirements of the:
 - (A) Statement of Requirements; and
 - (B) Service Provider Solution; and
 - (ii) provide the Services;
- (b) create and maintain an accurate and up-to-date log of all Sub-Contracts, which the Service Provider shall make available to TTL Personnel on request from time to time;

- (c) ensure that all contracts entered into with Sub-Contractors provide that payment by the Service Provider to the Sub-Contractor shall be made no later than thirty (30) calendar days from receipt of a valid and undisputed Invoice;
- (d) ensure that TTL is protected from any Sub-Contractor:
 - (i) defaulting under the relevant Sub-Contract; or
 - (ii) causing the Service Provider to default under this Agreement,including by introducing appropriate measures and, where appropriate, but without limitation to the generality of the foregoing, obtaining a parent company guarantee.

36.7 For each Sub-Contract, the Service Provider shall:

- (a) regularly monitor the measures referred to in Clause 36.6(d) above; and
- (b) report and discuss its findings to TTL at each Strategic Review Meeting or as otherwise required in accordance with Schedule 10 (*Contract Management and Reporting*).

36.8 For each Key Sub-Contractor and Sub-Contractor, the Service Provider shall notify TTL in writing within ten (10) Working Days of the appointment of such Key Sub-Contractor and/or Sub-Contractor of the scope and nature of the Services to be performed by the relevant Key Sub-Contractor and/or Sub-Contractor and the country or countries from which such Services are to be carried out or performed.

PART 12: ADDITIONAL OBLIGATIONS

37 Additional Service Provider Obligations

37.1 Without limitation and in addition to the Service Provider's other obligations set out in this Agreement, the Service Provider shall (and shall procure that its Sub-Contractors shall) at all times:

- (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 TTL Premises or Third Party property;
- (b) provide TTL Personnel with such co-operation, information, advice and assistance in connection with:
 - (i) the London Cycle Hire Scheme, LCHS Assets, Service Systems, Interfaces and the Services; and
 - (ii) carrying out its obligations under this Agreement,as expressly within the scope of the Agreement and as TTL may reasonably require;
- (c) act with good faith in its dealings with TTL Personnel, members of the TfL Group, Interested Parties, Other Service Providers, the Insurance Provider, Sponsor, Customers, Third Parties and its Sub-Contractors;
- (d) ensure that Service Provider Personnel and its Sub-Contractors act in such a way that the name and good reputation of the TfL Group is not brought into disrepute or otherwise becomes adversely affected; and

- (e) ensure that all:
 - (i) Sub-Contracts; and
 - (ii) all other non-employment contracts, which are necessary for the performance of the Services,are assignable to TTL (without any transfer charge) upon the occurrence of any of the events described in Clause 62 (*Termination*) unless TTL has expressly agreed otherwise in writing with the Service Provider.

38 TTL Obligations

- 38.1 TTL shall, and shall procure that the relevant member of the TfL Group shall:
- (a) comply with its obligations expressly set out in this Agreement;
 - (b) use its reasonable endeavours to respond within a commercially reasonable timescale to all reasonable requests by the Service Provider for:
 - (i) information; and/or
 - (ii) access to TTL Personnel,as specifically required in this Agreement but only insofar as required for the Service Provider to perform its obligations under this Agreement;
 - (c) use its reasonable endeavours to facilitate communications between the Service Provider and:
 - (i) Interested Parties;
 - (ii) Other Service Providers; and/or
 - (iii) the Insurance Provider; and
 - (iv) the Sponsor,relevant to this Agreement and the provision of the London Cycle Hire Scheme, where such communications are necessary in order for the Service Provider to be able to perform its obligations under this Agreement; and
 - (d) comply with all Laws which apply to TTL's responsibilities under this Agreement.

PART 13: CHANGES AND CHANGE MANAGEMENT

39 Change Control Request Procedure

- 39.1 Each Party shall have the relevant rights and shall comply with the obligations set out in Schedule 9 (*Change Control Request Procedure*) in respect of the Change Control Request Procedure.
- 39.2 The Service Provider acknowledges that TTL may at its sole discretion at any time (but, unless otherwise expressly provided in this Agreement, subject to any Changes to the Agreement arising as a result being effected through the Change Control Request Procedure) amend the details of the London Cycle Hire Scheme, including the:
- (a) amounts and nature of Payments;

- (b) geographical extent of the London Cycle Hire Scheme; and
- (c) times and days of operation of the London Cycle Hire Scheme.

39.3 The Service Provider shall, subject to the Change Control Request Procedure, be obliged to change the scope and extent of the:

- (a) LCHS Assets;
- (b) Service Systems; and
- (c) Services,

in the event of a change to the London Cycle Hire Scheme agreed in accordance with the Change Control Request Procedure.

PART 14: CONTRACT MANAGEMENT, MONITORING AND AUDIT

40 Contract Management and Incident Management

The Parties shall have the relevant rights and shall comply with the obligations of Schedule 10 (*Contract Management and Reporting*) in respect of management of each Party's obligations under this Agreement and any Incidents arising.

41 TTL Monitoring Staff

41.1 Without prejudice to the provisions of the Statement of Requirements and Clause 9 (*Progress Monitoring of the Implementation Phase*), TTL shall have the right to locate, at any time and for such period as TTL may require from time to time:

- (a) up to four (4) PMAs (or such other number as the Parties may agree from time to time); and
- (b) a number of TTL Monitors as requested by TTL Personnel,

at the Premises and/or any Sub-Contractor's premises in order to monitor and review the Service Provider's performance of its obligations and provision of the Services under this Agreement.

41.2 In terms of PMAs, the Service Provider shall provide, at no additional cost to TTL, such office accommodation, facilities, information and access to each PMA and TTL Monitor as they may reasonably require from time to time, including:

- (a) a desk and chair, with working telephone and personal computer (in the case of TTL Monitors such facilities may be provided by means of 'hotdesks');
- (b) utilities and public conveniences;
- (c) a parking space.

41.3 The Service Provider shall:

- (a) invite such of the PMAs and/or TTL Monitors to internal Service Provider meetings as TTL may reasonably require from time to time and shall permit such PMAs and/or TTL Monitors to attend such meetings;
- (b) permit such of the PMAs and/or TTL Monitors as TTL may reasonably require from time to time to attend Test Witnessing; and

- (c) ensure that its Sub-Contractors comply with the provisions of this Clause 41 as if they were a party to this Agreement.

41.4 The Service Provider acknowledges and accepts that the:

- (a) presence of PMAs and/or TTL Monitors at the Premises from time to time shall in no way diminish or limit the Service Provider's responsibility for providing the Services in accordance with this Agreement; and
- (b) actions of the PMAs and/or TTL Monitors shall not in any circumstances be taken to be, or indicate, the Approval or acceptance of TTL of any of the Services, LCHS Assets and/or Service Systems (or parts thereof).

41.5 TTL shall ensure that the conduct of the PMAs does not unreasonably:

- (a) disrupt the Service Provider or its Sub-Contractors; or
- (b) delay the provision of the Services.

42 **Audit and Inspection**

Obligation to maintain Records

42.1 The Service Provider shall, and shall procure that its Sub-Contractors shall:

- (a) maintain a complete, current and accurate set of Records pertaining to all:
 - (i) activities relating to the provision of the Services, LCHS Assets and Service Systems; and
 - (ii) transactions entered into by the Service Provider for the purposes of this Agreement (or, in the case of a Sub-Contractor, all transactions entered into by the Sub-Contractor for the purposes of the relevant Sub-Contract); and
- (b) retain all such Records for a period of not less than six (6) years (or such period, if different, as may be prescribed by Law) following termination or expiry of this Agreement and at the end of such period TTL may require that a subset of Records relevant to the then existing requirements of TTL or the TfL Group be delivered by the Service Provider to TTL or the relevant member of the TfL Group.

42.2 Subject to Clause 71 (*Confidentiality*):

- (a) the Records will be held by the Service Provider on its own behalf for the purposes of provision of the Services, LCHS Assets and Service Systems; and
- (b) TTL's and the TfL Group's right of access to the Records shall be solely as required for and in accordance with this Clause 42 or as otherwise set out in this Agreement.

42.3 The records and documents referred to in this Clause 42 shall include the following, insofar as they relate to the Services or this Agreement:

- (a) details of all Service Provider Personnel involved in the provision of the Services including names, training records, National Insurance numbers and any other information required in accordance with Schedule 39 (*Service Provider Personnel*);

- (b) all Sub-Contracts commitments, leases, manufacturer's specifications, details and warranties, purchase orders and data relating to procurement of the Services, LCHS Assets and Service Systems (or any parts thereof);
 - (c) management accounts and any other management records;
 - (d) accounting records (in hard copy as well as computer readable data);
 - (e) claims (including documentation covering negotiated settlements save where legally privileged), Compensation Events and variations to the Agreement and/or Services;
 - (f) detailed inspection records;
 - (g) information relating to each and all System Failures, prepared in accordance with Clause 19 (*System Failure*); and
 - (h) any other information specified in this Agreement,
- (together the "Records").

42.4 The Service Provider shall procure that each Sub-Contract contains equivalent:

- (a) rights of audit, inspection and access in favour of TTL and the TfL Group (and any Third Party to whom rights of audit, inspection and access are granted pursuant to this Clause 42); and
 - (b) obligations on the relevant Sub-Contractor,
- to those set out in this Clause 42.

Rights of audit

42.5 TTL Personnel may

- (a) at any time during the Term; and
- (b) during 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 five (5) Working Days' prior notice or such shorter notice as is reasonable in the circumstances but no more than twice in any twelve (12) month period, undertake any:

- (i) inspection of the Services, LCHS Assets and Service Systems; and
- (ii) audit or check of the Records and any matter relating to the Service Provider's performance of its obligations under this Agreement, including:
 - (A) the recording and calculation of:
 - 1) Service Charges;
 - 2) Service Failure Deduction Points; and
 - 3) Service Failure Deductions;
 - (B) the Gainsharing provisions set out in Schedule 23 (*Gainsharing*);

- (C) the implementation of the Security Policy and compliance with Schedule 14 (*Security Policy*);
- (D) compliance with Schedule 25 (*Business Continuity*);
- (E) the operation of the Management Information System;
- (F) compliance with the data protection provisions in set out in Schedule 15 (*Information Compliance*);
- (G) Testing conduct, methodology and procedures; and
- (H) the evaluation of claims, Compensation Events or variations to the Agreement and/or Services.

42.6 The Service Provider shall grant identical inspection, audit and/or checking rights to those described in Clause 42.5 above 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 (or such other period as may be prescribed by Law) following termination or expiry of this Agreement.

42.7 The Service Provider shall, at no additional cost to TTL or the TfL Group, promptly cooperate in relation to any inspection, audit or check, including to the extent relevant to the particular inspection, audit or check:

- (a) granting, or procuring the granting of access to:
 - (i) any premises (including the Premises and a Sub-Contractor's premises) used in the Service Provider's performance of its obligations under this Agreement, whether the Premises;
 - (ii) any equipment (including all LCHS Assets and Service Systems) used (whether exclusively or non-exclusively, although in terms of non-exclusively subject to any reasonable requirements of the Service Provider relating to health and safety, Third Party confidentiality and non-disruption to the Service Provider's normal business operations) in the performance of the Service Provider's obligations under this Agreement, wherever situated and whether the Service Provider's own equipment, a Sub-Contractor's equipment or otherwise; and
 - (iii) any Data dictionary and the fields and records within it to enable Data (including standing data and transaction data processed by the Service Systems and security settings) to be downloaded from any computer Systems operated by the Service Provider or a Sub-Contractor;
- (b) ensuring that appropriate security systems are in place in accordance with Schedule 14 (*Security Policy*) to prevent unauthorised access to, extraction of and/or alteration to, Data during an inspection, audit or check;
- (c) making the Documentation, Records and any information and logs to be maintained under this Agreement (whether exclusively or non-exclusively) available for inspection;
- (d) providing a reasonable number of copies of any documents or records and/or granting copying facilities for the purposes of making such copies;

- (e) maintaining Service Systems journal records for a minimum period of twelve (12) Months irrespective of the occurrence of any fraudulent act, suspected fraudulent act or security breach;
- (f) complying with reasonable requests of TTL Personnel for access to Service Provider Personnel (and where necessary Sub-Contractor Personnel) engaged in the performance of the Service Provider's obligations under this Agreement;
- (g) procuring that all Service Provider Personnel (and where necessary Sub-Contractor Personnel) fully co-operate with TTL Personnel in relation to any audit, or inspection or check conducted pursuant to this Clause 42; and
- (h) providing all reasonably requested support at the premises (including the Premises and a Sub-Contractor's premises) to TTL Personnel in the discharge of their functions and allowing them use of suitable office accommodation (if necessary).

Audit Methodology

42.8 Without limitation to the generality of the foregoing provisions of this Clause 42, the Audit Methodology of the Service Provider will be subject to audit by the relevant member of the TfL Group from time to time. The Service Provider shall:

- (a) ensure that:
 - (i) the Audit Methodology identifies omissions in the relevant process being audited; and
 - (ii) all features, functions and facilities ascribed as part of the Services, LCHS Assets and Service Systems (or any parts of them) which are not provided or managed by the Service Provider in accordance with this Agreement are identified and addressed;
- (b) provide details of the Audit Methodology, which shall be:
 - (i) at least equivalent to Good Industry Practice; and
 - (ii) to TTL's satisfaction;
- (c) if TTL considers that the Audit Methodology is not at least equivalent to Good Industry Practice, TTL shall be entitled to require the Service Provider to:
 - (i) adopt a more rigorous Audit Methodology in line with Good Industry Practice. Such methodology shall be adopted by the Service Provider as the Audit Methodology within twenty-five (25) Working Days of TTL serving notice on the Service Provider requiring it to do so; and/or
 - (ii) implement any other recommendations made by TTL Personnel in relation to the Audit Methodology from time to time at no additional cost to TTL; and
- (d) implement the Audit Methodology.

42.9 TTL shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or its Sub-Contractors or delay the provision of the Services.

Failure to Comply

42.10 Without prejudice to Clause 42.8 above, if TTL, as a result of audit, inspection or check whether or not undertaken in accordance with this Clause 42, identifies any failures by the Service Provider in complying with its obligations under this Agreement, TTL Personnel may notify the Service Provider to this effect. Promptly following receipt of such notice, and in any event no later than twenty (20) Working Days from the date of such notice, the Service Provider shall rectify such failures to the satisfaction of TTL, at no cost to TTL.

Inaccurate Information

42.11 In the event that an inspection, audit or check reveals that information previously supplied to TTL Personnel pursuant to this Clause 42, or otherwise, was inaccurate and:

- (a) such information was inaccurate in any material respect; and/or
- (b) any inaccuracy results in or creates any adverse impact on TTL and/or TfL Group, the business of TfL Group or the London Cycle Hire Scheme,

the cost incurred by TTL and the Service Provider in respect of any such inspection, audit or check shall be borne solely by the Service Provider.

42.12 In the event of dispute concerning:

- (a) the existence of an inaccuracy under Clause 42.11 above;
- (b) whether fraudulent activity on the part of the Service Provider, Service Provider Personnel or its Sub-Contractors has taken place;
- (c) the extent of such fraudulent activity; and/or
- (d) any matters concerning an audit certificate,

the Dispute Resolution Procedure shall apply.

42.13 In respect of any accounting information supplied by the Service Provider to TTL Personnel such statement shall, at the request of TTL Personnel, be accompanied by a separate audit certificate from the appointed auditor of the TfL Group or an independent auditor nominated by the TfL Group and, subject to Clause 42.11 above, the reasonable cost of such audit certificate to be borne by TTL.

Best Value Authority

42.14 The Service Provider acknowledges that the TfL Group is a best value authority for the purposes of the Local Government Act 1999 and as such TTL (as part of the TfL Group) 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. Without prejudice to the provisions of Clause 3 (*Value for Money Review*) and Clause 20 (*Continuous Improvement and Cost Reduction*), the Service Provider shall assist TTL (as part of the TfL Group) to discharge its duty wherever possible, and in doing so, it shall inter alia carry out any reviews of the Services requested by TTL Personnel from time to time. The Service Provider agrees to negotiate in good faith (acting reasonably) any Changes to the Services and Agreement in order for TTL (as part of the TfL Group) to achieve best value.

43 Open Book

43.1 The Service Provider shall:

- (a) provide to TTL Personnel information on a Monthly basis (or more frequently as the Parties may agree in writing) in accordance with the template set out in Schedule 30 (*Open Book Template*) together with such supporting information as TTL may reasonably require;
- (b) ensure that the proportion of central overhead allocated to the provision of the Services shall be certified by the Service Provider's chief financial officer to the effect that it is equivalent to other allocations of such overhead in respect of comparable business units (in terms of size and nature of business) within the Service Provider; and
- (c) prepare and provide the Project Accounts in accordance with the provisions of Clauses 43.1(a) and 43.1(b) above.

PART 15: CONTRACT RISK MANAGEMENT

44 Intellectual Property Rights

The Parties shall have the relevant rights and shall comply with the obligations of Schedule 41 (*Intellectual Property Rights*) in respect of Intellectual Property Rights.

45 Novation or Management of Supply Contracts

45.1 TTL shall be entitled from time to time, by notice to the Service Provider, to require the Service Provider to propose terms on which the Service Provider would be prepared to:

- (a) accept the novation to the Service Provider of one or more of the Supply Contracts (each relevant Supply Contract referred to in such notice being a "Notified Supply Contract"), such novation to have effect from the effective date of the relevant Notified Supply Contract or such other date as TTL may specify (the "Novation Date");
- (b) manage each Notified Supply Contract from the Novation Date until the date of agreement of appropriate novation arrangements (subject to Clause 45.4(d) below) in the event that such novation arrangements are not agreed on or before the Novation Date, including by providing:
 - (i) the Interim Management Services in respect of such Notified Supply Contracts; and/or
 - (ii) such other services as may be agreed pursuant to the Change Control Request Procedure in relation to such Notified Supply Contract(s);
- (c) manage one or more of the Notified Supply Contracts (each relevant Supply Contract referred to in such notice being a "Managed Contract") from such date as TTL may specify (the "Management Effective Date"), including by providing:
 - (i) the Management Services described in Schedule 20 (*Management Services*) in respect Managed Contracts; and/or
 - (ii) such other services as may be agreed pursuant to the Change Control Request Procedure in relation to such Managed Contract(s);

- 45.2 TTL may require the Service Provider to provide an Initial Response and/or Impact Assessment in respect of one, some or each of the scenarios described above (and in respect of one or more different Novation Dates and/or Management Effective Dates) for any particular Supply Contract(s).
- 45.3 Where the Notified Supply Contract is with a Power Provider, the notice issued by TTL pursuant to Clause 45.1 above will be deemed to be a Change Control Request for a Mandatory Change (and TTL may if it deems it appropriate, in its absolute discretion, accept novation or manage each relevant Notified Supply Contract by raising a Mandatory Change on the basis of the relevant terms produced by the Service Provider in accordance with this Clause 45). All other notices issued by TTL pursuant to Clause 45.1 above will be deemed to be a Change Control Request for a General Change.
- 45.4 Where pursuant to the application of Clauses 45.1 and 45.2 above, a Notified Supply Contract is to be novated to the Service Provider, then (unless otherwise agreed pursuant to the Change Control Request Procedure):
- (a) the Parties shall promptly enter into a deed of novation, substantially the form set out in Schedule 27 (*Deed of Novation*) (each a “**Deed of Novation**”) in respect of each Notified Supply Contract;
 - (b) TTL shall procure that the relevant member of the TfL Group uses its best endeavours to procure that each relevant Other Service Provider executes the Deed of Novation promptly. Where the Other Service Provider refuses to execute the Deed of Novation, the Service Provider shall participate in any necessary negotiations with the relevant Other Service Provider and relevant member of the TfL Group in good faith in order to reach agreement;
 - (c) during the period, if any, from the later of the Novation Date or the date on which pursuant to Clause 45.3 above the applicable Change comes into effect, to the date of execution of the Novation Deed (the “**Interim Period**”), the Service Provider shall provide the Interim Management Services;
 - (d) if the Interim Period continues for longer than ninety (90) calendar days, or such other period as the Parties may agree in writing, either Party may serve notice on the other requiring the proposed novation to be revoked. Promptly following service of such notice, TTL Personnel shall notify the Service Provider as to whether the Service Provider:
 - (i) is required to provide Management Services in relation to the Notified Supply Contract, whereupon it shall be deemed a Managed Contract, the date of such notice shall be deemed the Management Effective Date and the provisions of Clause 45.5 below shall apply; or
 - (ii) should cease to provide Interim Management Services in respect of the Notified Supply Contract;
 - (e) with effect from the date of execution of the Deed of Novation, the relevant Other Service Provider shall become a Key Sub-Contractor under this Agreement and shall cease to be an Other Service Provider; and
 - (f) the Service Provider shall not be entitled to any additional amounts due to the novation of, or otherwise in relation to, each Notified Supply Contract over and above those agreed through the Change Control Request Procedure in accordance with this Clause 45.4.

- 45.5 In the event that the Service Provider is required to manage any Managed Contract pursuant to Clause 45.1 or 45.4(d)(i) above, then, unless otherwise agreed pursuant to the Change Control Request Procedure:
- (a) the Service Provider shall from the Management Effective Date:
 - (i) provide the Management Services;
 - (ii) promptly advise TTL 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;
 - (iii) promptly send to TTL a copy of all notices and other communications between the Service Provider and the Managed Contractors which may or will affect the relevant member of the TfL Group's rights and obligations under the Managed Contract, whether the same are sent or received by it;
 - (iv) promptly advise TTL 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*);
 - (v) comply with all reasonable instructions of TTL Personnel in relation to its management of the Managed Contracts;
 - (b) in no event shall the Service Provider have authority to do, or seek or purport to do, any of the following:
 - (i) amend or vary any provisions of the Managed Contracts, whether orally or in writing or otherwise;
 - (ii) terminate the Managed Contracts; and/or
 - (iii) waive any of relevant member of the TfL Group's rights under, or any of the Managed Contractors' obligations under, the Managed Contracts; and
 - (c) the Service Provider shall:
 - (i) have no authority, and shall not hold itself out, or permit any person to hold itself out, as being authorised, to bind TTL or any member of the TfL Group in any way, and shall not do any act which might reasonably create the impression that the Service Provider is so authorised;
 - (ii) 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 TTL or any member of the TfL Group, nor pledge the credit of TTL or any member of the TfL Group;
 - (iii) 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:
 - (A) the Managed Contracts, or any contract in connection with the Managed Contracts; or
 - (B) the affairs of TTL or any member of the TfL Group in relation to the Managed Contracts or any of those other contracts; and

- (iv) immediately inform TTL if any of the foregoing occurs or is suspected to have occurred or is likely to occur.

45.6 The Service Provider agrees that, notwithstanding anything to the contrary under Clause 45.5 above, the provisions of Clause 73 (*Relationship of the Parties*) shall (without limiting those provisions) apply in respect of the Management Services.

46 Business Continuity

46.1 The Service Provider shall throughout the Term comply with the provisions of Schedule 25 (*Business Continuity*) including creating, maintaining and updating the Business Continuity Plan, which shall:

- (a) be capable of mitigating, in accordance with Good Industry Practice, any adverse impact on the LCHS Assets, Service Systems and Services in any circumstances where the ability of the Service Provider to provide the LCHS Assets, Service Systems and 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 TTL Personnel, in respect of which the Service Provider will consult with TTL and incorporate TTL's requirements.

46.2 Throughout the Term, the Service Provider will:

- (a) review, update and maintain the Business Continuity Plan to ensure that the Business Continuity Plan is at all times commensurate with the LCHS Assets, Service Systems and Services provided and total volume of business managed and administered and Services provided by the Service Provider. Such updates shall be provided on such dates as the Parties may agree from time to time in writing and as TTL may reasonably request from time to time; and
- (b) produce all updates and amendments required under Clause 46.2(a) above in advance of any agreed or anticipated volume increases in, or Changes to, the Services.

47 Security Policy

47.1 The Service Provider shall throughout the Term comply with the provisions of Schedule 14 (*Security Policy*), including ensuring that Service Provider Personnel and its Sub-Contractors comply with the provisions of this Clause 47 and Schedule 14 (*Security Policy*).

Security Policy

47.2 The Service Provider shall, at its own cost and in accordance with the Statement of Requirements and Schedule 14 (*Security Policy*) promptly prepare:

- (a) a written review of the Security Policy (as the same may be amended from time to time pursuant to the Change Control Request Procedure) upon request from TTL from time to time and in any event at least once in each twelve (12) month period following the date of achievement of Milestone 28 (*Full Service Ready for System Testing Complete/Full Service Ready for Go-Live*); and
- (b) an updated version of the Security Policy within ten (10) Working Days, or such other period as may be expressly agreed in writing by the Parties, following the

implementation of a Change so as to incorporate the effects of that Change in the Security Policy where such Change impacts on the Security Policy,

in each case to reflect the Statement of Requirements, and submit a copy of those documents (as applicable) to TTL for Approval.

47.3 TTL shall use commercially reasonable endeavours to supply the Service Provider on reasonable notice with information that the Service Provider reasonably requires so that the Service Provider is not delayed in performing its obligations under Clause 47.2 above.

47.4 In terms of the Security Policy, the Service Provider:

- (a) shall, at all times, provide such access, facilities, information, data, documentation and assistance reasonably required by TTL Personnel and any Third Party nominated by TTL in connection with the preparation and implementation of the Security Policy and any other security requirements envisaged under this Agreement;
- (b) agrees that TTL Personnel may, notwithstanding anything to the contrary in this Agreement, share the Security Policy in form or substance with any Third Party for the purposes of the:
 - (i) LCHS Assets;
 - (ii) Service Systems;
 - (iii) Services;
 - (iv) London Cycle Hire Scheme; and/or
 - (v) this Agreement; and
- (c) shall, as soon as possible, and in any event before the end of the relevant calendar day, update the Incident Log in respect of each Security Incident in connection with the performance or otherwise of the Service Provider's obligations under this Clause 47; and
- (d) shall ensure that the Incident Log is always:
 - (i) available to TTL; and
 - (ii) accurate, up to date and complete.

Security Incidents

47.5 In the event of a Security Incident:

- (a) the Service Provider shall at the Service Provider's cost:
 - (i) as soon as possible, except where due to a Compensation Event (and subject to the Service Provider's compliance with Clause 56 (*Compensation Events*):
 - (A) correct, make good, reinstate, replace and fix all deficiencies, loss and/or damage to the Services and/or Service Systems in connection with a Security Incident; and/or
 - (B) perform or re-perform Tests or alternative tests relating to the security of the Services and/or Service Systems,

as appropriate, including within reasonable timeframes specified by TTL from time to time, to demonstrate to TTL's reasonable satisfaction that the relevant parts of the Services and Service Systems provide the features, functions, and facilities and meet the performance criteria specified in the Statement of Requirements and this Agreement including in connection with the Service Provider implementing any Security Rectification Plan pursuant to Clause 47.5(a)(ii) below;

- (ii) immediately, prepare a Security Rectification Plan, including full details of the steps to be taken by the Service Provider to perform its obligations under Clause 47.5(a)(i) above and shall, without limiting Clause 47.5(a)(i) above, submit a copy of that Security Rectification Plan to TTL for Approval and, subject to such Approval, the Service Provider shall fully carry out that Security Rectification Plan;
- (iii) promptly escalate the matter to such level of seniority within the Service Provider organisation as TTL may require; and/or

(b) TTL may exercise its Step-in Rights.

47.6 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 a material breach of this Agreement by the Service Provider giving rise for TTL to terminate this Agreement in accordance with the provisions of Clauses 62.4 and 62.9 (*Termination*) shall apply. For the purposes of Clauses 62.4 and 62.9 (*Termination*), if the Service Provider has failed to comply with the Security Rectification Plan Approved by TTL in accordance with Clause 47.5 above, such failure shall be deemed to be a breach which is not capable of remedy; and
- (b) notwithstanding Clause 47.6(a) above, a breach or failure of security in connection with the Services, LCHS Assets and/or Service Systems, except for such breaches or failures directly arising from a Compensation Event (and subject to the Service Provider's compliance with Clause 56 (*Compensation Events*)), shall be at the sole risk of and sole cost to the Service Provider.

47.7 Either Party may request changes to any document envisaged under this Clause 47 in accordance with the Change Control Request Procedure.

47.8 If any Data or information 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 at its own cost carry out (or procure the carrying out of) such remedial action as is necessary to restore such Data or information.

48 Liability

Un-excluded Liability

48.1 Nothing in this Agreement shall exclude or limit:

- (a) either Party's liability in respect of:
 - (i) death or personal injury caused by its negligence;
 - (ii) fraud or fraudulent misrepresentation; or

- (iii) breach of any obligation as to title implied by:
 - (A) section 12 of the Sale of Goods Act 1979; or
 - (B) section 2 of the Supply of Goods and Services Act 1982;
- (b) the Service Provider's liability in respect of:
 - (i) the indemnities provided in:
 - (A) Clauses 48.3 below;
 - (B) paragraph 8.7 of Schedule 16 (*Assignment of Licences and Relevant Contracts*);
 - (C) paragraph 5 (*Intellectual Property Rights Indemnity*) of Schedule 41 (*Intellectual Property Rights*); and
 - (D) paragraph 7 (*Indemnities*) of Schedule 39 (*Service Provider Personnel*);
 - (ii) breach by the Service Provider of:
 - (A) Clause 50 (*Information Compliance*), insofar as it relates to fines, court awards, settlements and legal costs; and
 - (B) Clause 53 (*Corrupt Gifts or Payment and Fraud*);
 - (iii) damage to any Third Party property as a result of the carrying out or any acts or omissions relating to the Works;
- (c) TTL's liability in respect of the indemnities provided in:
 - (i) paragraph 8.8 of Schedule 16 (*Assignment of Licences and Relevant Contracts*);
 - (ii) paragraph 4 (*Intellectual Property Rights Indemnity*) of Schedule 41 (*Intellectual Property Rights*); and
 - (iii) paragraph 7 (*Indemnities*) of Schedule 39 (*Service Provider Personnel*).

Excluded Heads of Loss

48.2 Subject to Clause 48.1 above, neither Party shall be liable to the other under or in relation to this Agreement for

- (a) loss of goodwill;
- (b) loss of reputation;
- (c) loss of anticipated savings;
- (d) loss of profit; and
- (e) any indirect, special or consequential losses or damages howsoever arising.

Indemnities in favour of TTL Indemnified Parties

48.3 The Service Provider indemnifies and holds harmless, the TTL Indemnified Parties from and against all claims, demands, actions, proceedings, damages, losses, costs and expenses incurred or suffered by the TTL Indemnified Parties, howsoever arising from any breach of the Service Provider's obligations under the following paragraphs of Schedule 32 (*Revenue Collection and Payment*):

- (a) paragraph 3 (*Collection Accounts*);
- (b) paragraph 5 (*Merchant Acquirer Agreements, Declined Payments and Merchant Acquirer Services*); and
- (c) paragraph 6 (*Direct Debit*),

save that the Service Provider is not liable under this indemnity to the extent that liability under paragraphs 3.6 (*Collection Accounts*) or 6.2 (*Direct Debit*) of Schedule 32 (*Revenue Collection and Payment*) has arisen due to a Third Party's acts or omissions and the Service Provider is not otherwise negligent or in breach of this Agreement.

48.4 The Service Provider indemnifies and holds harmless, the TTL Indemnified Parties from and against all claims, demands, actions, proceedings, damages, losses, costs and expenses arising from any breach of the Service Provider's obligations under paragraphs 4.2 (*Site Design and Site Specific Plan*), 7.1(E) (*Terminal and Docking Station Implementation*) and 8.3(E) (*Site Management and Traffic Management*) of Schedule 37 (*Docking Station Implementation and Traffic Management*), save where any such actions, costs, claims, demands, charges or expenses result from any act or neglect, fault or omission on the part of the TTL Indemnified Party. The indemnity set out in this Clause 48.4 is subject to Clause 48.2 (*Excluded Heads of Loss*) above and Clause 48.7 (*Service Provider's Limitation of Liability*) below.

48.5 The Service Provider indemnifies and holds harmless, the TTL Indemnified Parties from and against all claims, demands, actions, proceedings, damages, losses, costs and expenses incurred or suffered by the TTL Indemnified Parties, howsoever arising from any claim, demand, action or proceeding made by a:

- (a) Customer;
- (b) user of a Bicycle (including a user who has not been permitted by a Subscriber or otherwise to use the Bicycle); and/or
- (c) a Third Party arising from the use of a Bicycle by a Customer or any user (permitted or not),

against the TTL Indemnified Parties arising out of or in connection with any breach by the Service Provider of this Agreement. The indemnity set out in this Clause 48.5 is subject to Clause 48.2 (*Excluded Heads of Loss*) above and Clause 48.7 (*Service Provider's Limitation of Liability*) below.

Service Provider's Limitation of Liability

48.6 The Service Provider's liability for lost, stolen or vandalised Cycling Assets to the extent that such liability does not arise from the Service Provider's tort (including negligence) or breach of this Agreement is as set out in paragraph 11.1 (*Operational Services: Variable Monthly Operational Charges*) of Schedule 7 (*Charging*). The amount of such liability shall not erode or be attributable to the liability caps set out in Clause 48.7 below. The Service Provider's liability for Cycling Assets which are lost, stolen or vandalised due to

the tort (including) negligence or breach of this Agreement by the Service Provider is subject to Clauses 48.1, 48.2, and 48.5 above and Clauses 48.7 and 48.11 (*Unaffected Rights*) below.

- 48.7 Subject to Clauses 48.1 (*Unexcluded Liability*), 48.2 (*Excluded heads of loss*) and 48.6 above and Clause 48.11 (*Unaffected Rights*) below, the Service Provider's liability whether arising from tort (including negligence), breach of contract or otherwise, shall in no event exceed, in relation to any and all causes of action arising out of and/or in connection with:
- (a) the provision of Design Services and/or Build Services, shall be limited to the greater of:
 - (i) £10 million; or
 - (ii) 100% of Service Charges for Design Services and Build Services paid or would be payable but for the breach of contract or act or omission which gave rise to the liability;
 - (b) the provision of the Operational Services, during each Operating Year of the Initial Term shall be limited to the greater of:
 - (i) £10 million; or
 - (ii) 100% of the Service Charges paid (or payable but for the breach of contract or act or omission which gave rise to the liability for such Services) for the applicable Operating Year;
 - (c) the provision of Services from the Expiry Date or Termination Date and in respect of any obligations which continue beyond such expiry or termination, the relevant aggregate limit set out in Clauses 48.7(a) and 48.7(b) above that applied immediately preceding such expiry or termination shall continue to apply.

TTL's Limitation of Liability

- 48.8 Subject to Clauses 48.1 (*Unexcluded Liability*), 48.2 (*Excluded Heads of Loss*) above and 48.11 (*Unaffected Rights*) below, TTL's liability in respect of all other losses, whether arising from tort (including negligence), breach of contract or otherwise, TTL's liability shall in no event exceed, in relation to any and all causes of action during the provision of the Services the amount equivalent to the Termination Compensation if TTL had terminated this Agreement pursuant to Clause 62.5 (*Termination*).

Conduct of Claims

- 48.9 Subject to TTL's rights under Clause 48.10 below each Party's rights under this Agreement to be indemnified (the "**Indemnified Party**") shall be contingent on:
- (a) the Indemnified Party:
 - (i) shall not make any admission of liability or act in a way which might reasonably be interpreted as an admission of liability or as a settlement of any action, claim or proceeding (in whole or in part) without the prior express written consent of the Party providing the indemnity (the "**Indemnifying Party**") and their insurers if appropriate;
 - (ii) promptly notify the Indemnifying Party of any such action, claim or proceeding;

- (iii) take reasonable steps to mitigate and provide documentary evidence of all losses so claimed; and
 - (iv) providing such assistance to the Indemnifying Party as the Indemnifying Party may reasonably request. The Indemnifying Party shall bear the reasonable costs of the Indemnified Party in providing such assistance;
- (b) the Indemnifying Party having the right to assume full conduct of all discussions, negotiations, actions, claims and proceedings in relation to which it has or may have any obligation to indemnify the Indemnified Party under this Agreement, and the Indemnifying Party shall regularly consult with and take reasonable heed of comments made by the Indemnified Party and use all reasonable endeavours not to act in a way detrimental to the reputation or business of the Indemnified Party.

Except that this Clause 48.9 shall not apply to the indemnities set out in Schedule 41 (*Intellectual Property Rights*).

48.10 In the event of any claim made by a Customer and/or a Third Party against any member of the TfL Group, including such claims to which the indemnities in Clauses 48.3 and 48.4 (*Indemnities in favour of TTL Indemnified Parties*) above apply:

- (a) the relevant member of the TfL Group shall:
 - (i) be given sole and full conduct of all such discussions, negotiations, actions, claims and proceedings; and
 - (ii) promptly notifying the Service Provider of any such action, claim or proceeding; and
- (b) the Service Provider shall provide the relevant member of the TfL Group with such reasonable assistance as TTL and the relevant member of the TfL Group may request.

Unaffected Rights

48.11 Nothing in this Clause 48 shall exclude or limit:

- (a) the right of the Service Provider to recover, or the obligation of TTL to pay, the:
 - (i) Milestone Payments;
 - (ii) Operational Charges;
 - (iii) Pass Through Costs; and
 - (iv) any amounts of Termination Compensation,which are properly due under this Agreement; or
- (b) the right of TTL to:
 - (i) receive from the Service Provider, any Revenue collected by or on behalf of the Service Provider;
 - (ii) claim Liquidated Damages; or
 - (iii) deduct Service Failure Deductions.

Extension to Limitation Period for Works

48.12 Notwithstanding that this Agreement is executed underhand, and any other provision of this Agreement, the Service Provider shall remain liable for any action or proceedings for any breach of any provision of this Agreement relating to the Works commenced against the Service Provider at any point up to the date of twelve (12) years from the date of completion of the Works.

49 Insurance

49.1 The Service Provider shall, throughout the Term of this Agreement (and any other period stated in this Clause 49), arrange and maintain policies of insurance of the following types and levels of indemnity (the “Insurances”):

- (a) with effect from the Effective Date public and product liability insurance:
 - (i) in respect of the Service Provider’s liability for loss or damage to property (including property of the TfL Group); and
 - (ii) against liability in respect of death, injury, illness or disease,
up to a limit of at least ten million pounds (£10,000,000) on an each and every occurrence basis and in the aggregate for product liability with a maximum excess of one hundred thousand pounds (£100,000);
- (b) with effect from the Effective Date employer’s liability insurance in respect of the Service Provider’s liability for death, personal 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 and every occurrence save in respect of terrorism where the Insurance shall be subject to a sub-limit of at least five million pounds (£5,000,000);
- (c) from the Effective Date until the later of the Operational Commencement Date and/or completion of the Works, insurance (including terrorism cover) against loss or damage in respect of the Works and all other fixtures, fittings, plant, machinery and apparatus from time to time in and upon any Site in an amount not less than the full reinstatement cost for the time being of the Works and LCHS Assets (including professional fees, the cost of debris removal and Value Added Tax where applicable and taking account of inflation during the period of insurance for the period from the date of damage or destruction to the likely date of reinstatement);
- (d) from the Operational Commencement Date, material damage insurance on an all risks basis, including terrorism cover, in respect of all LCHS Assets (and any TTL Systems or Other Service Provider Systems situated at the Premises, to the extent the Service Provider has control over and/or possession of them) for their full replacement value from time to time, together with business interruption cover in relation to the Service Provider’s costs and loss of income; and
- (e) with effect from the Effective Date professional indemnity insurance up to a limit of at least ten million pounds (£10,000,000) (with a maximum excess of on hundred thousand pounds £100,000) in the annual aggregate for the period of the Term and thereafter for a further period of six (6) years thereafter.

49.2 The Service Provider shall, throughout the Term of this Agreement (and any other period stated in this Clause 49), arrange and maintain the Insurances with a reputable insurer or insurers rated with a Standard & Poors Financial Standard Rating of A- or higher (or equivalent agency financial standard rating). In the event that one or more of the

Insurances is entered into with an insurer who subsequently falls below an A- Standard & Poors Financial Standard Rating (or equivalent), or otherwise is downgraded by two (2) or more levels, the Service Provider shall notify TTL in writing. In these circumstances the Service Provider shall, if required by TTL, replace the applicable Insurances with equivalent policies arranged and maintained with an insurer with a Standard & Poors Financial Standard Rating of A- or higher (or equivalent agency financial standard rating) at the Service Provider's own cost.

49.3 Fourteen (14) days prior to entering into each of the Insurances, the Service Provider shall provide an insurance specification as prepared by the Service Provider's insurance broker to TTL for review and comment.

49.4 In relation to each of the Insurances, the Service Provider shall prior to the execution of this Agreement and thereafter within five (5) Working Days of each due renewal date of the Insurance policies or at such other times as TTL may reasonably require, provide to TTL certificate of insurance in relation to Employers Liability Insurance and a "to whom it may concern" letter detailing insurance cover held issued by the Service Provider's insurance broker confirming that the Insurances are being maintained.

49.5 The Service Provider shall ensure that the Insurances:

- (a) cover the Service Provider's legal liability so far as such liability is generally insurable which may arise out of or in the course of or by reason of the Service Provider's and/or its Sub-Contractors' performance, non-performance or part-performance of its obligations under or in connection with this Agreement; and
- (b) which both TTL and the Service Provider are named insureds, provide that a vitiating act committed by one insured Party shall not prejudice the right to claim of any other insured Party who has an insured interest and who has not committed a vitiating act.

49.6 The public and product liability insurance policy referred to in Clause 49.1(a) above shall extend to provide protection to TTL under the provisions of an "indemnity to principals" clause and shall:

- (a) be endorsed to provide that no act or omission on the part of the Service Provider or its Sub-Contractors shall prejudice TTL's rights under such policy;
- (b) not contain any exclusion prohibiting insured versus insured claims, to the extent that this would prevent the Service Provider receiving an indemnity under the policy for claims made by the Tfl Group against the Service Provider; and
- (c) include a waiver of the insurer's rights of subrogation against TTL.

49.7 In respect of:

- (a) the public and product liability policy referred to in Clause 49.1(a) above; and
- (b) the professional indemnity insurance referred to in Clause 49.1(e) above,

the Service Provider shall notify TTL of any claim arising other than in connection with this Agreement, which results in an erosion of the policy aggregate limit of liability of fifty thousand pounds (£50,000) or more. Such erosion shall be reinstated by the Service Provider at its own cost.

49.8 The insurance policy referred to in Clause 49.1(c) above shall:

- (a) be in the joint names of TTL and the Service Provider; and

- (b) include a waiver of the insurer's rights of subrogation against TTL.
- 49.9 The material damage insurance policy referred to in Clause 49.1(d) above shall be in the joint names of TTL and the Service Provider and shall be endorsed to note a waiver of the insurer's rights of subrogation against TTL. However, TTL shall reimburse the Service Provider for any excess incurred by the Service Provider in respect of any insurance claim where such claim arises from loss or damage to LCHS Assets caused by the negligence of TTL or TTL's employees, servants or agents.
- 49.10 The Service Provider's public and product liability insurance policy shall be worded so that any custody and control exclusion shall not exclude liability of the Service Provider in respect of any loss or damage to premises of TfL Group that are occupied by the Service Provider for the purpose of performing the Services.
- 49.11 The Service Provider shall:
- (a) ensure that:
 - (i) all claims under the Insurances are dealt with promptly and diligently; and
 - (ii) the terms and conditions of the Insurances and all reasonable requirements of the insurers, including, in connection with the prosecution, defence and settlement of claims, the recovery of losses and the prevention of accidents are complied with;
 - (b) bear the cost of all exclusions and limitations under such Insurances and shall pay for any excess or deductible save where a claim is caused by the negligence of TTL in which case the cost shall be borne by TTL.
- 49.12 The Service Provider shall not take nor fail to take any action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 49.13 In relation to all the Insurances (except employer's liability insurance and professional indemnity insurance), the Service Provider agrees that TTL 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.
- 49.14 The Service Provider shall:
- (a) give TTL no 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;
 - (b) notify TTL as soon as reasonably practicable in writing of:
 - (i) 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;
 - (ii) any matter likely to affect the decision of the insurers to grant or to continue any of the Insurances; and
 - (iii) any event which might materially affect any such Insurances.
- 49.15 In the event of a claim being made under any material damage insurance, the proceeds shall be applied in making good the loss or damage in respect of which the claim is made.

49.16 If the Service Provider is in breach of its obligation to arrange and maintain the Insurances or cause the Insurances to be arranged and maintained, as required under Clause 49.1 above, TTL may at its absolute discretion:

- (a) pay any premiums required to keep such Insurances in force or procure such Insurances, and, in either case, recover from the Service Provider all costs, expenses or other amounts as TTL may incur; or
- (b) terminate this Agreement immediately upon written notice.

50 Information Compliance

50.1 Each Party shall have the relevant rights and shall comply with the obligations set out in Schedule 15 (*Information Compliance*) in relation to the Data Protection Act and FOI Legislation.

50.2 Without limiting the provisions within Schedule 15 (*Information Compliance*), the Service Provider shall, and shall procure that the Sub-Contractors shall:

- (a) provide all such assistance as may reasonably be required by TTL Personnel;
- (b) ensure that all TTL Personal Data Processed by the Service Provider and/or its Sub-Contractors on behalf of the TfL Group pursuant to this Agreement is processed in accordance with the requirements of the Data Protection Act and Data Protection Legislation;
- (c) comply with:
 - (i) all notification requirements and requests, including those made under the Data Protection Act, Data Protection Legislation and FOI Legislation, reasonably made by any member of the TfL Group;
 - (ii) the international Information Security Standard ISO 27001 (as amended from time to time) or such other standards as may from time to time replace, amend or augment such standard; and
 - (iii) the further obligations set out in Schedule 15 (*Information Compliance*),

so as to enable each member of the TfL Group to comply with its obligations under the Data Protection Act, Data Protection Legislation and FOI Legislation.

51 Health and Safety

General

51.1 The Service Provider shall at all times comply with, and ensure that the Service Provider Solution and Detailed Design and performance of all of the Service Provider's obligations under this Agreement complies with, all:

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

51.2 The Service Provider shall:

- (a) be responsible for the observance by itself, Service Provider Personnel and its Sub-Contractors of all current and relevant health and safety precautions necessary for the protection of itself, Service Provider Personnel, its Sub-Contractors and other

persons invited onto or visiting the Premises and the Sites, including all precautions required to be taken by or under any Health and Safety Legislation;

- (b) conduct:
 - (i) formal risk assessments from time to time of all aspects of the Services, LCHS Assets and Sites in accordance with the requirements of all applicable Health and Safety Legislation; and
 - (ii) 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 of the LCHS Assets, equipment or materials or other things in connection with the Services;
- (c) ensure that:
 - (i) there will be present at the Premises or Sites where the Works are performed at all times during Working Hours at least one individual (or such greater number required by law) suitably qualified in first aid; and
 - (ii) all necessary first aid supplies are:
 - (A) provided by the Service Provider; and
 - (B) adequate for first aid purposes and meet relevant health and safety standards;
- (d) strictly comply with, and shall procure that Service Provider Personnel and its Sub-Contractors strictly comply with, such induction training procedures, safety training procedures and Site procedures as:
 - (i) are required by Health and Safety Legislation; and
 - (ii) TTL Personnel may reasonably require from time to time.

51.3 In the event that a health or safety risk has arisen or is likely to arise in any part of the Premises or Sites at or from which the Service Provider provides Services, the Service Provider shall:

- (a) notify TTL promptly in writing;
- (b) provide TTL 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; and
- (c) promptly take such steps and adopt such safeguards.

Obligations under the CDM Regulations

51.4 TTL acknowledges and accepts that:

- (a) it is the Client in respect of the Works for the purposes of the CDM Regulations; and
- (b) it shall perform the duties imposed on a Client by the CDM Regulations.

51.5 TTL shall appoint David Brede as the CDM Co-ordinator for the purposes of the CDM Regulations or, if they cease to be the CDM Co-ordinator, such other person as TTL shall appoint pursuant to Regulation 14(1) of the CDM Regulations.

- 51.6 TTL appoints the Service Provider as Principal Contractor for the purposes of the CDM Regulations or, if the Service Provider ceases to be the Principal Contractor, such other contractor as TTL shall appoint pursuant to Regulation 14(2) of the CDM Regulations.
- 51.7 Each Party acknowledges that it is aware of and undertakes to the other that in relation to the Works and Sites, it shall duly comply with the CDM Regulations and its obligations set out in Schedule 37 (*Docking Station Installation and Traffic Management*). Without limitation where a project that comprises or includes the Works is notifiable:
- (a) where the Service Provider is and while it remains the Principal Contractor, it shall ensure that:
 - (i) the Construction Phase Plan is prepared and received by TTL prior to the commencement of construction work under this Agreement; and
 - (ii) any subsequent amendment to Construction Phase Plan by the Service Provider is notified to TTL and the CDM Co-ordinator; and
 - (iii) welfare facilities complying with schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase;
 - (b) where the Service Provider ceases to be the CDM Co-ordinator, promptly upon the written request of the CDM Co-ordinator, the Service Provider shall provide, and shall procure that any Sub-Contractor provides, the CDM Co-ordinator (or, if the Service Provider is not the Principal Contractor, to the Principal Contractor) such information as the CDM Co-ordinator reasonably requires for the preparation of the health and safety file.
- 51.8 If TTL, by a further appointment, replaces the CDM Co-ordinator, TTL shall immediately upon such further appointment notify the Service Provider in writing of the name and address of the new appointee.
- 51.9 If TTL appoints a successor to the Service Provider as the Principal Contractor, the Service Provider shall at no cost to TTL comply with all reasonable requirements of the new Principal Contractor to the extent necessary for compliance with the CDM Regulations. No extension of time shall be given to the Service Provider in respect of compliance with this Clause 51.9.
- 51.10 Whether or not the Works are notifiable and/or the Service Provider is the Principal Contractor, the Service Provider shall, and shall procure that its Sub-Contractors shall, comply with schedule 2 of the CDM Regulations.

52 Representations and Warranties

- 52.1 Without prejudice to any other warranties or representations expressed elsewhere in this Agreement:
- (a) each Party hereby warrants, represents (in relation to factual statements as at the Effective Date) and undertakes that in terms of this Agreement:
 - (i) it has full capacity, authority and all authorisations, consents, approvals and permits necessary (including all necessary Shareholder and board approvals) for it to enter into and discharge its obligations under this Agreement; and
 - (ii) this Agreement has been executed by a duly authorised representative of that Party;

- (iii) it is entering into this Agreement as principal and not as agent for any person;
 - (iv) it will act as an independent contractor in carrying out its obligations under this Agreement;
 - (v) it has not, prior to or on the Effective Date, committed any of the acts referred to in Clause 53.1(a) or 53.2(a) (*Corrupt Gifts or Payment and Fraud*);
 - (vi) the provisions of the Agreement do not put that Party in breach of any other agreements to which it is a party to the extent that it would make this Agreement or the Guarantee invalid; and
 - (vii) the execution of this Agreement does not contravene the terms of any licence, regulation or other restrictions applicable to that Party;
- (b) the Service Provider hereby warrants, represents and undertakes to TTL that:
- (i) in terms of this Agreement that any and all information supplied in writing after the date of the OJEU Notice by or on behalf of the Service Provider to any member of the TfL Group or to any of its advisers, including to all responses to any clarification process of the procurement, in connection with the award of contract to the Service Provider and in response to the tender for the provision of Services made by the Service Provider was, at the time it was provided, and, except where superseded by subsequent information supplied to a member of the TfL Group, at the date hereof to the best of the Service Provider's knowledge, information and belief, true and accurate and it shall advise TTL of any fact, matter or circumstance of which it may or has become aware which would render any material statement or representation to be false or misleading;
 - (ii) in terms of its obligations under this Agreement, it shall discharge its obligations under this Agreement and provide the Services, LCHS Assets and Service Systems:
 - (A) with all reasonable skill, care and diligence;
 - (B) in accordance with:
 - 1) any specific performance standards, Service Levels or other obligations contained in this Agreement and, in the absence of any specific performance standards, Service Levels or obligations, in a timely, economic, efficient and reliable manner and in accordance with Good Industry Practice;
 - 2) all applicable Laws and, furthermore, in such a way that does not hinder or prevent any member of the TfL Group's compliance with all applicable Laws;
 - 3) the British Standards Institute's BS ISO/IEC 20000:2005 "IT Services Management Standards" as updated, amended or replaced from time to time; and
 - 4) the Information Technology Infrastructure Library ("ITIL") published by the United Kingdom Office of Government Commerce as updated, amended or replaced from time to time (and the Service Provider shall ensure that certification

of the Service Provider and each Sub-Contractor under ITIL is achieved and maintained in connection with the Services and Service Systems);

- (iii) in terms of the Services, LCHS Assets and Service Systems:
 - (A) it has:
 - 1) full knowledge of the extent and nature of TTL's requirements for and the purpose for which the Services, LCHS Assets and Service Systems are required and acknowledges that the TfL Group is relying upon the Service Provider's expertise and knowledge in the provision of the LCHS Assets, Service Systems and the Services;
 - 2) allowed for all items of work described by or referred to in this Agreement or which are otherwise necessary to provide the Services and gained adequate detail and insight into all such items of work prior to the Effective Date; and
 - 3) all licences and consents necessary to enable it to grant the licences in Schedule 41 (*Intellectual Property Rights*);
 - (B) the Build Deliverables and Design Deliverables shall:
 - 1) be free from material defects;
 - 2) be Fit for Purpose for which they are intended;
 - 3) be of satisfactory quality;
 - 4) conform strictly to the Statement of Requirements and all statements and other requirements in this Agreement;
 - (C) the Documentation provided by the Service Provider will be, and the Service Provider Solution is:
 - 1) complete and accurate; and
 - 2) suitable and sufficient to enable the TfL Group to enjoy the full benefit of the Services, LCHS Assets and Service Systems;
 - (D) the Financial Model is in all material respects accurate and complete;
 - (E) the Services shall be supplied and rendered by appropriately experienced, trained and qualified Service Provider Personnel with reasonable skill, care and diligence;
 - (F) it has title, free of all liens and encumbrances, to the TTL Assets that are transferred to TTL pursuant to Clause 55.1 (*LCHS Assets*);
 - (G) the Services, LCHS Assets and Service Systems shall:
 - 1) be free from material defects;
 - 2) be Fit for Purpose for which they are intended;

- 3) be of satisfactory quality;
 - 4) conform strictly to the Statement of Requirements and all statements and other requirements in this Agreement; and
 - 5) comply in all respects with any Law which may be in force at the time of delivery;
- (iv) in the case of the LCHS Assets and Service Systems, they are capable of running in combination and interface appropriately with all relevant:
- (A) LCHS Assets;
 - (B) TTL Systems;
 - (C) Interested Party Systems;
 - (D) Other Service Provider Systems;
 - (E) Insurance Provider Systems; and
 - (F) Third Party Systems;
- (v) in the case of Service Systems:
- (A) the Interfaces will permit interfacing between:
 - 1) the Services Databases and any other part of the Service Systems;
 - 2) each of the Service Elements;
 - 3) the Service Systems;
 - 4) Other Service Provider Systems;
 - 5) Insurance Provider Systems; and
 - 6) Third Party Systems;
 - (B) the Service Systems:
 - 1) will be Date Compliant and Euro (€) Compliant; and
 - 2) do not include any Software licensed under an Open Source Licence unless stated as such in Schedule 28 (*Service Provider Solution*) or agreed in writing by TTL in accordance with the Change Control Request Procedure;
 - (C) it has used, and shall at all times use, the latest commercially available state of the art Virus protection Software, in accordance with Good Industry Practice, on all Service Systems and parts of the Service Systems;
- (vi) it is a company registered in the UK and shall provide all of the Services from the Premises or such other premises notified to TTL in writing in advance of the relevant Services (or any part thereof) being performed from such premises. Such written notice to specify the scope and nature of the Services (or any part thereof), the premises from which such Services

are to be provided and the rationale for such Services being performed at such premises.

The Service Provider agrees that any breach of this Clause 52.1(b)(iv) shall be deemed to be a material breach of this Agreement.

52.2 If the Service Provider is not the manufacturer and/or developer of any element of the LCHS Assets and/or Service Systems, the Service Provider shall:

- (a) obtain the same warranties as specified in:
 - (i) Clause 52.1(b)(iii)(F);
 - (ii) Clause 52.1(b)(iii) (G); and
 - (iii) Clause 52.1(b)(v)(B),from the manufacturer and/or developer;
- (b) make the benefit of such warranties as it obtains from the manufacturer and/or developer available to TTL as if they had been given to TTL directly; and
- (c) at its own cost, assist and cooperate with TTL in making claims under such warranties.

52.3 The warranties specified in:

- (a) Clause 52.1(b)(iii)(F);
- (b) Clause 52.1(b)(iii)(G);
- (c) Clause 54.1(b)(iii)(C); and
- (d) Clause 52.2 above,

shall survive any inspection, acceptance and payment in respect thereof by TTL and shall inure to the benefit of TTL, its agents, successors in interest and assigns.

52.4 If at any time the Service Provider becomes aware or TTL Personnel notifies the Service Provider of a failure of all or any part of the Services to comply with the warranties (a "Failure"), without prejudice to any other rights or remedies available to TTL, 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 resolve the Failure to TTL for comment;
- (b) take into account any comments or requested amendments received from TTL in preparing a final remedial action plan; and
- (c) implement the final remedial action plan with the object of resolving any Failures, save to the extent provided for under Clause 19 (*System Failure*).

52.5 For the purposes of construing the warranties and representations in this Clause 52, references to the Services, LCHS Assets and Service Systems shall include any part of the Services, LCHS Assets and Service Systems (as applicable).

52.6 Each warranty and representation shall:

- (a) be construed as a separate warranty or representation; and
- (b) subject to:
 - (i) Clause 48 (*Liability*);
 - (ii) Clause 56 (*Compensation Events*);
 - (iii) Clause 59 (*Relief Events*); and
 - (iv) Clause 60 (*Force Majeure*),

not be limited or restricted by any other term of this Agreement during the Term of this Agreement.

52.7 The warranties and representations expressly set out in this Agreement are made in lieu of all other warranties and representations, expressed or implied, including any implied warranties of fitness for a particular purpose, satisfactory quality, adequacy or otherwise to the extent permitted by law and all such warranties and representations are expressly excluded to the fullest extent permitted by law.

53 Corrupt Gifts or Payment and Fraud

53.1 Corrupt Gifts or Payment

- (a) Save for the Service Charges, the Service Provider shall not, and shall procure that Service Provider Personnel and its Sub-Contractors shall not:
 - (i) 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 LCHS Assets, Service Systems, Services, the London Cycle Hire Scheme or the Agreement or any other agreement with any member of the TfL Group.
 - (ii) shall not conspire with any person to do any of the acts mentioned in Clause 53.1(a)(i) above.
- (b) Any:
 - (i) breach by the Service Provider of Clause 53.1(a) above; or
 - (ii) commission of any offence by the Service Provider under the Prevention of Corruption Acts 1889-1916 in relation to this Agreement or any contract with any member of the TfL Group, the Greater London Authority and/or other associated bodies,

shall entitle TTL to:

- (A) terminate this Agreement in accordance with Clause 62 (*Termination*); and
 - (B) 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 TTL as a result of, or which would not have arisen but for, the breach of this Clause 53.
- (c) The decision of TTL in relation to the foregoing provisions of this Clause 53 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 53.1.

53.2 Fraud

- (a) If any fraudulent activity comes to the attention of the Service Provider in relation to the LCHS Assets, Service Systems, Services or the London Cycle Hire Scheme, the Service Provider shall:
- (i) notify TTL by the most expeditious means available;
 - (ii) co-operate in the investigation of such fraudulent activity; and
 - (iii) implement any necessary changes to the procedures or working practices employed in the provision of the LCHS Assets, Service Systems or Services as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised.
- (b) In the event of any fraudulent activity on the part of the Service Provider, Service Provider Personnel or its Sub-Contractors, TTL shall have the right to:
- (i) terminate this Agreement in accordance with Clause 62 (*Termination*); and
 - (ii) recover from the Service Provider any cost, loss, liability or damage incurred or suffered by TTL as a result of, or which would not have arisen but for, such fraudulent activity provided that, in the case of fraudulent activity on the part of Service Provider Personnel or its Sub-Contractors, such termination right shall only be exercisable in the event that either:
 - (A) the Service Provider has not taken action which TTL, acting reasonably, considers appropriate, in relation to the relevant member of Service Provider Personnel or a Sub-Contractor; or
 - (B) such cost, loss, liability or damage arose due to or was contributed to by, the negligence or default of the Service Provider or a Sub-Contractor.

PART 16: PREMISES AND LCHS ASSETS

54 Premises

54.1 The Parties shall comply with the provisions of Schedule 18 (*Premises*) in respect of the Premises.

54.2 TTL shall grant (or shall procure TfL to grant) the Lease.

55 LCHS Assets

General

55.1 The Service Provider shall:

- (a) create, maintain and update the Asset Register in accordance with the provisions of Schedule 12 (*Asset Management*); and
- (b) comply with the Service Provider's other obligations set out in this Clause 55 and Schedule 12 (*Asset Management*) in respect of all LCHS Assets, comprising both:
 - (i) TTL Assets; and

- (ii) Service Provider Assets.

Capital Expenditure

55.2 The Service Provider shall maintain a record of all capital expenditure incurred by it in fulfilling its obligations under this Agreement. Such record shall include, as a separate line for each item of expenditure:

- (a) the price properly paid for the relevant LCHS Asset;
- (b) any discount obtained by, or reduction or special deal made available to, the Service Provider against the supplier's advertised retail price for such LCHS Asset;
- (c) the amount of VAT or sales tax (if any) properly paid by the Service Provider in respect of such LCHS Asset; and
- (d) any additional sums incurred in relation to the relevant LCHS Asset, including any warranty payments.

Title in TTL Assets

55.3 Subject to Clause 55.5 below:

- (a) the Service Provider shall ensure that, upon achievement of Milestone 28 (*Full Service Ready for Service Testing Complete/Full Service Ready for Go-Live*) (or in the case of TTL Assets procured by the Service Provider in relation to a Change, on the date specified in the relevant Change Control Request), full legal, beneficial and equitable title and property in the TTL Assets shall immediately transfer to TTL, at no cost to TTL, free from all encumbrances, charges or liens; and
- (b) with effect from the date of transfer of title to the TTL Assets to TTL, TTL shall grant to the Service Provider a licence to use the TTL Assets for the sole purpose of providing the Services and no other purpose whatsoever.

Title in Service Provider Assets

55.4 Until such time that TTL takes possession of any or all of Service Provider Assets in accordance with the provisions of:

- (a) Clause 64.2 (*Consequences of Termination, Partial Termination or Expiry*); and
- (b) Clause 63.3 (*Exit Management*),

full legal, beneficial and equitable title to and property in the Service Provider Assets shall remain vested in the Service Provider.

Risk in TTL Assets and Service Provider Assets

55.5 Notwithstanding Clauses 55.3 and 55.4 above, throughout and following the Term risk in and liability in respect of the:

- (a) TTL Assets; and
- (b) Service Provider Assets,

shall remain with the Service Provider until such time as TTL takes possession of such TTL Assets and/or Service Provider Assets pursuant to:

- (i) Clause 64.2 (*Consequences of Termination, Partial Termination or Expiry*); and
- (ii) Clause 63.2 (*Exit Management*).

Restrictions on LCHS Assets

55.6 The Service Provider shall not, without the express prior written consent of TTL:

- (a) employ any of the LCHS Assets for any use other than for the provision of the Services and under no circumstances whatsoever 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, pledge, underlet, lend or otherwise deal with the LCHS Assets or any interest in them;
- (c) allow the creation of any charge or lien over the LCHS Assets;
- (d) attach Service Provider Assets to any land or premises (other than the 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 LCHS Assets to be forfeited under any applicable law or which might jeopardise the LCHS Assets;
- (f) agree to create any floating charge of the LCHS Assets without TTL's prior written consent. Such consent may contain conditions as TTL considers at its sole discretion appropriate including that:
 - (i) TTL Assets from are excluded from the effect of such floating charge;
 - (ii) any such act does not affect the TTL Assets in any way; and
 - (iii) is subject to the right of TTL to repossess the TTL Assets at any time on termination or expiry of this Agreement or Partial Termination (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 (including the Premises) the TTL Assets are affixed to;
- (g) tamper with any identification upon the LCHS Assets.

Service Provider obligations

55.7 The Service Provider shall:

- (a) provide a full management service in respect of the LCHS Assets in accordance with the terms of this:
 - (i) Agreement; and
 - (ii) Good Industry Practice;
- (b) in relation to the LCHS Assets when not in use in accordance with terms of this Agreement:

- (i) store such LCHS Assets at the Premises (or such other place agreed in writing with TTL) in a proper manner and in conditions which adequately protect and preserve the LCHS Assets;
- (ii) ensure that such LCHS Assets are:
 - (A) stored separately from any other assets; and
 - (B) clearly identifiable as LCHS Assets and being the property of either:
 - 1) TTL; or
 - 2) the Service Provider;
- (c) ensure that all LCHS Assets are (without limiting the Statement of Requirements) at all times:
 - (i) housed, maintained and operated in accordance with:
 - (A) Good Industry Practice;
 - (B) without limiting the generality of Clause 55.7(b)(i)(A) above, the relevant manufacturer's recommendations; and
 - (C) the relevant Service Levels;
 - (ii) labelled appropriately with a unique identifying reference corresponding with the relevant entry in the Asset Register; and
 - (iii) kept in good order, repair and condition; and
- (d) provide to TTL Personnel such access to the LCHS Assets as TTL Personnel may reasonably require.

Asset Agreement

55.8 The Service Provider shall:

- (a) ensure that all LCHS Assets that the Service Provider and its Sub-Contractors acquire or use but do not own are subject to appropriate written legally binding contracts (including any relevant guarantees, warranties, licences, equipment rental or lease agreements) (the "**Asset Agreements**"), which:
 - (i) permit the Service Provider (and its Sub-Contractors) and the TfL Group to use such LCHS Assets for the purposes set out in this Agreement; and
 - (ii) provide all necessary maintenance and support in respect of the LCHS Assets in order to permit the Service Provider to comply with its obligations under this Agreement;
- (b) use all reasonable endeavours to procure that:
 - (i) except in relation to Service Provider IPR (which shall be subject to the provisions of Schedule 41 (*Intellectual Property Rights*)), the Asset Agreements relating to Service Provider Assets are assignable or transferable to TTL; and
 - (ii) the Asset Agreements relating to TTL Assets are in the name of TTL or the relevant member of the TfL Group, as directed by TTL,

at no additional cost to TTL;

- (c) ensure that the Service Provider takes all steps reasonably necessary to ensure that the Asset Agreements in respect of LCHS Assets are not breached or terminated; and
- (d) if, notwithstanding the Service Provider's compliance with Clause 55.8(c) above 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.

No relief

55.9 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 LCHS Assets, except where such defective or unsatisfactory performance is directly due to the occurrence of a:

- (a) Compensation Event; or
- (b) Force Majeure Event,

provided that the Service Provider has complied with the provisions of:

- (i) Clause 56 (*Compensation Events*) in respect of Compensation Events; or
- (ii) Clause 60 (*Force Majeure*) in respect of Force Majeure Events.

Spare Parts

55.10 The Service Provider shall be responsible for the procurement of all necessary Spare Parts and replacements for the LCHS Assets (including the Cycle Assets) as part of the Services. The cost of all such Spare Parts shall be included in the Service Charges and no additional payment shall be due in respect of the Spare Parts except as TTL may, acting reasonably, from time to time in writing expressly approve.

55.11 Spare Parts shall only be used in accordance with the Approved Maintenance Plans or, with TTL's express prior consent, in an emergency.

Replacement and disposal of TTL Assets

55.12 Upon replacement of any TTL Assets or parts due to maintenance, repair or replacement, the Service Provider shall comply with TTL's instructions in dealing with such replaced TTL Assets or parts, to either:

- (a) return such items to TTL; or
- (b) dispose of such items.

55.13 On TTL's express written notice pursuant to Clause 55.12 above, the Service Provider shall promptly dispose of TTL Assets specified in such notice and shall account to TTL for the proceeds.

55.14 The Service Provider shall:

- (a) comply with:

- (i) relevant Laws; and
- (ii) the Security Plan,

when disposing of TTL Assets and parts of TTL Assets which the Service Provider has replaced as part of the Services; and

- (b) maintain a change log of Specially Written Software, which will be provided as part of the Asset Register and shall be current to within one (1) Month of any changes to such Specially Written Software.

PART 17: SUPERVENING EVENTS

56 Compensation Events

56.1 If, and to the extent that, as a result of the occurrence of a Compensation Event, the Service Provider is unable to:

- (a) achieve Operational Commencement on the Operational Commencement Date that would otherwise apply but for the Compensation Event; and/or
- (b) comply with its obligations under this Agreement,

the Service Provider is entitled to apply for relief from its obligations and/or claim compensation in accordance with this Clause 56.

56.2 Subject to Clause 56.4 below, in order to obtain relief and/or claim compensation, the Service Provider must:

- (a) promptly after becoming aware that the Compensation Event has caused or is likely to cause delay and/or breach of an obligation under this Agreement, notify TTL of its claim for:
 - (i) an extension of time to the Operational Commencement Date;
 - (ii) payment of compensation; and/or
 - (iii) relief from its obligations under this Agreement, as appropriate;
- (b) within five (5) Working Days, or such other period as the Parties may expressly agree in writing, of receipt by TTL of the notice referred to in Clause 56.2(a) above, give full details of:
 - (i) the Compensation Event;
 - (ii) the extension of time to the Operational Commencement Date required; and
 - (iii) any amount and/or other relief claimed in accordance with this Clause 56; and
- (c) demonstrate to the reasonable satisfaction of TTL:
 - (i) the extent to which the Compensation Event was the cause of:
 - (A) the amounts claimed;
 - (B) any delay in the achievement of the Operational Commencement Date; and/or

- (C) breach of the Service Provider's obligations under this Agreement;
- (ii) neither the Service Provider nor any of Service Provider Personnel or Sub-Contractors could have avoided such occurrence or consequences by taking steps which they might reasonably have been expected to have taken without incurring material expenditure;
- (iii) the Compensation Event has given rise to the need for relief from the Service Provider's obligations under this Agreement;
- (iv) despite the occurrence of the Compensation Event, the Service Provider is using all reasonable endeavours to perform its obligations under this Agreement, including complying with the Business Continuity Plan; and
- (v) the amounts 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.

56.3 In the event that the Service Provider has complied with its obligations under Clause 56.2 above, then (as appropriate):

- (a) the Operational Commencement Date shall be postponed by such time as TTL may, at its sole discretion direct, following consideration of the period proposed by the Service Provider in accordance with Clause 56.2 above;
- (b) in the case of an additional cost being incurred by the Service Provider, TTL shall compensate the Service Provider for the actual costs properly and reasonably incurred, to the extent:
 - (i) caused or contributed to by the Compensation Event; and
 - (ii) such costs could not reasonably have been mitigated,

within thirty (30) Working Days of its receipt of a written request by the Service Provider supported by all relevant information; and

- (c) TTL shall give the Service Provider relief from its obligations under the Agreement, to the extent that the Service Provider has (subject to the Service Provider fulfilling its obligations at Clause 56.2 above) been unable to fulfil such obligations as a consequence of the Compensation Event except that the Operational Commencement Date will only be adjusted in accordance with Clause 56.3(a) above.

56.4 In the event that information is provided after the dates referred to in Clause 56.2 above, 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.

56.5 If:

- (a) the Parties cannot agree the extent of any compensation, delay incurred, relief from the Service Provider's obligations under the Agreement; or
- (b) TTL disagrees that a Compensation Event has occurred (or as to its consequences), or that the Service Provider is entitled to any relief under this Clause 56,

the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

57 NOT USED

58 NOT USED

59 Relief Events

59.1 If, and to the extent that a Relief Event:

- (a) is the direct cause of a delay to Operational Commencement on the Operational Commencement Date; and/or
- (b) adversely affects the ability of the Service Provider to perform any of its obligations under this Agreement,

the Service Provider is entitled to apply for relief from any rights of TTL arising under Clause 62 (*Termination*), subject to the provisions of Clause 62.4(f) (*Termination*).

59.2 To obtain relief, the Service Provider must:

- (a) promptly, and in any event within ten (10) Working Days after becoming aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform its other obligations, notify TTL of its claim for relief, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;
- (b) within five (5) Working Days of receipt by TTL of the notice referred to in Clause 59.2(a) above, give full details of the relief claimed; and
- (c) demonstrate to the reasonable satisfaction of TTL that:
 - (i) neither the Service Provider nor any of the Service Provider Personnel or Sub-Contractor could:
 - (A) reasonably have foreseen the occurrence or consequences of the Relief Event; and
 - (B) not have avoided such occurrence or consequences by taking steps which they might reasonably have been expected to have taken without incurring material expenditure;
 - (ii) the Relief Event has given rise to the need for relief from the Service Provider's obligations under this Agreement;
 - (iii) despite the occurrence of the Relief Event, the Service Provider is using all reasonable endeavours to perform its obligations under this Agreement, including complying with the Business Continuity Plan;
 - (iv) the 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;
 - (v) the Relief Event caused or contributed to the delay to the Operational Commencement Date; and
 - (vi) the time lost could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice, without incurring material expenditure.

- 59.3 In the event that the Service Provider has complied with its obligations under Clause 59.2 above, then:
- (a) the Operational Commencement Date shall be postponed by such time as TTL may at its sole discretion direct following consideration of the period proposed by the Service Provider in accordance with Clause 59.1 above; and
 - (b) TTL shall not be entitled to exercise its rights to terminate this Agreement under Clause 62 (*Termination*), subject to the provisions of Clause 62.4(f) (*Termination*).
- 59.4 Nothing in Clause 59.3 above shall affect:
- (a) any entitlement of TTL to make Service Failure Deductions or any deductions made as a result of Schedule 5 (*Service Level Agreement*) during the period in which the Relief Event is subsisting, except to the extent that TTL has, acting reasonably, agreed to the reduction in part or all of such deductions; nor
 - (b) TTL's Step-in Rights.
- 59.5 In the event that information required by Clause 59.2 above is provided after the dates referred to in that Clause 59.2, the Service Provider shall not be entitled to any relief during the period for which the information is delayed.
- 59.6 The Service Provider shall notify TTL if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 59.7 The Service Provider may make a Change Control Request for a General Change to TTL in accordance with Schedule 9 (*Change Control Request Procedure*) as part of its approach to overcoming the impact of the Relief Event. In addition to the obligations set out in Schedule 9 (*Change Control Request Procedure*), TTL will act reasonably in considering that Change Control Request.
- 59.8 If:
- (a) the Parties cannot agree the extent of the relief required; or
 - (b) TTL disagrees that a Relief Event has occurred or that the Service Provider is entitled to any extension of the Operational Commencement Date,
- the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

60 Force Majeure

- 60.1 Subject to Clause 60.3 below, 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.
- 60.2 If the Service Provider alone is affected by the Force Majeure Event, TTL 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.
- 60.3 The Service Provider shall not be entitled to rely upon Clause 60.1 above if and to the extent that the Service Provider has failed to comply with the Business Continuity Plan,

unless the Service Provider is prevented from complying with the Business Continuity Plan as a direct result of the Force Majeure Event.

60.4 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:

(i) mitigate the effect of the Force Majeure Event; and

(ii) 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 in the case of:

(i) the Service Provider, compliance with the Business Continuity Plan; and

(ii) either Party, the making of any alternative arrangements for resuming the performance of the relevant Party's obligations, which may be practicable without incurring material additional expense; and

(c) shall forthwith after the cessation of the Force Majeure Event:

(i) notify the other Party thereof; and

(ii) resume full performance of its obligations under this Agreement.

60.5 In the event that the Force Majeure Event occurs before Operational Commencement and if the Service Provider has complied with its foregoing obligations under this Clause 60, then subject to Clause 60.6 below, the Operational Commencement Date shall be postponed by such time as shall be reasonable for such a Force Majeure Event, taking into account the likely effect of delay.

60.6 If, on the expiry of three (3) Months after occurrence of a Force Majeure Event (or at any time thereafter), 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, TTL may terminate this Agreement in its entirety or may Partially Terminate in accordance with Clause 62 (*Termination*).

60.7 If, on the expiry of twelve (12) Months after occurrence of a Force Majeure Event, where TTL is the affected Party, the Force Majeure Event is continuing and has a material adverse effect on TTL's compliance with all or substantially all of its obligations hereunder then, for as long as such Force Majeure Event continues and has that effect, the Service Provider may terminate this Agreement in its entirety.

PART 18: STEP-IN AND TERMINATION

61 Step-in Rights

61.1 Without prejudice to any other right or remedy of TTL under this Agreement including, for the avoidance of doubt, TTL's right to terminate or to Partially Terminate this Agreement under Clause 62 (*Termination*), TTL shall have the right to exercise Step-in Rights by providing all or part of the Services, either by itself or through TTL Personnel,

its agents or sub-contractors, in accordance with the following provisions of this Clause 61 where TTL reasonably considers that one or more of the following circumstances has arisen, subject to Clause 61.2 below:

- (a) there is a Material Service Level Failure or Continuous Service Breach;
- (b) a serious risk exists to the health or safety of any persons;
- (c) at any time upon or after the occurrence of an Insolvency Event;
- (d) the Service Provider:
 - (i) commits a material breach or Persistent Breach of this Agreement;
 - (ii) has materially failed to comply with the terms of (as the case may be) the:
 - (A) Exit Plan; or
 - (B) Service Transfer Plan;
- (e) TTL is expressly so entitled pursuant to:
 - (i) Clause 19.4 (*System Failure*); or
 - (ii) Clause 47.5(b) (*Security Policy*);
- (f) a System Failure has occurred and has continued, or in TTL's reasonable opinion is likely to continue, for a period of more than five (5) Working Days and the Service Provider has either:
 - (i) not implemented the Business Continuity Plan; or
 - (ii) implemented such Business Continuity Plan (in whole or in part) but the standard of Services provided is not in accordance with Schedule 5 (*Service Level Agreement*);
- (g) a Key Milestone is delayed by more than fifteen (15) Working Days, due to an act or omission of the Service Provider;
- (h) TTL needs to do so in order to discharge any part of its statutory duties;
- (i) there is a Force Majeure Event preventing the Service Provider from performing some or all of its obligations under the Agreement; and/or
- (j) there is a Change in Law which renders performance of a material part of the Service Provider's obligations under this Agreement illegal.

61.2 If TTL believes that any of the circumstances set out in Clause 61.1 above have arisen, TTL may, following such consultation as TTL, acting reasonably, deems appropriate in the circumstances, serve notice in writing on the Service Provider (a "Step-in Notice") specifying:

- (a) which of the circumstances specified in Clause 61.1 is or are applicable;
- (b) the action TTL intends to take and the reasons for such action;
- (c) the date on which TTL intends to commence such action which, for the avoidance of doubt, may be the date that the Step-in Notice is served; and

(d) the time period which it believes will be reasonably necessary for such action.

61.3 At any time after TTL has issued a Step-in Notice, TTL may, for such period as TTL Personnel deem necessary, subject to Clause 61.11 below, 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 TTL Personnel consider appropriate. Subject to Clauses 44 (*Intellectual Property Rights*) and 71 (*Confidentiality*) but 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 TTL expressly, in the Step-in Notice, confirms that it is taking over such Services:

(i) the obligation of the Service Provider to provide such Services shall be suspended for the period specified in the Step-in Notice; and

(ii) the Service Provider shall continue to provide the Services that are not the subject of the Step-in Action in accordance with the provisions of the Agreement;

(b) entering upon the Premises from which the Services or any part of them are being provided (and the Service Provider shall procure that TTL Personnel and any Third Party engaged by the TfL Group is able to enter upon the Premises at no cost to the TfL Group or to such Third Party);

(c) having access to, and the right to use, any of the Service Systems and all records, documents (including the Documentation) and Data relevant to the provision of the LCHS Assets and/or Services;

(d) using and accessing any:

(i) Service Provider Assets; and

(ii) any premises (including the 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 required by TTL in respect of those Service Provider Assets, premises, plant, equipment and facilities. The Service Provider hereby grants to TTL Personnel and any Third Party engaged by TTL (and shall procure that its Sub-Contractors shall grant) such rights as are necessary for TTL Personnel or any Third Party to exercise TTL's rights under this Clause 61.3(d);

(e) requiring the Service Provider to enter into legally binding agreements with Third Parties for the purpose of remedying or mitigating the circumstances which gave rise to the Step-in Action (the "Arrangements"), provided that:

(i) TTL shall only be entitled to do so by requesting a Mandatory Change pursuant to the Change Control Request Procedure in relation to the same; and

(ii) unless and until a Step-Out Notice is served on the Service Provider by TTL, the Service Provider shall not do, permit to be done, omit to do or permit not to be done, anything which will or may terminate or breach the terms of such Arrangements.

The costs of all such Arrangements shall be borne as follows:

- (A) if, and to the extent that, the activities that TTL requires to be carried out through the Arrangements are not referred to, or implicit in, the Statement of Requirements or Schedule 28 (*Service Provider Solution*), by TTL; and
 - (B) in all other cases:
 - 1) where the Step-in Action arises from a Fault Trigger by the Service Provider; and
 - 2) where the Step-in Action arises from a No Fault Trigger by TTL.
 - (f) doing all other things that TTL Personnel reasonably deem necessary for the purposes of taking such Step-in Action.
- 61.4 In the event that TTL wishes to engage the services of any Third Party to assist it in the performance of the Step-in Action, TTL 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, TTL shall:
- (a) 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 Clause 71 (*Confidentiality*) prior to being engaged in any Step-in Action; and
 - (b) comply, and shall procure that the Third Party complies, with all reasonable requirements of the Service Provider in respect of use of premises (including the Premises) to which they are given access.
- 61.5 A Step-in Notice may be served and Step-in Action taken by TTL at any time, whether before, during or after the service of a notice of termination or a Partial Termination Notice pursuant to this Agreement.
- 61.6 The Service Provider shall, and shall procure that Service Provider Personnel and Sub-Contractors shall:
- (a) co-operate fully with TTL Personnel's reasonable instructions throughout the period specified in the Step-in Notice, as extended by Parties in writing; and
 - (b) provide all assistance reasonably required by TTL Personnel on request for the purposes of or relating to the Step-in Action, including:
 - (i) providing access to or copies of Data and such other financial, operational, management or other information as may be required by TTL Personnel which is relevant to the provision of the Services; and
 - (ii) procuring the prompt assistance and availability of all relevant Service Provider Personnel (and Sub-Contractor Personnel).
- 61.7 Where Step-In Action is taken:
- (a) pursuant to:
 - (i) Clause 61.1(a);
 - (ii) Clause 61.1(b) (where the risk arises due to the breach of the Agreement by the Service Provider);

- (iii) Clause 61.1(c);
- (iv) Clause 61.1(d);
- (v) Clause 61.1(e)(i);
- (vi) Clause 61.1(e)(ii) (where due to the breach of this Agreement by the Service Provider);
- (vii) Clause 61.1(f) (where due to breach of this Agreement by the Service Provider); or
- (viii) Clause 61.1(g),

(each a "Fault Trigger") then, for so long as and to the extent that the Step-in Action is taken, the Service Provider shall compensate TTL on demand for all reasonably and properly incurred costs and expenses incurred by TTL in respect of such Step-in Action, including the reasonably allocated overheads and other internal costs and all advisers and legal fees incurred by TTL or any other party appointed by it in:

- (A) preparing for and issuing the Step-in Notice; and
- (B) undertaking the Step-in Action,

provided that TTL consults with the Service Provider in advance of committing to such costs and continues to take reasonable steps to mitigate such costs. Where reimbursement of TTL's costs and expenses includes the costs and expenses of any Third Party appointed, such Third Party's costs and expenses may include a reasonable profit element; or

- (b) pursuant to any of the circumstances set out in Clause 61.1 above which are not Fault Triggers (the "No Fault Triggers") then, for so long as and to the extent that the Step-In Action is taken, TTL shall:
 - (i) meet its own costs of taking the Step-in Action; and
 - (ii) reimburse the Service Provider for all reasonable costs incurred by the Service Provider in assisting TTL,

provided that the Service Provider has taken all reasonable steps to mitigate such costs and provided and continues to provide TTL Personnel with its full co-operation and assistance pursuant to Clause 61.6 above. Such reimbursement amounts shall be included in the Service Provider's Invoice, with each item requiring reimbursement separately identified.

61.8 For so long as the Step-in Action is taken and the Service Provider complies with Clause 61.6 above, the Service Provider shall continue to be paid the Service Charges , plus any amounts due in accordance with Clause 61.7(b) above (if applicable), against which the following shall be set-off and deducted:

- (a) where Step-in Action is taken:
 - (i) pursuant to the Fault Triggers, an amount corresponding to any Service Failure Deductions due in accordance with this Agreement based on the level of Services actually received by TTL in the Month prior to the Month in which Step-in Action is taken (if not already accounted for); or

- (ii) pursuant to the No Fault Triggers, an amount corresponding to the mean level of Service Failure Deductions over the three (3) Months prior to the Month in which Step-in Action is taken (if not already accounted for),

applied on a pro-rata basis in respect of the Services that are the subject of the Step-in Action, and in either case such deductions shall be subject to the Service Failure Deduction Cap;

- (b) all other deductions which TTL is entitled to make from such sums under this Agreement; and
- (c) all costs and expenses due in accordance with Clause 61.7(a) above (if applicable).

61.9 If and to the extent that the aggregate deductions referred to in Clauses 61.8(a), 61.8(b) and 61.8(c) above exceed the aggregate amount of the Service Charges and any sums payable under Clause 61.7(b) which are due, the Service Provider shall promptly upon demand pay to TTL a sum equal to the difference.

61.10 Neither TTL nor any TTL Personnel and/or Third Party engaged by TTL in accordance with this Clause 61 shall have any liability to the Service Provider for any damage which:

- (a) has occurred prior to the date specified in the Step-in Notice for commencement of Step-in Action; or
- (b) results from a breach by the Service Provider of its obligations under this Agreement (save where TTL and/or TTL Personnel have caused damage following a Step-in Action).

61.11 Without prejudice to TTL's right to exercise its Step-in Rights and/or its continuing Step-in Rights 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 TTL Personnel from time to time during the period of Step-in Action, promptly develop and put forward to TTL 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, including a plan for the resumption of delivery of the Services which shall set out in detail:

- (i) any relief from Service Levels for an interim period that the Service Provider in good faith believes to be necessary for the smooth resumption of delivery of the Services; and
- (ii) confirmation of any changes made to the Services during the period Step-in Action is taken

(the "Resumption Plan");

- (b) upon receipt of the Resumption Plan, TTL shall, unless TTL reasonably considers it to not be appropriate or considers that the Service Provider's proposals will not result in the Services being resumed promptly and maintained to the required Service Levels, subject to such conditions and amendments in the Resumption Plan as the Parties may agree and in any event without prejudice to TTL's rights under this Clause 61 (where the circumstances referred to in Clause 61.1 above are continuing or recur), permit the Service Provider to continue to perform or recommence performance of all or part of the Services in respect of which the Step-in Action has been taken in accordance with the Resumption Plan;

- (c) any permission given under Clause 61.11(b) above 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 (which shall be the date set out in the Resumption Plan or such other date as TTL may reasonably require) 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 TTL will withdraw TTL Personnel (and any personnel of Third Parties appointed by TTL as referred to in Clause 61.3 above) 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; and
- (d) notwithstanding the foregoing, TTL may, at its sole discretion, decide at any time that it is inappropriate for TTL to continue with its Step-in Action or that the grounds for the exercise of its rights under Clause 61.3 above no longer exist in respect of all or any part of the suspended Services and may serve a Step-Out Notice specifying the:
 - (i) parts of the Services in respect of which the Service Provider is to resume full performance; and
 - (ii) date on which the Service Provider’s provision of and responsibility for such Services is to resume, provided that the period of notice is reasonable.

The Service Provider shall comply fully with the terms of any such Step-Out Notice. Nothing in this Clause 61.11 shall prevent TTL from issuing more than one Step-Out Notice in relation to Services affected by a single Step-in Notice and TTL may, subject to Clauses 61.11(c) and 61.11(d)(ii) above, require the Service Provider to recommence the provision of suspended Services in their entirety, partially or gradually.

61.12 Without prejudice to any other rights TTL may have to terminate this Agreement, TTL shall, subject to TTL’s compliance with Clause 61.11(b) above, be entitled in its sole discretion to terminate this Agreement:

- (a) in the event that TTL exercises its Step-in Rights for a continuous period of three (3) Months or more as a result of one or more Fault Triggers; and/or
- (b) once the total of all periods during which TTL exercises its Step-in Rights equals or exceeds twelve (12) Months in aggregate. In the event that TTL does not terminate this Agreement in accordance with this Clause 61.12 no later than six (6) months following issuance of the Step-in Notice, TTL shall issue the Service Provider with a Step-Out Notice and shall step-out of the Services within two (2) months of such Step-Out Notice, in accordance with the terms of this Clause 61.

61.13 References (however worded) in this Clause 61 to any steps or action being taken by TTL under this Clause 61 are references to such steps or action being taken either by TTL itself or by TTL Personnel or any persons engaged by TTL or a member of the TfL Group for that purpose.

61.14 The issuing of a Step-in Notice and taking of Step-in Action by TTL:

- (a) shall not give the Service Provider the right to terminate this Agreement; and
- (b) shall be without prejudice to TTL’s right to terminate this Agreement or to Partially Terminate in accordance with Clause 62 (*Termination*), whether the

event permitting TTL to do so arose before, on or after the date of the Step-in Notice.

- 61.15 In taking any Step-in Action, TTL shall, and shall procure that any Third Parties engaged by it for such purposes shall perform the affected Services with all reasonable care and skill. Notwithstanding the foregoing, TTL 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 fair wear and tear in any elements of the LCHS Assets or any deterioration of the Services operated by it whilst taking the Step-in Action save to the extent caused by negligence on the part of TTL and any such Third Parties.
- 61.16 TTL shall not disturb or adversely affect the provision of the Services more than is required for the purposes of the Step-in Action.
- 61.17 For the period of three (3) months following a Step-Out Notice, TTL may not take any Step-in Action in relation to the applicable part of the Services to which the Step-Out Notice applied to the extent that such part of the Services are effected by the same circumstances which had led to the initial Step-in Action. TTL's obligation in this Clause 61.17 not to take Step-in Action on certain circumstances are without prejudice to TTL's rights and remedies under this Agreement including any right to terminate this Agreement.

62 Termination

Termination by the Service Provider

- 62.1 The Service Provider may terminate this Agreement in accordance with provisions of Clause 60.7 (*Force Majeure*).
- 62.2 Without prejudice to the other rights or remedies that the Service Provider may have, the Service Provider may serve a notice in writing on TTL to terminate this Agreement with effect from thirty (30) Working Days after the receipt by TTL of such notice, if TTL fails to comply with any of its payment obligations under this Agreement relating to any undisputed sum in excess of either:
- (a) during the Implementation Phase only, three (3) Milestone Payments; or
 - (b) during the Operational Phase only, a sum equal to three (3) Months of the Operational Charges,

in each case, where payment has fallen due and payable and TTL fails to remedy such breach within ninety (90) calendar days after receipt of formal written notice from the Service Provider demanding such payment.

- 62.3 The Service Provider:
- (a) may only terminate this Agreement in accordance with the provisions of Clauses 62.1 and 62.2 above; and
 - (b) must fully specify in any notice of termination the details of the event which has occurred entitling the Service Provider to terminate.

Termination by TTL of the Agreement

- 62.4 Without prejudice to any other rights or remedies that TTL may have, TTL may terminate this Agreement (in whole or part) in accordance with the following provisions of this Clause 62.4 upon the occurrence of any of the following events or circumstances:

- (a) a Change of Control or Change of Ownership of the Service Provider and/or Guarantor and/or Shareholder (other than as a result of a consolidation, amalgamation, merger or solvent reconstruction of the Service Provider Group), provided that TTL serves the notice of termination within sixty (60) calendar days of the date of TTL's receipt of notice served in accordance with Clause 79.1 (*Change of Control and Change of Ownership*);
- (b) the Service Provider commits:
 - (i) one or more material breaches; or
 - (ii) a Persistent Breach,of this Agreement or any other agreement that it has entered into with TTL and/or the TfL Group pursuant to or in connection with this Agreement;
- (c) a Guarantor commits:
 - (i) one or more material breaches; or
 - (ii) a Persistent Breach,of a Guarantee or any other agreement that it has entered into with TTL and/or the TfL Group pursuant to or in connection with this Agreement or (without limitation to the foregoing) any other event giving rise to a right for TTL to terminate a Guarantee has occurred;
- (d) if any of the representations or warranties set out in Clause 52 (*Representations and Warranties*) of this Agreement or set out in a Guarantee prove to have been inaccurate or incorrect when made on or at the Effective Date or of the relevant Guarantee (as appropriate), which materially adversely affects the provision of the LCHS Assets, Service Systems and/or Services or the operation of the London Cycle Hire Scheme;
- (e) the Service Provider commits any material breach of:
 - (i) Clause 27 (*Revenue*); or
 - (ii) the provisions of Schedule 32 (*Revenue Collection and Payment*),which results in TTL incurring financial loss;
- (f) a Key Milestone is delayed by more than forty (40) Working Days;
- (g) any:
 - (i) falsification of Data and/or Personal Data;
 - (ii) failure to comply with:
 - (A) Clause 50 (*Information Compliance*); and/or
 - (B) the provisions of Schedule 15 (*Information Compliance*);
 - (iii) failure to comply with a provision of this Agreement that causes Data to be materially corrupted,

in each case by the Service Provider, Service Provider Personnel, its Sub-Contractors or their respective agents or employees where such falsification, non-compliance or failure by an agent or employee:

- (A) is not dealt with to TTL's reasonable satisfaction;
 - (B) arose due to or was contributed to by, the negligence or default of the Service Provider, Service Provider Personnel or its Sub-Contractor; or
 - (C) adversely impacts the operation or integrity of London Cycle Hire Scheme;
- (h) there is a Material Service Level Failure or Continuous Service Breach;
- (i) an Insolvency Event affecting the Service Provider or a Guarantor occurs, unless in the case of an Insolvency Event affecting a Guarantor, the Service Provider has provided to TTL such security in place of such Guarantor's guarantee as TTL in its sole discretion deems acceptable to it;
- (j) if:
- (i) there is a Change in Law, other than a change in TfL Group Policy, which renders operation of the London Cycle Hire Scheme wholly or partly illegal; or
 - (ii) the London Cycle Hire Scheme is cancelled or terminated by an authority (including the Mayor) other than by a member of the TfL Group;
- (k) a System Failure has occurred and has continued, or in TTL's opinion is likely to continue, for a period of more than twelve (12) hours and the Service Provider has either:
- (i) not implemented the Business Continuity Plan (if required to do so under this Agreement); or
 - (ii) failed to implement the Business Continuity Plan (in whole or in part),
- such that the standard of Services provided does not comply with the standards to which the Services were provided immediately prior to the System Failure occurring;
- (l) in the event of a breach by the Service Provider of Clause 32 (*London Living Wage*);
- (m) as expressly provided for in the following provisions:
- (i) Clause 19.4 (*System Failure*);
 - (ii) Clause 47.6 (*Security Policy*);
 - (iii) Clause 49.16 (*Insurance*);
 - (iv) Clause 53.1(b) (*Corrupt Gifts or Payment and Fraud*);
 - (v) Clause 53.2(b) (*Corrupt Gifts or Payment and Fraud*);
 - (vi) Clause 60.6 (*Force Majeure*);

- (vii) Clause 61.12 (*Step-in Rights*);
- (viii) Clause 71.4 (*Confidentiality*);
- (ix) Clause 72.4 (*Assignment*);
- (x) Clause 78.3 (*Conflict of Interest*);
- (xi) Clause 79.2 (*Change of Control and Change of Ownership*);
- (xii) Schedule 3 (*Milestones and Deliverable*);
- (xiii) Schedule 24 (*Equality and Diversity*);
- (xiv) Schedule 41 (*Intellectual Property Rights*); and/or
- (xv) Clause 77 (Parent Company Guarantee).

62.5 Without prejudice to any other rights and remedies TTL may under this Agreement, TTL may, at its sole discretion and without any obligation to provide any reasons therefore, terminate this Agreement (in whole or part) at any time by giving not less than three (3) Months' written notice to the Service Provider. If TTL exercises this right, then pursuant to Schedule 6 (*Termination Compensation*), it will pay to the Service Provider any Termination Compensation due.

Breaches capable of remedy

62.6 Without prejudice to TTL's rights and remedies under Clause 62.8 below and subject to any shorter notice periods set out elsewhere in this Agreement, upon the occurrence of a breach of this Agreement or other circumstances giving rise to a right of TTL to terminate under Clause 62.4 above that are capable of remedy, TTL shall serve a notice of default on the Service Provider requiring the Service Provider at the Service Provider's option (and the Service Provider shall notify TTL which of the following below applies within five (5) Working Days of TTL's notice) to (the "Notice to Remedy"):

- (a) remedy or procure the remedy of the breach or breaches or other circumstances giving rise a right of TTL to terminate the Agreement as soon as practicable and, in any event no longer than within twenty (20) Working Days of the date of such Notice to Remedy (or such longer period as may be agreed by TTL at its sole discretion); or
- (b) propose a programme for the remedy of the breach or breaches or other circumstances giving rise a right of TTL to terminate the Agreement within ten (10) Working Days of the date of such Notice to Remedy (or such longer period as may be determined by TTL at its sole discretion) (the "Remedy Programme"). The Remedy Programme shall specify in detail the:
 - (i) manner in which such breach, breaches or circumstances is or are proposed to be remedied by the Service Provider; and
 - (ii) latest date by which is the Service Provider proposes that the breach, breaches or circumstances shall be remedied,

and the provisions of Clause 62.7 below shall apply.

62.7 Where the Service Provider puts forward a Remedy Programme in accordance with Clause 62.6(b) above:

- (a) TTL shall endeavour to respond as soon as practicable and shall have ten (10) Working Days (or longer period agreed between the Parties) within which to notify the Service Provider in writing that it does not accept the Remedy Programme;
- (b) In the event that TTL does not notify the Service Provider of its acceptance of the Remedy Programme within such period, TTL shall be deemed to have accepted the Remedy Programme;
- (c) Where TTL notifies the Service Provider that it does not accept the Remedy Programme, TTL and the Service Provider shall endeavour within the following five (5) Working Days to agree any necessary amendments to the proposed Remedy Programme; and
- (d) Failing agreement of such necessary amendments within this five (5) Working Day period, TTL may reject the proposed Remedy Programme in the event that TTL determines that the Remedy Programme is not capable of remedying the relevant breach, breaches or circumstance within a reasonable period.

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

- (a) where the Service Provider puts forward a Remedy Programme pursuant to Clause 62.6 above and the:
 - (i) the Service Provider fails to implement or comply with the Remedy Programme accepted by TTL in accordance with Clause 62.7 above; or
 - (ii) the Remedy Programme is rejected by TTL in accordance with Clause 62.7 above; or
- (b) in all other cases to which Clause 62.6 above applies, the breach, breaches or other circumstances specified in the Notice to Remedy is or are not remedied before the expiry of the period referred to in Clause 62.6(a) above (or such other period as may have been agreed by TTL at its sole discretion).

Breaches not capable of remedy

62.9 Where a material breach is not capable of remedy, TTL shall be entitled to terminate this Agreement immediately or upon such notice as TTL may, by notice, specify.

62.10 For the avoidance of doubt, and without prejudice to TTL's rights under Clause 62.9 above, the Parties agree that a breach of the following Clauses shall not be capable of remedy and are deemed to be material breaches:

- (a) Clause 62.4(a) (Clause 79.1 (*Change of Control and Change of Ownership*));
- (b) Clause 62.4(f) (delay of a Key Milestone for more than forty (40) days);
- (c) Clause 62.4(i) (an Insolvency Event affecting the Service Provider or a Guarantor);
- (d) Clause 62.4(j) (a Change in Law or cancellation or termination of the London Cycle Hire Scheme);
- (e) Clause 62.4(m)(i) (Clause 19.4 (*System Failure*));
- (f) Clause 62.4(m)(iv) (Clause 53.1(b)(*Corrupt Gifts or Payment and Fraud*));
- (g) Clause 62.4 (m)(v) (Clause 53.2(b)(*Corrupt Gifts or Payment and Fraud*));

- (h) Clause 62.4(m)(vii) (Clause 61.12 (*Step-in Rights*));
- (i) Clause 62.4(m)(viii) (Clause 71.4 (*Confidentiality*));
- (j) Clause 62.4(m)(ix) (Clause 72.4 (*Assignment*)); and
- (k) Clause 62.4(m)(xi) (Clause 79.2 (*Change of Control and Change of Ownership*));
- (l) Clause 62.4(m)(xii) (Schedule 3 (*Milestones and Deliverables*)).

Partial Termination

62.11 A Partial Termination Event will occur when any of the circumstances described in:

- (a) Clauses 62.4(b) to 62.4(h) (inclusive);
- (b) Clause 62.4(j) (a Change in Law or cancellation or termination of the London Cycle Hire Scheme);
- (c) Clause 62.4(m)(i) (Clause 19.4 (*System Failure*));
- (d) Clause 62.4(m)(ii) (Clause 47.6 (*Security Policy*));
- (e) Clause 62.4(m)(vi) (Clauses 60.6 (*Force Majeure*));
- (f) Clause 62.4(m)(vii) (Clause 61.12 (*Step-in Rights*));
- (g) Clause 62.4 (m)(xii)(Schedule 3 (*Milestones and Deliverables*)); or
- (h) Clause 62.4(m)(xiv) (Schedule 41 (*Intellectual property Rights*)).

arise in relation to one or more of the Service Elements. For the avoidance of doubt, TTL shall also have the right to terminate this Agreement in relation to one or more of the Service Elements in accordance with Clause 62.5 above.

62.12 On the occurrence of a Partial Termination Event, the provisions of Clauses 62.6 to 62.8 (inclusive) shall apply mutatis mutandis to the relevant Service Elements provided that, in addition to TTL's rights to terminate such Service Elements, where the relevant Service Elements are being provided by a Sub-Contractor, TTL shall have the right to require the Service Provider by notice to replace the relevant Sub-Contractor.

62.13 If the Service Provider fails to replace any relevant Sub-Contractor in accordance with the provisions of Clause 62.12 above within a reasonable time, such time not to exceed three (3) Months (or such longer time as TTL may in its sole discretion agree) of TTL issuing notice under Clause 62.12 above, TTL shall be entitled at its sole option to terminate the rights and obligations of the Service Provider to continue to provide the relevant Service Elements provided by the relevant Sub-Contractor by notice having effect either immediately or on such date as TTL shall specify in such notice.

62.14 Notwithstanding that the provisions of this Agreement, including Clauses 62.4 and 62.12, may permit TTL to require the Service Provider to attempt to remedy a particular breach or other circumstance, TTL shall be entitled to exercise its Step-in Rights at any time in the event that the circumstances in Clause 61.1 (*Step-in Rights*) apply.

Service Provider to notify TTL

62.15 The Service Provider shall, promptly upon becoming aware that one or more of the events or circumstances set out in Clauses 62.1 and 62.2 and/or Clause 62.9 above has,

have or is or are likely to arise, notify TTL of this occurrence or likely occurrence with full details.

63 Exit Management

63.1 In addition to, and without limitation to, the generality of the following provisions of this Clause 63, the Parties shall comply with their obligations set out in Schedule 16 (*Exit Plan*).

63.2 The Service Provider acknowledges that:

(a) upon the termination or expiry of this Agreement or Partial Termination, TTL may require part or all of the Services to be performed by TTL Personnel or a New Service Provider; and

(b) in order that the transfer of the provision of part or all of the Services, LCHS Assets and Service Systems may be properly managed, TTL Personnel or New Service Provider will need to obtain a detailed knowledge of the operation and management of the:

(i) Premises;

(ii) LCHS Assets;

(iii) Service Systems; and

(iv) Services,

before taking over the performance of part or all of the Services, or services similar to part or all of the Services (the "New Services").

63.3 In the event of termination or expiry of this Agreement or Partial Termination, the Service Provider shall, and shall procure that Service Provider Personnel and its Sub-Contractors:

(a) provide all necessary co-operation and assistance in order to ensure the smooth transfer of part or all of the Services, LCHS Assets and Service Systems to TTL Personnel and/or the New Service Provider in the event of termination or expiry of this Agreement or Partial Termination;

(b) take all steps necessary to transfer the legal, beneficial and equitable title to and property in the TTL Assets (in the event that title to such TTL Asset is not already held by TTL) and/or Service Provider Assets acquired by TTL in accordance with:

(i) Clause 64.2 (*Consequences of Termination, Partial Termination and Expiry*); and

(ii) the Service and Asset Transfer Plan,

free from all encumbrances and TTL and/or the relevant member of the TfL Group shall have the right to quiet possession of such assets; and

(c) provide the Exit Management Services and comply with the provisions of Schedule 16 (*Exit Plan*).

Future Procurement of the Services

63.4 TTL may require information to be provided by the Service Provider concerning the relevant:

- (a) Premises;
- (b) LCHS Assets;
- (c) Service Systems; and/or
- (d) the Services,

in order to provide such information to Third Parties whom a member of the TFL Group has invited to tender for the provision of the New Services whether or not an agreement with a member of the TFL Group to provide the New Services has been entered into. The Service Provider shall provide all such information at TTL's request provided that TTL has obtained a written confidentiality undertaking from any Third Party to whom it proposes providing the information in respect of any information which is deemed to be confidential.

Partial Termination

63.5 In the event of a Partial Termination, any variations that are required to this Agreement as a result of such Partial Termination shall be agreed by the Parties pursuant to the Change Control Request Procedure as soon as practicable following the service of the Partial Termination Notice. Any such variations shall be deemed to be a Mandatory Change for the purposes of Schedule 9 (*Change Control Request Procedure*).

64 Consequences of Termination, Partial Termination or Expiry

64.1 Upon termination or expiry of this Agreement or Partial Termination, TTL shall, subject to Clause 75 (*Recovery of Sums Due and Set-Off*):

- (a) pay the Service Provider the relevant:
 - (i) Milestone Payments;
 - (ii) Operational Charges;
 - (iii) Pass Through Expenses; and
 - (iv) Termination Compensation (if applicable),

due and payable to the Service Provider under this Agreement up to and including the Termination Date, Expiry Date or Partial Termination Date (as applicable); and

- (b) in the circumstances set out in Schedule 6 (*Termination Compensation*), pay Termination Compensation to the Service Provider.

64.2 On termination or expiry of this Agreement or Partial Termination for any reason and without prejudice to the provisions of paragraph 2 (*Licensing of Intellectual Property Rights*) of Schedule 41 (*Intellectual Property Rights*):

- (a) in respect of TTL Assets (or, in the case of Partial Termination, such TTL Assets as are required for the provision of the Service Element(s) which has or have been Partially Terminated):
 - (i) in the event that termination has occurred in accordance with:
 - (A) Clause 62.4(b) (material breach and/or Persistent Breach);
 - (B) Clause 62.4(d) (breach of Clause 52 (*Representations and Warranties*));

- (C) Clause 62.4(f) (Key Milestone delayed by more than forty (40) days);
- (D) Clause 62.4(h) (Material Service Level Failure or Continuous Service Breach); or
- (E) Clause 62.4(k) (System Failure),

at TTL's option (exercised at its sole discretion) and on TTL's demand, the Service Provider shall promptly pay to TTL an amount equivalent to the amount as has been, or should have been, entered into the Asset Register in relation to the TTL Assets nominated in TTL's demand pursuant to Schedule 12 (*Asset Management*), whereupon title in such TTL Asset shall transfer to the Service Provider (if title to such TTL Asset is not already held by the Service Provider) and they shall be deemed Service Provider Assets; and

- (ii) in all other circumstances of termination, then TTL at its option (exercised at its sole discretion) may, if title to such TTL Asset is not already held by TTL, require title in the TTL Assets referred to in the demand, make payment on the termination or expiry of this Agreement or Partial Termination (as appropriate) of an amount equivalent to:
 - (A) the Net Book Value of each such TTL Asset as at the Expiry Date, Termination Date or Partial Termination Date;
 - (B) less any amount that has been, or should have been, entered into the Asset Register in relation to such TTL Asset pursuant to Schedule 12 (*Asset Management*),

whereupon title to such TTL Assets shall immediately transfer to TTL;

- (b) in respect of the Service Provider Assets, TTL shall have the option (exercised at its sole discretion) to purchase any of the Service Provider Assets used in the provision of the Services at their then Net Book Value (or, in the case of Partial Termination, such Service Provider Assets as are required for the provision of the Service Element which has or have been Partially Terminated, to TTL or a New Service Provider, in accordance with TTL's reasonable instructions);
- (c) subject to TTL's compliance with Clause 64.2(a)(ii) above, to the extent that any LCHS Assets have not already been handed over to TTL in accordance with the Service and Asset Transfer Plan, the Service Provider shall deliver or transfer the LCHS Assets (or, in the case of Partial Termination, such LCHS Assets as are required for the provision of the Service Element which has or have been Partially Terminated), to TTL or a New Service Provider, in accordance with TTL's reasonable instructions;
- (d) in the event that the Service Provider (or a relevant Sub-Contractor) owns, as at the Expiry Date, Termination Date or Partial Termination Date, any unused Spare Parts for the TTL Assets (if owned or acquired specifically in relation to this Agreement), TTL shall have the right to require the Service Provider to transfer title in, and deliver to TTL, any such Spare Parts upon payment by TTL to the Service Provider of the:
 - (i) Net Book Value of such Spare Parts;
 - (ii) less such amount as that has been paid for such Spare Parts under this Agreement as at such date;

- (e) TTL may require the Service Provider to sell, as agent for TTL, any TTL Assets. In this event the Service Provider shall:
 - (i) use all reasonable endeavours to obtain the fair market price for such TTL Assets; and
 - (ii) promptly account to TTL for any sale proceeds, net of the Service Provider's reasonable costs of sale, which it receives in respect of such TTL Assets.

In the event that the Service Provider is unable to sell any such TTL Assets, the Service Provider shall, subject to TTL's express written approval, dispose of such TTL Assets in accordance with Clause 55.14 (*LCHS Assets*);

- (f) to the extent that they have not already been removed in accordance with the Service and Asset Transfer Plan, the Service Provider shall promptly remove all Service Provider Assets (or, in the event of Partial Termination, those Service Provider Assets which are no longer required for the provision of the Services after Partial Termination) which are situated on TTL Premises or such other premises as shall fall under TTL's control as part of the Service Transfer and Asset Plan or Exit Plan (as appropriate), except as otherwise required under this Agreement or expressly agreed in writing by the Parties. If the Service Provider fails to comply with its obligations under this Clause 64.2(f), within twenty (20) Working Days, TTL may take any action which is necessary or desirable to remove any such Service Provider Assets and other items from TTL Premises. Subject to TTL taking reasonable care and giving the Service Provider prior notice of the actions that TTL proposes to take:
 - (i) TTL 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 TTL Premises or of any action taken by TTL pursuant to this Clause 64.2(f); and
 - (ii) the Service Provider shall indemnify TTL against any cost, expense, loss, damage or liability which TTL may suffer or incur as a result of any such removal or action and against any claim, action, proceeding or demand for damages by any Third Party (including legal fees and expenses on an indemnity basis) in respect of any cost expense, loss, damage or liability which that Third Party may suffer or incur and which results from, or arises out of or in any way is connected with any such removal or action; and
- (g) if TTL Assets are to be re-located following termination or expiry of this Agreement or Partial Termination, the Service Provider shall provide such reasonable assistance to TTL Personnel, as TTL may require to facilitate such re-location and TTL shall reimburse the Service Provider's reasonably and properly incurred costs in providing such assistance.

64.3 With effect from the Termination Date or Expiry Date (as appropriate), and subject to Clause 65 (*Survival of Clauses and Schedules*), the rights and obligations of the Parties shall terminate and be of no future effect. This Clause 64.3 is without prejudice to either Party's rights and remedies which may have accrued prior to the Termination Date or Expiry Date. Subject always to Clause 48 (*Liability*) and Clause 64.4 below, termination or expiry of this Agreement or Partial Termination shall not affect or prejudice any other right to damages or other remedy which:

- (a) the terminating Party may have in respect of the circumstances which gave rise to the termination or Partial Termination; or

(b) any Party may have in respect of any breach of this Agreement,

which existed at or before the Termination Date, Partial Termination Date or Expiry Date.

64.4 The Service Provider shall have no claim against TTL in relation to the termination or expiry of this Agreement or Partial Termination or the events directly giving rise to termination or Partial Termination, where relevant, other than those amounts properly due under this Agreement but unpaid by TTL or as expressly provided in:

(a) this Clause 64; and

(b) Schedule 6 (*Termination Compensation*).

64.5 Following termination or expiry of this Agreement or Partial Termination, each Party shall use its reasonable endeavours to mitigate any losses, expenditure and costs arising as a consequence of such termination or expiry of this Agreement or Partial Termination for which they are to be compensated by the other Party. Where compliance with this Clause 64 will mean that the Service Provider will incur additional material expenditure, the Service Provider shall not incur such material expenditure without the express written approval of TTL.

64.6 Where TTL has served:

(a) a notice to terminate this Agreement in accordance with Clause 62.4 or 62.5 (*Termination*); or

(b) a Partial Termination Notice,

TTL shall, at any time before the expiry of the termination notice or Partial Termination Notice, be entitled to exercise, as soon as may be practicable within that period, such of the following powers as it considers expedient:

(i) direct the Service Provider, where Services have not been provided, to refrain from providing such Services;

(ii) direct the Service Provider to:

(A) complete in accordance with this Agreement, the performance of all or any of the Services (or any component thereof) which are ongoing at the expiry of the notice; and

(B) deliver such Services at such time or times as may be mutually agreed on,

and all Services provided by the Service Provider in accordance with such directions and accepted shall be paid for through and as part of the Service Charges at no additional cost to TTL; and/or

(iii) direct that the Service Provider, as soon as may be practicable after the receipt of such notice to:

(A) take such steps as necessary to ensure that the Services (or relevant Service Elements, in the event of Partial Termination) being provided by the Service Provider are reduced as rapidly as practicable;

- (B) as far as possible, and in a manner consistent with Clause 64.6(b)(iii)(A) above, concentrate work on the completion of Services (or relevant Service Elements, in the event of Partial Termination) partly provided; and/or
- (C) determine on the best terms reasonably achievable such Sub-Contracts and orders for Services that have not been completed, observing in this connection any direction given under by TTL in respect of:
 - 1) Clause 64.6(b)(ii);
 - 2) Clause 64.6(b)(iii)(A); and/or
 - 3) Clause 64.6(b)(iii)(B),

as far as may be possible.

64.7 All activities carried out by the Service Provider pursuant to Clause 63 (*Exit Management*) and this Clause 64 shall be paid for through and as part of the Service Charges, save to the extent that the Service Provider demonstrates that its reasonably and properly incurred costs in carrying out such activities exceed its costs of providing the Services that are covered by the Service Charges as shown in the Financial Model. Where its reasonably and properly incurred costs do so exceed the costs covered by the Service Charges, TTL shall reimburse the Service Provider for such reasonably and properly incurred excess costs calculated in accordance with Annex G (*Principles to Apply to the Pricing of Changes to this Agreement*) of Schedule 9 (*Change Control Request Procedure*) on receipt of a valid Invoice in respect of the same together with such timesheets and/or other records as TTL may reasonably require to verify the accuracy of such Invoice.

65 Survival of Clauses and Schedules

- 65.1 Termination or expiry of this Agreement shall not affect the coming into force or the continuance in force of any provision which is expressly or by its nature or implication intended to come into or continue in force on or after termination, including the following Clauses and Schedules:
- (a) Clauses 1.6 (*Definitions and Interpretation*);
 - (b) Clause 24 (*Gainsharing*);
 - (c) Clause 25 (*Commercial Exploitation of Bicycle Assets and Docking Station Assets*);
 - (d) Clause 27.2 (*Revenue*);
 - (e) Clause 42 (*Audit and Inspection*);
 - (f) Clause 48 (*Liability*);
 - (g) Clause 49 (*Insurance*);
 - (h) Clause 50 (*Information Compliance*);
 - (i) Clause 63 (*Exit Management*);
 - (j) Clause 64.3 (*Consequences of Termination, Partial Termination or Expiry*);
 - (k) Clause 65 (*Survival of Clauses and Schedules*);

- (l) Clause 70 (*Publicity*), including Schedule 38 (*2012 Games - No Marketing Rights*);
- (m) Clause 71 (*Confidentiality*);
- (n) Clause 74 (*Contracts (Rights of Third Parties) Act*);
- (o) Clause 81 (*Dispute Resolution Procedure*), including Schedule 21 (*CEDR Model Expert Determination Agreement*);
- (p) Clause 82 (*Governing Law and Jurisdiction*); and
- (q) Schedule 41 (*Intellectual Property Rights*).

PART 19: MISCELLANEOUS

66 Waiver and Approvals

- 66.1 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, law or otherwise.
- 66.2 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 TTL of its Step-in Rights shall not impair or constitute a waiver of any right, power, privilege or remedy of TTL under this Agreement.
- 66.3 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.
- 66.4 No consent, comment, acceptance or approval (including any Approval) of TTL under this Agreement shall in any way relieve the Service Provider of its obligations under this Agreement.

67 Entire Agreement

- 67.1 This Agreement, together with all documents referred to in it (including but not limited to the documents referred to in Clause 52.1(b)(i) (*Representations and Warranties*)), 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.
- 67.2 The Parties acknowledge that they have 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, they agree that it shall have no remedy in respect of any other such representation or warranty, except in the case of fraud. The Parties acknowledge that their respective legal advisers have explained to it the effect of this Clause 67.2.
- 67.3 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.

68 Illegality and Severability

If any provision of this Agreement (in whole or part) is held illegal, void, invalid or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the Agreement and the remaining provisions shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal, or unenforceable provision. In the event that in TTL's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the Agreement, TTL and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

69 Notices

69.1 Any notice (which term shall in this Clause 69 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.

69.2 Notices served under this Agreement shall be addressed as provided in Clause 69.4 below 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 pre-paid airmail or two (2) 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 hours on the next Working Day; or
- (e) subject to Clause 69.3 below, 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.

Except for Suspension Notices in which event this Clause 69.2 shall be applied in accordance with Clause 6.2 (*Suspension of the Operational Services*).

69.3 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 69.2 above:
 - (i) Step-in Notices and Step-Out Notices under Clause 61 (*Step-in Rights*);
 - (ii) Notices of termination and Partial Termination Notices under Clause 62 (*Termination*);

- (iii) any Notice of Approval;
- (iv) Notice of Authority to Proceed;
- (v) Agreement to Release Payment;
- (vi) Notice of Agreement to Operate and Notice of Business Acceptance; and
- (vii) any notice issues pursuant to Clause 6.1 (*Suspension of the Operational Services*).

(b) Notices sent by electronic mail shall:

- (i) be in a form and context calculated to come to the recipient's immediate attention, including by being classified as "urgent";
- (ii) be set up such that the sender is able to check whether they have been received and opened by the recipient;
- (iii) be in immediately intelligible form and saveable to the relevant information systems; and
- (iv) comply with any other requirements specified in writing by TTL 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 69.2 above.

69.4 The addresses and other details of the Parties referred to in this Clause 69.4 are, subject to Clause 69.5 below:

(a) Name: Transport Trading Limited

For the attention of: TfL's Director of Congestion Charging and Traffic Enforcement

Address: Palestra, 197 Blackfriars Road, London SE1 8NJ

Facsimile number: [\[Information Redacted\]](#)

E-mail address: [\[Information Redacted\]](#)

(b) Name: Serco Limited

For the attention of: [\[Information Redacted\]](#)

Address: Serco Integrated Transport, Gemini Business Park, Unit 6/7, Hornet Way, Beckton, London E6 7FF

Facsimile number: [\[Information Redacted\]](#)

E-mail address: [\[Information Redacted\]](#)

69.5 Either Party to this Agreement may notify the other Party of any change to the address or any of the other details specified in Clause 69.4 above, 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.

70 Publicity

70.1 Subject to Clause 70.3 below and whether or not any restriction contained in Clause 71 (*Confidentiality*) applies, the Service Provider shall not, and shall procure that Service Provider Personnel and Sub-Contractors do not, make any announcement (including, any communication to the public, to any clients or suppliers of either party or to all or any of the employees of either party or to representatives of the press, television, radio or other media):

- (a) concerning the existence, provisions or subject matter of this Agreement; or
- (b) containing any information about TTL (including, Confidential Information)

without the prior written consent of TTL.

70.2 TTL shall have the absolute discretion in deciding whether to give its consent as referred to in Clause 70.1 above.

70.3 Clause 70.1 above 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 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 the other Party.

70.4 The Parties acknowledge and accept in accordance with Schedule 38 (*2012 Games - No Marketing Rights*) neither Party has any rights to market and/or publicise the Services, LCHS Assets and Service Systems in respect of the Games and shall comply strictly with the provisions of Schedule 38 (*2012 Games - No Marketing Rights*).

70.5 The obligations and restrictions contained in:

- (a) this Clause 70; and
- (b) Schedule 38 (*2012 Games - No Marketing Rights*),

shall survive termination of the Agreement and continue without limit of time.

71 Confidentiality

TTL Confidential Information

71.1 The Service Provider acknowledges and accepts that it may receive, obtain, prepare or create TTL Confidential Information.

71.2 The Service Provider undertakes to TTL, subject to Clause 71.3 below, that:

- (a) it shall receive and/or maintain the TTL Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
- (b) it shall not use the TTL Confidential Information for any purposes whatsoever (and in particular shall not use the TTL Confidential Information to the detriment of

TTL or the TfL Group) 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 TTL Confidential Information to any Third Party without the prior written consent of TTL, except that it is entitled to the extent strictly necessary to disclose the TTL Confidential Information:
 - (i) to such of the Service Provider Personnel and advisers who need to know the TTL 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 Service Provider Personnel and shall, before disclosing TTL Confidential Information to members of Key Personnel, either:
 - (A) require such Key Personnel to enter into a written confidentiality undertaking in the form set out in Schedule 19 (*Deed of Confidentiality*); or
 - (B) have obtained prior written notice from TTL confirming that the obligations of confidentiality imposed on such members of Key Personnel by the Service Provider are sufficient and that no such written undertaking is required; or
 - (ii) to the Service Provider's auditors and any other person or body having a legal right or duty to know the TTL Confidential Information in connection with the Service Provider's business, provided that prior to such disclosure the Service Provider consults with TTL as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before TTL Confidential Information is disclosed;
- (d) it shall inform each of the persons referred to in Clauses 71.2(c)(i) and 71.2(c)(ii) above to whom TTL Confidential Information is disclosed of the restrictions as to use and disclosure of the TTL Confidential Information;
- (e) it shall, at TTL's request, deliver to TTL or destroy all or any 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 TTL Confidential Information and if instructed by TTL in writing, remove all electronically held TTL Confidential Information, including the purging of all disk-based TTL Confidential Information and the reformatting of all disks provided that the Service Provider shall be entitled to retain such number of copies as are necessary for its internal or external audit purposes; and
- (f) it shall not, except where provided in Clause 71.2(c) above, or without the prior written consent of TTL, disclose to any Third Party the nature or content of any discussions or negotiations between the Parties relating to the TTL Confidential Information.

71.3 The obligations set out in Clause 71.2 above do not apply to any TTL 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 TTL;
- (b) is lawfully disclosed to the Service Provider otherwise than in breach of an obligation of confidentiality to TTL;

- (c) is or has come into the public domain through no fault of the Service Provider or Service Provider Personnel or its Sub-Contractors; or
- (d) is required by law or by order of a court of competent jurisdiction to be disclosed.

71.4 The Service Provider acknowledges that damages may not be an adequate remedy for any breach of Clause 71.2 above and that, without prejudice to all other remedies which TTL may be entitled to as a matter of law, TTL shall be entitled to terminate this Agreement and/or seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause 71 and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause 71.

71.5 The TTL Confidential Information shall be and shall remain the property of TTL.

Service Provider Confidential Information

71.6 TTL acknowledges and accepts that during the Term it may receive Service Provider Confidential Information.

71.7 TTL undertakes to the Service Provider, subject to Clause 71.8 below, that:

- (a) it shall receive and/or maintain the Service Provider Confidential Information in strictest confidence and it 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 (and in particular shall not use the Service Provider Confidential Information to the detriment of the Service Provider) other than for the purpose of the receipt of the Services, compliance with its obligations under this Agreement or exercise of its rights under this Agreement;
- (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:
 - (i) to such of TTL Personnel, agents and advisers who need to know the Service Provider Confidential Information, provided that TTL shall be responsible for any breach of its obligations occasioned by any act or omission of such persons; or
 - (ii) to TTL's auditors, any other person or body having a legal right or duty to know the Service Provider Confidential Information in connection with the business of TTL and the TfL Group and any other person to whom Service Provider Confidential Information may be disclosed under this Agreement, provided that prior to such disclosure TTL 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 71.7(c)(i) and 71.7(c)(ii) above to whom Service Provider Confidential Information is disclosed of the restrictions as to use and disclosure of the Service Provider Confidential Information;
- (e) it shall, at the Service Provider's request, deliver to the Service Provider or destroy all or any 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 Service Provider Confidential Information and if instructed by the Service Provider in writing, remove all electronically held Service Provider Confidential Information, including the purging of all disk-based Service Provider Confidential Information and the reformatting of all disks provided that TTL shall be entitled to retain such number of copies as are necessary for its internal and/or audit purposes; and

- (f) it shall not, except where provided in Clause 71.7(c) above, 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.

71.8 The obligations set out in Clause 71.7 above do not apply to any Service Provider Confidential Information which:

- (a) TTL can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to TTL by the Service Provider;
- (b) is lawfully disclosed to TTL otherwise than in breach of an obligation of confidentiality to the Service Provider;
- (c) is or has come into the public domain through no fault of TTL or TTL Personnel;
- (d) TTL determines should be disclosed in accordance with FOI Legislation; or
- (e) is required to be disclosed:
- (i) to the National Audit Office or the District Auditor; or
- (ii) by law or by order of a court of competent jurisdiction.

71.9 TTL acknowledges that damages may not be an adequate remedy for any breach of Clause 71.7 above and that (without prejudice to all other remedies which the Service Provider may be entitled to as a matter of law) the Service Provider shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause 71 and no proof of special damages shall be necessary for the enforcement of the provisions of this Clause 71.

71.10 The Service Provider Confidential Information shall be and shall remain the property of the Service Provider.

71.11 The obligations of confidentiality set out in this Clause 71 shall remain in effect indefinitely, or until the relevant information is no longer confidential in accordance with the provisions of this Clause 71.

72 Assignment

72.1 TTL may novate or otherwise transfer this Agreement (in whole or in part) to any member of the TfL Group.

72.2 Within ten (10) Working Days of a written request from TTL, the Service Provider shall at TTL's expense execute such agreement as TTL may reasonably require to give effect to any such transfer of all or part of TTL's rights and obligations under this Agreement to one or more members of the TfL Group.

72.3 Subject to Clause 36 (*Key Sub-Contractors and Sub-Contractors*), this Agreement is personal to the Service Provider who shall not assign, transfer, charge, novate, 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 without the consent of TTL.

72.4 In the event of breach of Clause 72.3 above by the Service Provider, TTL shall be entitled to terminate this Agreement immediately.

73 Relationship of the Parties

73.1 Nothing in this Agreement shall constitute, or be deemed to constitute:

- (a) a partnership between the Parties; or
- (b) except as expressly provided to the contrary in this Agreement, either Party, as the agent of any other Party for any purpose; or
- (c) any relationship of employer and employee between TTL and any member of Service Provider Personnel.

73.2 Except as expressly provided to the contrary in this Agreement, 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 TTL or the TfL Group or bind TTL or any member of the TfL Group in any way.

74 Contracts (Rights of Third Parties) Act

74.1 Subject to Clause 74.2 below, a person that is not party to this Agreement has no rights under the Third Parties Act to enforce any term of this Agreement, but this does not affect any right or remedy of a third party that exists or is available apart from the Third Parties Act.

74.2 The Service Provider acknowledges and accepts that:

- (a) the LCHS Assets, Service Systems, Services and Deliverables under this Agreement are provided for the benefit of TTL and members of the TfL Group and accordingly the provisions of this Agreement are also provided for the benefit of members of TfL Group who shall be regarded as third parties for the purpose of the Third Parties Act. Members of the TfL Group shall have the right in their own capacity to enforce any provision, term, obligation or warranty included in this Agreement;
- (b) any loss suffered by a member of the TfL Group under this Agreement shall be deemed to be a loss of TTL. TTL shall have the right to bring a claim on its own behalf and on behalf of any member of the TfL Group where such member of the TfL Group suffers loss and to claim for damages suffered by any member of the TfL Group as agent and trustee for that member of the TfL Group; and
- (c) a New Service Provider may enforce the provisions of:
 - (i) paragraph 8.7 (*Termination*) of Schedule 39 (*Service Provider Personnel*); and
 - (ii) paragraph 8 of Schedule 16 (*Exit Plan*),

74.3 Notwithstanding Section 2(1) of the Third Parties Act, the Parties to this Agreement may vary or terminate this Agreement by agreement between them without requiring the consent of any third party on whom this Clause 74 confers rights.

75 Recovery of Sums Due and Set-Off

- 75.1 All damages, costs, charges, expenses, debts, sums or other amounts owing to or incurred by TTL arising out of or attributable to this Agreement may be deducted by TTL from monies due or which may become due to the Service Provider under this Agreement and TTL may recover such amount as a debt.
- 75.2 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 save as required by law.

76 Mutual Assistance

- 76.1 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.
- 76.2 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, LCHS Assets and Service Systems, to document, secure, register, acknowledge and perfect the vesting, assignment and licences in relation to any LCHS Assets and Intellectual Property Rights arising under this Agreement in accordance with the terms of this Agreement.

77 Parent Company Guarantee

The Service Provider shall, within twenty-one (21) calendar days of the Effective Date, deliver to TTL 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 of the Guarantor (the "**Guarantee**"). In the event of breach of this Clause 77 TTL shall be entitled, at its sole discretion, to terminate this Agreement under Clause 62.4(b) (*Termination*) for material breach.

78 Conflict of Interest

- 78.1 The Service Provider acknowledges and agrees that:
- (a) it does not have and will not have an interest in any matter where there is or is likely to be a conflict of interest with it providing the Services, LCHS Assets and Service Systems to TTL or with any member of the TfL Group; and
 - (b) 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 or with any member of the TfL Group.

This Clause 78.1 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 Effective Date, providing services provided that the Service Provider shall:

- (i) not act for any such client in respect of any transactions between any member of TfL Group and such client;
- (ii) ensure that the Service Provider Personnel acting in any capacity for any such client are different from the Service Provider Personnel involved in providing the Services or in any other work which the Service Provider carries out in relation to any member of TfL Group;
- (iii) ensure that any personnel acting for any such client do not have access to information held by the Service Provider relating to any member of TfL Group; and

- (iv) inform TTL of all such existing clients and the steps that it is taking to ensure compliance with Clauses 78.1(b)(i) to 78.1(b)(iii) above (inclusive).

78.2 The Service Provider shall:

- (a) undertake ongoing and regular conflict of interest checks throughout the Term, and in any event not less than once every six (6) Months;
- (b) notify TTL in writing immediately upon becoming aware of any actual or potential conflict of interest with the LCHS Assets, Service Systems or Services or any member of the TfL Group; and
- (c) work with TTL Personnel to do whatever is necessary (including the separation of Service Provider Personnel working on, and data relating to, the Services, LCHS Assets and Service Systems from the matter in question) to manage such conflict to TTL's satisfaction.

78.3 In the event of breach of:

- (a) Clause 78.1; or
- (b) Clause 78.2,

TTL shall be entitled, at its sole discretion, to terminate this Agreement under Clause 62.4(b) (*Termination*) for material breach.

79 Change of Control and Change of Ownership

79.1 The Service Provider shall promptly, and in any event within five (5) Working Days of a public announcement, notify TTL of:

- (a) any event that may give rise to a:
 - (i) Change of Ownership or a Change of Control; and/or
 - (ii) future Change of Ownership or Change of Control,and provide such information as TTL requires in relation to such a Change of Ownership or Change of Control; and
- (b) the sale or proposed sale of all or substantially all of the business of the Service Provider or the Guarantor.

79.2 In the event of the sale of all or substantially all of the business of the Service Provider or the Guarantor, TTL shall have the right to terminate this Agreement within sixty (60) calendar days of receipt of notice from the Service Provider in accordance with Clause 79.1 above unless, in the case of a sale affecting the Guarantor, the Service Provider has within such period provided a guarantee from a replacement guarantor acceptable to TTL in terms identical to the Guarantee.

80 Counterparts

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts shall together constitute one Agreement and the same Agreement. Either Party may enter into this Agreement by signing any such counterpart or duplicate.

PART 20: DISPUTE RESOLUTION PROCEDURE, GOVERNING LAW AND JURISDICTION

81 Dispute Resolution Procedure

81.1 The Parties shall settle disputes arising out of, under or in connection with this Agreement in accordance with the provisions of this Clause 81.

Expert determination

81.2 Subject to Clause 81.15, TTL 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 stating the nature of the dispute (the “Dispute Notice”); and
- (b) on receipt of the Dispute Notice, the Parties shall promptly attempt to settle the dispute by means of commercial negotiation between:
 - (i) the Service Provider’s Executive Board Director responsible for the relationship between it and TTL; and
 - (ii) TfL’s Director of Congestion Charging and Traffic Enforcement.

81.3 Subject to Clauses 81.14 and 81.4 below, if the 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 (“Expert Determination”).

81.4 If a dispute is referred to adjudication pursuant to Clause 81.15 below, then a Party may not at the same time or subsequently refer the same dispute to Expert Determination.

81.5 The Service Provider shall continue to provide the Services, LCHS Assets and Service Systems in accordance with the Agreement and without delay or disruption while a dispute is being resolved.

81.6 Within one (1) Month of the Effective Date, the Parties shall appoint an expert to determine all disputes arising under this Agreement (the “Expert”). The Expert shall be:

- (a) a Queen’s Counsel or such other suitably qualified person as the Parties may expressly in writing agree; and
- (b) independent of the Parties.

81.7 In the event that the proposed Expert:

- (a) refuses to be appointed or to continue to act as the Expert under this Agreement; or
- (b) is incapable, or becomes incapable, of acting as Expert for any reason,

either of the Parties may request the Chief Executive of the Centre for Effective Dispute Resolution (“CEDR”) to appoint a replacement Expert as soon as reasonably practicable. Any such request shall include a request that before appointing a replacement Expert, the Chief Executive of CEDR shall first solicit comments from both Parties regarding the appropriate skills that the Expert will require in order to determine disputes under this Agreement. The Chief Executive of CEDR shall be entitled to proceed to appoint a replacement Expert if, in his opinion, such comments have not been received from one or other Party within two (2) weeks.

- 81.8 For the avoidance of doubt, the Expert shall sit as an expert not as an arbitrator.
- 81.9 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:
- (a) 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*) (the "Model Expert Determination Agreement"); and
 - (b) each use their best endeavours to procure that the Expert signs such agreement promptly thereafter.

If, notwithstanding their respective best efforts to procure his signature, the proposed Expert refuses to sign, the Parties shall promptly appoint a different individual to act as Expert in accordance with this Clause 81.

- 81.10 When seeking to agree the procedural directions that will govern the conduct of the Expert Determination, each of the Parties shall request the Expert to include:
- (a) directions whereby either Party may request the Expert to issue declaratory relief; or
 - (b) 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).
- 81.11 In respect of any dispute and particularly in respect of a dispute which is in any way concerned with:
- (a) the exercise of Step-in Rights; or
 - (b) termination or Partial Termination of this Agreement; or
 - (c) the implementation of the Exit Plan; or
 - (d) otherwise relating to a New Service Provider being appointed for the supply of LCHS Assets and/or Services (or any part thereof),

when considering whether to issue declaratory relief or make an interim determination, the Expert shall be requested by the Parties to take into account the fact that the London Cycle Hire Scheme is a service provided to members of the public and as such the London Cycle Hire Scheme should continue to operate in a timely, economic, efficient and reliable manner and such that the Service Provider shall not cease to provide the Services.

- 81.12 The Expert's final determination shall be final and binding on the Parties except:
- (a) in the case of fraud or manifest error; or
 - (b) where the Expert's final determination relates to:
 - (i) a dispute with a value in excess of three million pounds (£3,000,000) (as certified by the Expert in his final determination); or

- (ii) 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; or
- (iii) where the determination relates principally to the grant of relief of a non-financial nature,

where the exceptions at Clauses 81.12(a) and 81.12(b) above apply, 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.

81.13 In the event that a Party wishes to exercise its right under Clause 81.12 above to reject the final determination, such Party shall:

- (a) so inform the Expert and the other Party (or parties) by notice in writing (the "Rejection Notice") within ten (10) Working Days of receipt of the Expert's final determination; and
- (b) issue proceedings regarding the dispute before the court no later than six (6) months following service of the final determination.

81.14 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 Clauses 81.10 and 81.12 above, 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.

Adjudication

81.15 Either Party may refer dispute arising out of, under or in connection with this Agreement to which the Housing Grants Construction and Regeneration Act 1996 Part II applies to adjudication in accordance with the Model Adjudication Procedure published by the Construction Industry Council current at the date of reference (the "Model Adjudication Procedure") and either Party may give notice in writing (the "Adjudication Notice") to the other of the intention to do so. The Adjudicator's decision shall be binding until the dispute or difference is finally determined by the court of England and Wales. The nominating body shall be the Chartered Institute of Arbitrators or any successor organisation.

81.16 The Party referring the dispute to adjudication will follow the Model Adjudication Procedure to secure the appointment of an Adjudicator, endeavouring to secure such appointment within seven (7) calendar days of the Adjudication Notice.

81.17 Each Party shall:

- (a) comply with the Model Adjudication Procedure and the directions the Adjudicator makes in accordance with the Model Adjudication Procedure; and
- (b) facilitate the resolution of the dispute as quickly and economically as possible, and
- (c) continue to act in accordance with this Agreement throughout the adjudication.

81.18 The Adjudicator shall:

- (a) decide on the dispute in accordance with the Model Adjudication Procedure; and

- (b) notify the Parties of the decision within the period permitted by the Model Adjudication Procedure.
- 81.19 Where an Adjudicator has given a decision under the applicable adjudication rules and no notice has been served by either Party disputing that decision no later than six (6) Months after the decision in question, the Adjudicator's decision shall be final as well as binding.
- 81.20 Subject to Clause 81.14 above, the Parties shall implement an Adjudicator's decision without delay. The Parties shall:
- (a) be entitled to summarily enforce the reliefs and remedies set out in an Adjudicator's decision, even if the decision is subject to legal proceedings; and
 - (b) not be entitled to raise any right of set-off, counterclaim or abatement in connection with any enforcement proceedings.
- 81.21 None of the following are liable for anything done or omitted in the discharge or purported discharge of his functions in any adjudication, unless the act or omission is in bad faith:
- (a) the Adjudicator; and
 - (b) any employee, agent or advisor of the Adjudicator.

Provisions relating to both the Expert and Adjudicator

- 81.22 The Expert and Adjudicator (as applicable) shall be entitled to appoint experts and/or other professional advisers to assist in reaching his determination. The fees of such experts and/or professional advisers shall be treated as part of the fees and expenses of the Expert Determination or adjudication (as applicable).
- 81.23 The Parties agree that in respect of any dispute arising under this Agreement:
- (a) either Party may make an application to the Expert or the Adjudicator (as applicable) requesting that any Interested Party, Other Service Provider, the Insurance Provider, Sponsor and/or Third Party (including in each case their heirs, successors and assignees) (a "Third Party Service Provider") be joined to proceedings before the Expert or the Adjudicator (as applicable) under this Agreement;
 - (b) the Expert or Adjudicator (as applicable) shall, on an application by any Party, be entitled to join a Third Party Service Provider to proceedings between the Parties in the event that the Expert or Adjudicator considers, in his sole discretion, that it is appropriate to do so, provided that such Third Party Service Provider consents to be joined to such proceedings;
 - (c) the Parties shall amend the:
 - (i) Model Expert Determination Agreement; or
 - (ii) Model Adjudication Rules,(as applicable) to take account of a decision by the Expert to join a Third Party Service Provider to the proceedings before the Expert or Adjudicator under this Agreement, in respect of the relevant dispute only; and

- (d) a Third Party Service Provider may be joined to proceedings before the Expert or Adjudicator (as applicable) under this Agreement by mutual consent of the Parties, which shall:
 - (i) be communicated in writing to the Expert or Adjudicator (as applicable); and
 - (ii) enclose a document signed for and on behalf of such Third Party Service Provider confirming its consent to be joined to such proceedings.

In the event that the Parties agree to join a Third Party Service Provider to proceedings before the Expert or Adjudicator, the Parties shall use their best endeavours to procure the agreement of the Expert or Adjudicator (as applicable) to such amendment to amend the Model Expert Determination Agreement or Model Adjudication Rules (as applicable).

82 Governing Law and Jurisdiction

- 82.1 This Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, English and Welsh law.
- 82.2 Without prejudice to Clause 81 (*Dispute Resolution Procedure*), the Parties shall submit to the exclusive jurisdiction of the English courts to settle any dispute which may arise out of or in connection with the Agreement, provided that TTL has the right, in its absolute discretion, to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

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 TRADING LIMITED

By:

Name:

Position:

Date:

SIGNED for and on behalf of SERCO LIMITED

By:

Name:

Position:

Date: