

Contract Reference Number: LUC0114

Date:

WiFi Enabling Agreement
between
London Underground Limited
and
Virgin Media Business Limited

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THIS AGREEMENT is made the day of

2012

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** a company registered in England and Wales under number 1900907 whose registered office is at 55 Broadway, London SW1H 0BD (“**the Authority**”); and
- (2) **VIRGIN MEDIA BUSINESS LIMITED**, a company registered in England and Wales (Company Registration Number 01785381) whose registered office is at Media House, Bartley Wood Business Park, Hook, Hampshire, RG27 9UP (“**the Concessionaire**”).

RECITALS:

- A. The Authority intends to grant a concession to provide WiFi services to the public in respect of the London Underground.
- B. On 29 March 2011 the Authority issued a voluntary notice of its requirements and its intention to let such concession agreement by way of a notice in the Official Journal of the European Union under reference 2011/S 62-101138.
- C. The Parties have agreed to enter into this Agreement for the provision by the Concessionaire of WiFi services to the public using London Underground and other locations upon the terms and conditions of this Agreement.

THE PARTIES AGREE THAT:

1. Definitions and Interpretation

In this Agreement (including the Recitals):

- 1.1 unless the context indicates otherwise the following expressions shall have the following meanings:

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|----------------------------------|---|
| “Access Points” or “AP’s” | a device that transmits and receives data to allow wireless devices to connect using wi-fi (IEEE 802.11 (g) and/or (n) standards (as varied or amended from time to time)) and which is the part of the Infrastructure that provides the direct interface to the Users; |
| “Agreement” | this agreement, including the Schedules and all other documents referred to in this agreement; |
| “Agreement Information” | this Agreement in its entirety (including from time to time agreed changes to this |

	Agreement);
“Agreement Commencement Date”	the date for commencement of this Agreement specified in Schedule 1;
“Annual Concession Fee”	the annual fee payable by the Concessionaire as more particularly set out in Schedule 4;
“Authority Content”	shall have the meaning as set out in paragraph 1.3.1 in Schedule 10;
“Authority Contract Manager”	the person appointed in accordance with paragraph 2.1 of Schedule 7, and named as such in Schedule 1 or such other person as notified to the Concessionaire by the Authority;
“Authority Premises”	any land or premises (including temporary buildings) owned or occupied by or on behalf of the Authority;
“Business Day”	any day excluding Saturdays, Sundays or public or bank holidays in England;
“Cessation Plan”	a plan agreed between the Parties or determined by the Authority pursuant to Clause 29 to give effect to a Declaration of Ineffectiveness;
“Change of Communications Law”	means any change to Communications Laws as they apply to the Authority or the Concessionaire, or the application after the date of this Agreement to either the Authority or the Concessionaire of any new General Conditions of Entitlement or any new Special Conditions where such General Conditions of Entitlement or Special Conditions did not previously so apply;
“Commercially Sensitive Information”	the commercially sensitive information set out in Schedule 2;
“Communication”	a communication within the meaning of regulation 2 of the Privacy and Electronic Communications (EC Directive) Regulations 2003;
“Communications Data”	communications data within the meaning given to it in regulation 2 of the Data Retention (EC Directive) Regulations 2009;

“Communications Laws”	the Communications Act 2003, the Data Retention (EC Directive) Regulations 2009, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Radio Equipment and Terminal Equipment Regulations 2000, the General Conditions of Entitlement and any other laws or regulations that apply to electronic communications networks, services or apparatus in the United Kingdom;
“Communications Provider”	a communications provider within the meaning given to it in condition 1 of the General Conditions of Entitlement;
“Concessionaire Contract Manager”	the person appointed in accordance with paragraph 2.1 of Schedule 7, or such other person as notified to the Authority by the Concessionaire ;
“Concessionaire Equipment”	any equipment, software, licences, components and materials of whatsoever nature used by the Concessionaire in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the Authority under this Agreement;
"Concessionaire Group"	a group undertaking (as that term is defined in sections 1161 and 1162 of the Companies Act 2006) of the Concessionaire;
“Concessionaire’s Personnel”	all such employees, officers, suppliers, sub-contractors and agents of the Concessionaire as are engaged in the performance of any of the Services and including the Key Personnel;
“Concessionaire Platform”	the hardware, software and communications platform upon which the Concessionaire operates its broadband wireless network;
“Confidential Information”	all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Authority (including the TfL Group) or the Concessionaire (including the Concessionaire Group) whether commercial, financial, technical or otherwise, and including information which relates to the business affairs, customers,

	suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Authority (and any member of the TfL Group) or the Concessionaire (and any member of the Concessionaire Group);
“Declaration of Ineffectiveness”	a declaration of ineffectiveness in relation to this Agreement made by a Court of competent jurisdiction pursuant to Regulation 47J of the Public Contracts Regulations 2006 or Regulation 45J the Utilities Contracts Regulations 2006;
“Electronic Communications Apparatus”	electronic communications apparatus within the meaning given to it in paragraph 1 of the Electronic Communications Code;
“Electronic Communications Code”	the electronic communications code having effect under section 106 of the Communications Act 2003;
“Electronic Communications Network”	an electronic communications network within the meaning given to it in section 32 of the Communications Act 2003 and/or condition 1 of the General Conditions of Entitlement;
“Electronic Communications Service”	an electronic communications service within the meaning given to it in section 32 of the Communications Act 2003 and/or condition 1 of the General Conditions of Entitlement;
“Emergency Organisation”	an emergency organisation within the meaning given to it in condition 1 of the General Conditions of Entitlement;
“Emergency Suspension”	shall have the meaning as set out in Clause 3.2.2;
“Exit Plan”	the exit plan to be prepared and updated from time to time in accordance with Clause 28.4;
“Fees”	the fees payable to the Authority by the Concessionaire in accordance with this Agreement, as specified in or calculated in accordance with Schedule 4 as the same may be varied from time to time in accordance with Clause 27.7 and/or Clause 32;

“Force Majeure Event”

any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes (save for strikes, lock-outs or other industrial disputes of the Party seeking to rely on the Force Majeure Event) to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“**Affected Party**”) to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;

“General Conditions of Entitlement”

the general conditions of entitlement issued by Ofcom under Part II of the Communications Act 2003;

“Guarantor”

Virgin Media Investment Holdings Limited (registered number 03173552) of Media House, Bartley Wood Business Park, Hook, Hants RG27 9UP

“Holding Company”

has the meaning attributed to it in section 1159 of the Companies Act 2006 and for the purposes of section 1159(1) a company (the first company) shall be treated as a member of another company if:

- (a) any of its subsidiaries is a member of that other company; or
- (b) any shares in that other company are held by a person acting on behalf of the first company or any of its subsidiaries; or
- (c) any shares in that other company are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares by the first company.)

“Infrastructure”	the WLAN equipment installed, owned and maintained (or to be installed, owned and maintained at any time during the Term) by or on behalf of the Authority at the Locations for use by (i) the Concessionaire in the provision of the WiFi Service and (ii) the Authority and/or such other third parties as may be authorised from time to time for non-commercial purposes by the Authority, as such infrastructure is more particularly described in the Infrastructure Specification;
“Infrastructure Specification”	the specification set out in Schedule 3 as it may be amended from time to time in accordance with Clause 32;
“Initial Contribution Fee”	the [REDACTED] initial contribution fee payable by the Concessionaire as more particularly set out in Schedule 4;
“Initial Delivery Target”	the completed delivery of all the Infrastructure set out in Schedule 3 such that all Locations set out in Schedule 3 are installed and declared fully operational and compliant with the Infrastructure Specification (in accordance with the acceptance procedures contemplated in clause 6.5);
“Initial Delivery Target Date”	31 December 2012;
“Interconnection”	interconnection within the meaning given to it in condition 1 of the General Conditions of Entitlement;
“Insolvency Event”	any of the following: <ul style="list-style-type: none"> (a) the Concessionaire and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order; (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of the Concessionaire and/or the Holding Company; (c) being a company, the Concessionaire and/or the Holding

Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);

- (d) the Concessionaire and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Concessionaire becoming bankrupt or dying;
- (f) any similar event to those in (a) to (e) above occurring in relation to the Concessionaire and/or the Holding Company under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights”

any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“Key Personnel”

the Concessionaire’s key personnel named in Schedule 1;

“Location”

- (a) a London Underground location (including, where reasonably practicable, ticket halls, escalators, public passageways and platforms but excluding, unless otherwise agreed, tunnels and trains) at which Infrastructure is to be installed and at which the WiFi Service is to be

made available in accordance with Schedule 3 as such locations may be added to in the Authority's discretion from time to time together with such of the Authority's depots, sidings and other operational areas as the Authority may specify in the Authority's discretion (collectively "**the London Underground Locations**"); and

- (b) such Transport for London above-ground level assets (including bus stops and street furniture) as may be agreed between the Parties from time to time ("**the TfL Locations**");

"London Underground" the stations, tunnels, buildings, depots, sidings, systems, track and other assets that are used in the maintenance and provision of the underground services generally known as the 'London Underground';

"Losses" all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct loss (including actual Revenue Share Losses), damages, claims, demands, proceedings and judgments;

"Materials" has the meaning given to it in Clause 15.1.2;

"Milestone" an event which is the completion of one or more of the specified activities as may be set out in the Project Plan;

"Operational Agreement" the operational agreement to be agreed in good faith between the Parties, based upon the principles set out in Schedule 7;

"Parties" the Authority and the Concessionaire (including their successors and permitted assignees) and "**Party**" shall mean either of them as the case may be;

"Period" means one of thirteen four weekly (every 28 days) accounting periods in accordance with the Authority's accounting policy and as is set out for the Term in Schedule 4;

“Persistent Breach”	any breach of this Agreement which occurs three times in any three month period or five times in any twelve month period which together would amount to a material breach of this Agreement;
“Portal”	a web site which will be available to Users on the WiFi Service;
“Portal Supplier Agreement”	the third party agreement entered into by the Concessionaire or a member of the Concessionaire Group for the provision of systems and services to provide and manage the Portal;
“Project Plan”	the plan (if any) for implementation and/or project delivery set out in Schedule 5, developed and agreed by the Parties in relation to the performance and timing of the Services under this Agreement which may include Milestones;
“Public Electronic Communications Network”	a public electronic communications network within the meaning given to it in section 151 of the Communications Act 2003 and/or section 1 of the General Conditions of Entitlement;
“Public Electronic Communications Service”	a public electronic communications service within the meaning given to it in section 151 of the Communications Act 2003 and/or section 1 of the General Conditions of Entitlement;
“Records”	has the meaning given to it in Clause 17.1.1;
“Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended;
“Replacement Concessionaire”	any replacement supplier or provider to the Authority of this Agreement (or any part of it);
“Revenue Share Fee”	the fee payable by the Concessionaire based on a share of the Concessionaire's revenues in relation to the Services as more particularly set out in Schedule 4;
“Revenue Share Losses”	any loss of the Revenue Share Fee which is directly attributable to any breach or any negligent performance of this Agreement by the Concessionaire (or any of its employees,

	agents or sub-contractors);
“Rights”	the rights granted by the Authority to the Concessionaire under this Agreement including the right to supply the Services at the Locations in accordance with the terms of this Agreement;
“Service Commencement Date”	the date for commencement of the Services set out in Schedule 1;
“Service Levels”	the standards of performance to which the Services are to be provided by the Concessionaire or the Infrastructure is to be provided by the Authority at all times as listed in Schedule 11, as the same may be varied, added to or replaced from time to time in accordance with Clause 32;
“Services”	<p>(a) subject to Clause 27.7 all or any part of the public access service for wireless broadband internet services and data access to be provided by the Concessionaire under this Agreement in accordance with the Specification including any variations to such services and/or activities pursuant to Clause 32 (the “WiFi Service”); and</p> <p>(b) any services, functions or responsibilities which may be reasonably regarded as incidental to the WiFi Service (whether performed for the benefit of the Authority, Users or WISPs or otherwise) and which may be reasonably inferred from this Agreement;</p>
“Service Partner”	any third party which has contracted with the Concessionaire to provide WLAN access or services for Users using the Concessionaire’s Platform, including WISPs, roaming partners or mobile network operators or wholesale partners who are part of the Revenue Share Fee paid to the Authority;
“Special Conditions”	has the meaning as defined in Clause 13.1.15;

“Specification”	the specifications and other requirements set out in Schedule 3;
“Term”	the period during which this Agreement continues in force as provided in Clause 2 and Schedule 1;
“Termination Fee”	has the meaning defined in Clause 27.6 and as detailed in Schedule 4;
“TfL”	Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
“TfL Group”	TfL and all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any “member of the TfL Group” shall refer to TfL or any such subsidiary;
“Traffic Hours”	the times the London Underground passenger service is in operation as set out in the Operational Agreement;
“Transparency Commitment”	the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which the Authority is committed to publishing its contracts, tender documents and data from invoices received;
“User”	any person using or attempting to use the Services;
“VAT”	value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;
“Virgin Media Service”	the services provided by the Concessionaire or any member of the Concessionaire Group to its own customers in relation to this Agreement.;
“WISP”	wireless internet service provider; and
“WLAN”	a wireless local area network conforming to the IEEE802.11 ((g) and/or (n) standards (as varied or amended from time to time).
1.2	a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;

- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of this Agreement;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.5 headings are included in this Agreement for ease of reference only and do not affect the interpretation or construction of this Agreement;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, this Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where the conflicting part of the Schedule is explicitly expressed to take precedence;
- 1.8 the Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.9 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.10 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. **Commencement and Duration**

- 2.1 Subject to Clause 2.2, this Agreement commences on the Agreement Commencement Date and continues in force for the duration stated in Schedule 1 unless terminated earlier in accordance with Clause 27.
- 2.2 Either Party has the option to request an extension of this Agreement for an additional period of up to 24 months by serving a written request on the other Party no later than 15 months prior to the end of the duration of this Agreement specified in Schedule 1 (“**the Expiry Date**”). On service of such request, the parties shall meet to discuss an extension based on the terms of this Agreement and subject to mutual agreement by the Parties of suitable adjustments to the Fees negotiate in good faith with a view to agreeing an extension period within 3 months of the request provided above.

3. **Provision of the Services**

3.1 The Concessionaire:

- 3.1.1 shall, subject to Clause 6.2 provide the Services from the Service Commencement Date in accordance with this Agreement;
- 3.1.2 acknowledges that it has sufficient information about the Authority and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Agreement;
- 3.1.3 shall neither be entitled to any rebate or payment nor excused from any obligation or liability under this Agreement due to any misinterpretation or misunderstanding by the Concessionaire of any fact relating to the Specification or otherwise to this Agreement; and
- 3.1.4 shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services.

3.2 Notwithstanding anything to the contrary in this Agreement:-

- 3.2.1 the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement; and
- 3.2.2 in the event of an emergency (whether threatened, impending or current), the Authority reserves the right to temporarily suspend or disable the operation of the Infrastructure in respect of a part or the whole of the London Underground affected by such emergency (an "**Emergency Suspension**"). Such Emergency Suspension shall continue for so long as the Authority or an Emergency Organisation deems necessary or appropriate in the interests of preserving the general safety of the public.

3.3 The Concessionaire shall provide the Services:

- 3.3.1 in accordance with the Service Levels;
- 3.3.2 with the high degree of skill, care and diligence normally exercised by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;
- 3.3.3 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;

- 3.3.4 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;
 - 3.3.5 so that they are properly managed and monitored and shall promptly inform the Authority if any aspect of this Agreement is not being or is unable to be performed; and
 - 3.3.6 so that an orderly handover of the Services to the Authority (and/or its nominee) and/or a Replacement Concessionaire can be carried out upon expiry or termination of this Agreement (howsoever caused) promptly, without undue delay and with the minimum of interruption and inconvenience to the Authority and Users.
- 3.4 Throughout the Term the Concessionaire shall when required give to the Authority such written or oral advice or information regarding any of the Services as the Authority may reasonably require.
- 3.5 Where the Parties expressly agree to add TfL Locations in accordance with the procedure specified in Clause 32, if reasonably requested to do so by the Authority and with the intention that the Concessionaire shall provide the Services at other TfL Locations, the Concessionaire shall contract with any other company within the TfL Group on substantially equivalent commercial terms to this Contract with only the necessary changes being made.
- 4. Payment of Fees**
- 4.1 In consideration of the grant by the Authority of the Rights the Concessionaire shall pay the Fees to the Authority.
- 4.2 The Concessionaire shall provide such information to the Authority in order to determine the Fees payable in accordance with Schedule 4. The Authority shall invoice the Concessionaire for the Fees in accordance with the procedures set out in Schedule 4, and the Concessionaire shall pay the Authority the Fees in accordance with those procedures and with the other provisions of this Agreement.
- 4.3 All Fees exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.
- 4.4 The Authority shall not be liable to make any payments to the Concessionaire pursuant to this Agreement save in respect of the Termination Fee or any damages for breach of this Agreement by the Authority in accordance with the terms of this Agreement.
- 4.5 The Authority will submit invoices to the postal address set out in Schedule 1 or, where an electronic format for submission of invoices is

set out in Schedule 1, such electronic format shall, unless the Authority requires otherwise, be used.

- 4.6 If the Fees claimed by the Authority in any invoice have been correctly calculated, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Authority may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in Schedule 1.
- 4.7 Interest shall accrue at the interest rate of three percent (3%) above the base rate of HSBC Bank plc from time to time on all sums due and payable under this Agreement from the due date until the date of actual payment (both before and after 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. The parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under this Agreement in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.8 The Authority acknowledges that there is no minimum guaranteed Revenue Share Fee and that the Concessionaire makes no representation in respect of the amount of the Revenue Share Fee.

5. **Concessionaire Obligations**

- 5.1 The Concessionaire shall:
- 5.1.1 provide the WiFi Service during Traffic Hours at the London Underground Locations in accordance with the Specification;
 - 5.1.2 use all reasonable endeavours to market the Services;
 - 5.1.3 manage the relationship with Users (including the billing and collection of moneys due from Users) and prospective Users and complaints arising; and
 - 5.1.4 manage the relationship with Service Partners;
- 5.2 The Concessionaire shall not issue any service set identifiers (SSID's as defined by IEE802.11) to Service Partners or otherwise that would be inconsistent with the Authority's Guidance on Advertising set out in Schedule 9.
- 5.3 The Concessionaire shall not use the Infrastructure other than for the provision of the WiFi Service to Users.
- 5.4 The Concessionaire shall ensure that the Portal Supplier Agreement shall, unless otherwise agreed by the Authority in writing, be assignable and/or capable of novation at the request of the Authority (and/or its nominee) and/or any Replacement Concessionaire upon the Concessionaire ceasing to provide the Services without restriction

(including any need to obtain any consent or approval) or payment. Where the Concessionaire is unable to procure that the Portal Supplier Agreement is assignable and/or capable of novation to the Authority (and/or its nominee) and/or any Replacement Concessionaire without restriction or payment, the Concessionaire shall promptly notify the Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Authority so directs, may include the Concessionaire seeking an alternative Service Partner, to be agreed by the Authority.

- 5.5 During the Term the Concessionaire shall not (unless otherwise agreed in writing) advertise or market the Services or any goods or services available from the Concessionaire or display any signs or advertisements on London Underground premises other than through the Authority's advertising concessionaire and in accordance with the provisions of Schedule 8 and the Authority's Guidance on Advertising set out in Schedule 9.
- 5.6 The provisions of Schedule 10 relating to the Portal shall apply.
- 5.7 With effect from the Agreement Commencement Date, the Concessionaire shall use all reasonable endeavours to enter into agreements to achieve wholesale access to the Infrastructure by third parties.
- 5.8 The Concessionaire shall ensure that Users are able to access the Portal without charge.

5.9 Installation of Concessionaire Equipment

5.9.1 To the extent (if any) that the Concessionaire needs to install the Concessionaire Equipment at Authority Premises it shall submit a written request to the Authority detailing:

5.9.1.1 what Concessionaire Equipment it wishes to install,
and

5.9.1.2 when and at which Authority Premises it wishes to
install it

5.9.2 On receipt of the Authority's consent to a request under Clause 5.9.1, the Concessionaire shall, subject to Clause 5.3, be entitled to install the Concessionaire Equipment in accordance with such request.

5.9.3 The Concessionaire shall install the Concessionaire Equipment:

5.9.3.1 diligently and in a good and workmanlike manner; and

5.9.3.2 in compliance with the requirements set out in this Agreement and any other requirements of the Authority.

5.9.4 The Concessionaire shall not install any wireless telegraphy apparatus as part of the Concessionaire Equipment.

6. The Authority's Obligations

- 6.1 The Authority grants to the Concessionaire the exclusive right to provide a public access service for wireless broadband internet services and data access at the London Underground Locations for the Term. No rights are granted by the Authority to the Concessionaire in respect of the provision of the WiFi Service at the TfL Locations unless the Parties expressly agree the applicable terms in accordance with the procedure specified in Clause 32.
- 6.2 The Authority acknowledges that the Concessionaire is reliant on the Authority to deliver the Infrastructure in a timely fashion and agrees that it will use reasonable endeavours to meet the Initial Delivery Target by the Initial Target Delivery Date.
- 6.3 The Authority agrees to monitor its delivery of Infrastructure against the Project Plan and the Initial Delivery Target, and to notify the Concessionaire promptly if it becomes aware that any expected delivery date or Milestone within the Project Plan may be missed, or that there may be any risk to the Initial Delivery Target being met by the Initial Target Delivery Date.
- 6.4 If the Authority gives notice to the Concessionaire in accordance with Clause 6.3 above, both Parties agree to meet in good faith to discuss reasonable mitigating actions and to agree a plan for the delivery of the Infrastructure in the most expedient manner.
- 6.5 The Parties shall in good faith agree a procedure for acceptance of the Infrastructure to ensure that once delivered, the Infrastructure is compliant with the Infrastructure Specification.
- 6.6 To the extent that the Authority fails to deliver the Infrastructure, or the Infrastructure is otherwise unavailable to Users for any reason, the Annual Concession Fee payable by the Concessionaire shall be reduced in accordance with Schedule 4.
- 6.7 If 80 London Underground Locations have not been declared fully operational and compliant with the Infrastructure Specification as agreed in the Operational Agreement by the Initial Delivery Target Date, the Concessionaire may terminate this Agreement immediately upon giving written notice to the Authority and Clause 27.6 of this Agreement will apply.

- 6.8 Where any delay in delivery of Infrastructure by the Authority is caused directly by any negligent act or omission or breach of contract of the Concessionaire in its capacity as provider of Services under this Agreement or otherwise ("**Concessionaire Delay**") the Initial Delivery Target Date shall be amended by such period as reflects the period of the Concessionaire Delay.
- 6.9 The Authority will notify the Concessionaire when a Location becomes available for acceptance in accordance with the procedures set out in the Operational Agreement, and authorises the Concessionaire to:
- 6.9.1.1 carry out acceptance tests to ensure that the Infrastructure meets the Infrastructure Specification and can be used to provide the Services;
 - 6.9.1.2 connect the Concessionaire Equipment to the Infrastructure in order that the Concessionaire may provide the Services; and
 - 6.9.1.3 use the Infrastructure in accordance with good industry practice in order to provide the Services.
- 6.10 Following completion of the delivery of the Infrastructure, notwithstanding that the Authority may temporarily suspend or disable the operation of the Infrastructure in accordance with Clause 3.2.2, the Authority agrees that it shall maintain the Infrastructure in accordance with the Service Levels to achieve an availability target of at least [REDACTED] fully operational Locations at any one time as more particularly set out in the Service Levels.
- 6.11 The Authority may, at its own cost, from time to time, and pursuant to the process set out in the Operational Agreement:
- 6.11.1 add London Underground Locations to those set out in Schedule 3A; and
 - 6.11.2 amend the list of London Underground Locations set out in Schedule 3A by substituting existing London Underground Locations for alternative London Underground Locations which have an equivalent footfall.

7. **Warranties**

- 7.1 Without prejudice to any other warranties expressed elsewhere in this Agreement, the Concessionaire warrants, represents and undertakes to the Authority that:
- 7.1.1 the Concessionaire:
 - 7.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so

- require, the consent of its Holding Company) to enter into and to perform this Agreement; and
- 7.1.1.2 is aware of the purposes for which the Services are required and acknowledges that the Authority is reliant upon the Concessionaire's expertise and knowledge in the provision of the Services; and
 - 7.1.1.3 is entering into this Agreement as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement;
 - 7.1.1.4 will in performing its obligations not do anything that prevents the Authority complying with all applicable laws and codes of practice;
 - 7.1.1.5 shall not undertake any actions which are beyond the performance of the Concessionaire's obligations under this Agreement or the Specification of the Services which would be likely to lead to the Authority being classified as an Internet Service Provider in respect of the WiFi Service; and
 - 7.1.1.6 shall use its reasonable endeavours to provide the Authority with such assistance as the Authority may reasonably require in order to try and ensure that the Authority is not classified as an Internet Service Provider in relation to the WiFi Service.
- 7.1.2 this Agreement is executed by a duly authorised representative of the Concessionaire; and
- 7.1.3 all documents, drawings, computer software and any other work prepared or developed by the Concessionaire or supplied to the Authority under this Agreement shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.
- 7.2 Each warranty and obligation in this Clause 7 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement.
- 7.3 Except as expressly stated in this Agreement, all warranties and conditions, implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by law.

8. Operational Management

- 8.1 The Parties agree to the provisions set out in Schedule 7 relating to the management of the relationship between the Parties under this Agreement.
- 8.2 The Authority authorises the Authority Contract Manager to act as the Authority's representative for this Agreement and the Concessionaire shall deal with the Authority Contract Manager (or his or her nominated representative) in respect of all matters arising under this Agreement as more fully set out in Schedule 7.
- 8.3 The Concessionaire authorises the Concessionaire Contract Manager to act as the Concessionaire's representative for this Agreement and the Authority shall deal with the Concessionaire Contract Manager (or his or her nominated representative) in respect of all matters arising under this Agreement as more fully set out in Schedule 7.

9. Concessionaire's Personnel

- 9.1 The Parties confirm that the Regulations do not apply on the Agreement Commencement Date or the expiry or termination of this Agreement.
- 9.2 Nothing in this Agreement will render the Concessionaire's Personnel, an employee, agent or partner of the Authority or, where TfL is the Authority any member of the TfL Group by virtue of the provision of the Services by the Concessionaire under this Agreement, and the Concessionaire shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Concessionaire's Personnel.
- 9.3 The Concessionaire shall provide the Concessionaire's Personnel as necessary for the proper and timely performance and management of the Services in accordance with this Agreement. All personnel deployed on work relating to this Agreement shall have the appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Authority.
- 9.4 Without prejudice to any of the Authority's other rights, powers or remedies, the Authority may (without liability to the Concessionaire) deny access to such Concessionaire's Personnel to any Authority Premises if such Concessionaire's Personnel in the Authority's view have not been properly trained in any way required by this Agreement and/or are otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall notify the Concessionaire of such denial in writing; the Concessionaire shall immediately remove such Concessionaire's Personnel from performing the Services and provide a suitable replacement (with the

Authority Contract Manager's prior consent in the case of Key Personnel).

9.5 The Concessionaire shall give the Authority, if so requested, full particulars of all persons who are or may be at any time employed on this Agreement and shall take all reasonable steps to avoid changes to any of its staff designated in this Agreement as Key Personnel. The Concessionaire shall give the Authority reasonable notice of any proposals to change Key Personnel and Clause 9.3 shall apply to the proposed replacement personnel.

9.6 Notwithstanding Clause 9.2, the Concessionaire shall indemnify, keep indemnified and hold harmless the Authority from and against all Losses which the Authority or TfL Group incur or suffer, whenever such Losses may arise or be brought by the Concessionaire's Personnel or any person who may allege to be the same.

10. **Sub-Contracting and Change of Ownership**

10.1 The Concessionaire shall not assign or sub-contract all or any part of the Services to any third party who is not a member of the Concessionaire Group without the prior written consent of the Authority identifying the relevant sub-contractor which may be refused or granted consent subject to such conditions as the Authority sees fit.

10.2 Where the Concessionaire sub-contracts all or any part of the Services to any person, the Concessionaire shall:

10.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Concessionaire under this Agreement insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;

10.2.2 be responsible for payments to that person;

10.2.3 remain solely responsible and liable to the Authority for any breach of this Agreement or any performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Concessionaire;

10.3 The Concessionaire shall give notice to the Authority within 10 Business Days where :

10.3.1 there is any change in the ownership of the Concessionaire where such change relates to 50% or more of the issued

share capital of the Concessionaire being transferred outside of the Concessionaire Group; and

- 10.3.2 there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company being transferred outside of the Concessionaire Group,

Upon the occurrence of any of the events referred to at Clauses 10.3.1 and 10.3.2, and subject to Clause 27.6, the Authority shall have the right to terminate this Agreement.

11. **Conflict of Interest**

- 11.1 The Concessionaire warrants that it does not and will not have at the Agreement Commencement Date or Service Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or any member of the TfL Group, save to the extent fully disclosed to and approved by the Authority.
- 11.2 The Concessionaire shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and shall notify the Authority in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or the TfL Group and shall work with the Authority to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Authority's satisfaction, provided that, where the Authority is not so satisfied, it may terminate this Agreement in accordance with Clause 27.1.4.

12. **Access to Premises**

- 12.1 The Authority shall be under no obligation to provide access to any Authority Premises or office or other accommodation or facilities or services (including telephony and IT services) to the Concessionaire save for any Authority Premises at which the Parties have agreed that the Concessionaire may locate Concessionaire Equipment.
- 12.2 The Concessionaire hereby waives (and undertakes not to exercise) any rights it may have from time to time under paragraph 20 of the Electronic Communications Code with respect to any Authority Premises made available to the Concessionaire in connection with the proper performance of the Agreement or any Electronic Communications Apparatus installed at such Authority Premises. For the avoidance of doubt, this Clause shall apply to Electronic Communications Apparatus installed or made available pursuant to this Agreement for the provision of the Service, and shall not apply to any apparatus installed by the Concessionaire by way of a separate written contractual arrangement.

13. Compliance with Policies and Law

13.1 The Concessionaire, at no additional cost to the Authority:

13.1.1 undertakes to procure that all the Concessionaire's Personnel comply with the following policies and standards of the Authority, copies of which have been provided by the Authority to the Concessionaire:

13.1.1.1 London Underground Limited, Harassment & Bullying Policy and Procedure (Version 1.0, dated 1 October 2010); and

13.1.1.2 London Underground, Category 1 Standard S1257 Drugs and Work (Issue no: A2, dated November 2011)

13.1.2 shall provide the Services in compliance with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the Concessionaire's business and/or the Authority's business, from time to time in force which are or may become applicable to the Services. The Concessionaire shall promptly notify the Authority if the Concessionaire is required to make any change to the Services for the purposes of complying with its obligations under this Clause 13.1.2;

13.1.3 without limiting the generality of Clause 13.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

13.1.4 acknowledges that, in providing the Services, it will be the provider of Public Electronic Communications Services and Electronic Communications Services and without limiting the generality of Clause 13.1.2:

13.1.4.1 it shall comply in all respects with the General Conditions of Entitlement as they apply to a provider of Public Electronic Communications Services and Electronic Communications Services;

13.1.4.2 it shall comply in all respects with all applicable Communications Laws;

13.1.4.3 it shall retain Communications Data as required by the Data Retention (EC Directive) Regulations 2009 with respect to any WLAN or other

Electronic Communications Network to which the Concessionaire is given access by the Authority for the purposes of providing the WiFi Service;

13.1.5 acknowledges that, in making the Infrastructure available to the Concessionaire for the provision of the Services, the Authority will be the provider of a Public Electronic Communications Network and an Electronic Communications Network but only in relation to, and to the extent that, the Infrastructure is used to enable the Concessionaire to provide the Services and without limiting the generality of Clause 13.1.2 or Clause 13.1.4:

13.1.5.1 the Concessionaire shall not do anything which would prevent the Authority from complying with the General Conditions of Entitlement as they apply to providers of Public Electronic Communications Networks and Electronic Communications Networks;

13.1.5.2 the Concessionaire shall promptly notify the Authority if it receives any request from another Communications Provider to negotiate with that Communications Provider with a view to concluding an agreement for Interconnection and shall, subject to Clause 5, conduct all such negotiations;

13.1.5.3 if the Authority receives a notice from the Secretary of State requiring it to retain any Communications Data under the Data Retention (EC Directive) Regulations 2009 with respect to any WLAN or other Electronic Communications Network referred to in Clause 13.1.4.3, the Concessionaire shall: (a) provide assistance reasonably requested for the Authority to resist the application of the Data Retention (EC Directive) Regulations 2009 or to require the Secretary of State to withdraw the notice; and (b) provide the Authority with such assistance as the Authority may reasonably require to assist the Authority in complying with the Data Retention (EC Directive) Regulations 2009;

13.1.5.4 the Concessionaire shall reimburse the Authority for any Losses the Authority incurs from having to comply with any reasonable requests made by the Concessionaire under the Privacy and Electronic Communications (EC Directive) Regulations 2003 (if applicable);

- 13.1.5.5 the Concessionaire shall advise the Authority if it becomes aware of any matter which would affect the Authority's compliance with the General Conditions of Entitlement as they apply to providers of Public Electronic Communications Networks and Electronic Communications Networks; and
 - 13.1.5.6 the Concessionaire shall use its reasonable endeavours to provide the Authority with such assistance as the Authority may reasonably require to assist the Authority in ensuring its compliance with the General Conditions of Entitlement as they apply to providers of Public Electronic Communications Networks and Electronic Communications Networks.
- 13.1.6 acknowledges that the Infrastructure has been installed and established and must be used in accordance with the licensing exemptions for RLAN apparatus as set out in the Wireless Telegraphy Act Wireless Telegraphy (Exemption) Regulations 2003. The Concessionaire shall not do anything that will or may place the Authority in breach of the restrictions and conditions associated with the relevant licensing exemptions;
- 13.1.7 acknowledges that it has not been given any permission or authorisation from the Authority to intercept (and undertakes not to intercept) any Communication in the course of its transmission over any WLAN or other Electronic Communications Network to which the Concessionaire is given access by the Authority for the purposes of providing the WiFi Service;
- 13.1.8 acknowledges that the Authority is under a duty under section 76A of the Sex Discrimination Act 1975, section 71 of the Race Relations Act 1976 and under section 49A of the Disability Discrimination Act 1995 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex or marital status, race or disability (as the case may be) and to promote equality of opportunity between persons of different racial groups and between disabled people and other people (as the case may be). In providing the Services, the Concessionaire shall assist and cooperate with the Authority where possible in satisfying this duty;
- 13.1.9 acknowledges that the Authority is under a duty to have due regard to the need to:

- 13.1.9.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
- 13.1.9.2 eliminate unlawful discrimination; and
- 13.1.9.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in providing the Services, the Concessionaire shall assist and co-operate with the Authority where possible to enable the Authority to satisfy its duty;

- 13.1.10 shall assist and co-operate with the Authority where possible with the Authority's compliance with its duties under section 1 and section 149 of the Equality Act 2010 as and when section 1 and/or section 149 come into force, including any amendment or re-enactment of section 1 or section 149, and any guidance, enactment, order, regulation or instrument made pursuant to these sections;
- 13.1.11 shall undertake penetration testing prior to the Service Commencement Date and thereafter on a minimum of an annual basis and provide full unaudited results to the Authority Contract Manager.
- 13.1.12 shall promptly notify the Concessionaire's Personnel and the Authority of any health and safety hazards that exist or may arise in connection with the performance of the Services;
- 13.1.13 shall investigate and report all information security breaches, actual or suspected and provide full details to the Authority Contract Manager including the potential impact on the Authority;
- 13.1.14 shall be responsible for all content filtering and record keeping with regard to the Public Access Wi-Fi SSIDs, including the obligation to retain information on User logins and web traffic;
- 13.1.15 shall comply in all respects with and shall not do anything that would prevent the Authority from complying in all respects with any of the conditions set out in S.45(2)(b) of the Communications Act 2003 that Ofcom may make or impose on the Concessionaire or the Authority ("Special Conditions") in relation to the Service;
- 13.1.16 shall advise the Authority if it becomes aware of any matter which would affect the Authority's compliance with the Special Conditions; and

13.1.17 shall use its reasonable endeavours to provide the Authority with such assistance as the Authority may reasonably require to assist the Authority in ensuring its compliance with the Special Conditions.

In all cases, the costs of compliance with this Clause 13.1 shall be borne by the Concessionaire.

13.2 In providing the Services, the Concessionaire shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Concessionaire's activities may impact on the environment) to 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.

14. **Corrupt Gifts and Payment of Commission**

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

15. **Concessionaire Equipment and Materials**

15.1 Risk in:

15.1.1 all Concessionaire Equipment shall be with the Concessionaire at all times; and

15.1.2 all other equipment and materials forming part of the Services ("**Materials**") shall be with the Concessionaire at all times,

regardless of whether or not the Concessionaire Equipment and Materials are located at Authority Premises.

- 15.2 The Concessionaire shall ensure that all Concessionaire Equipment and all Materials meet all minimum safety standards required from time to time by law.

16. **Quality and Best Value**

- 16.1 The Concessionaire acknowledges that the Authority is a best value authority for the purposes of the Local Government Act 1999 and as such the Authority is required to make arrangements to secure continuous improvement in the way it exercises its functions (having regard to a combination of economy, efficiency and effectiveness) and, as such, the Concessionaire shall, where reasonably requested by the Authority, participate in any relevant best value review.

17. **Records, Audit, Inspection and Re-tendering**

Records, Audit and Inspection

- 17.1 The Concessionaire shall, and shall procure that its sub-contractors (where relevant) shall:

- 17.1.1 maintain a complete and correct set of records necessary to demonstrate the performance of the Services and the Concessionaire's obligations under this Agreement and all transactions entered into by the Concessionaire for the purposes of this Agreement ("**Records**"), including:

17.1.1.1 all records relating to the calculation of the Fees and;

17.1.1.2 all documents and records as are required to be maintained by it in accordance with applicable laws and regulations (including Communications Laws);

but excluding:

17.1.1.3 all records relating to the Virgin Media Service; and

17.1.1.4 the Concessionaire's contracts with Service Partners.

- 17.1.2 retain all Records during the Term and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of this Agreement ("**Retention Period**").

- 17.2 The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Concessionaire what the Authority considers to be reasonable written notice and at any reasonable time to inspect any aspect of the Concessionaire's performance of the Services including the right to audit the Concessionaire's security processes, procedures and practices relating to the Services (including compliance with Clause 13.1) and the Concessionaire shall give all reasonable assistance to the Authority or its nominee in conducting such inspection, including making available documents and staff for interview.
- 17.3 The Concessionaire shall comply with all reasonable requests of the Authority so as to ensure that the Concessionaire is complying with, or to remedy the Concessionaire's failure to perform, its obligations under this Agreement, including but not limited to its obligations under Clause 13.

Retendering

- 17.4 On reasonable notice but in any event within fourteen (14) days of a written request from the Authority, the Concessionaire shall provide to the Authority and/or to one or more potential Replacement Concessionaires (subject to each potential Replacement Concessionaire entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Concessionaire undertaking due diligence regarding the Services:

17.4.1 such records as are reasonably required in order for any potential Replacement Concessionaire to determine whether or not it is able to provide the Services (but excluding any information relating to the pricing or value of the Services or any other commercially sensitive information of the Concessionaire);

17.4.2 the information referred to in Clause 9.5 and Clause 28.8.

18. Set-Off

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

19. **Liability and Indemnity**
- 19.1 Nothing in this Agreement shall operate to exclude or limit any Party's liability to the other Party for
- 19.1.1 death or personal injury resulting from the negligence of such Party or of its servants, agents or employees;
 - 19.1.2 fraud or fraudulent misrepresentation;
 - 19.1.3 any other liability which cannot be excluded or limited by law;
- 19.2 Subject always to Clause 19.1 neither Party shall have any liability in contract, tort or otherwise (including liability for negligence) arising out of or in connection with this Agreement for:
- 19.2.1 indirect or consequential loss or damage;
 - 19.2.2 loss of profits (but excluding Revenue Share Losses);
 - 19.2.3 loss of business, revenue, data, anticipated savings or wasted expenditure, or damage to goodwill (in each case whether direct or indirect)
- 19.3 Subject to Clauses 19.1, 19.2, 19.4 19.5 and 19.6, the Concessionaire is responsible for and shall indemnify, keep indemnified and hold harmless the Authority and the other members of the TfL Group (including their respective employees, sub-contractors and agents) ("**the Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers in respect of damage to the real property of the Indemnified Party as a consequence of any breach or any negligent performance of this Agreement by the Concessionaire (or any of its employees, agents or sub-contractors) or of any breach of statutory duty, misrepresentation or misstatement by the Concessionaire (or any of its employees, agents or sub-contractors).
- 19.4 The Concessionaire is not responsible for and shall not indemnify the Authority for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement by the Authority or any other member of the TfL Group including by any of their respective employees, agents or sub-contractors.
- 19.5 Subject always to the provisions of clause 19.1 the total aggregate liability of the Concessionaire in each year of this Agreement (the first such year commencing on the Agreement Commencement Date) in respect of the indemnity in Clause 19.3 above shall in no event exceed five million pounds (£5,000,000).
- 19.6 Subject always to the provisions of clause 19.1 the total aggregate liability of the Concessionaire in each year of this Agreement (the first such year commencing on the Agreement Commencement Date) in

respect of all claims arising in respect of such year (whether arising under contract, tort (including negligence), by way of indemnity or otherwise but excluding any liability governed by clause 19.5) shall in no event exceed a sum equivalent to one hundred and twenty five percent (125%) of the Annual Concession Fee paid or payable by the Concessionaire during such year.

20. Insurance

20.1 The Concessionaire will at its sole cost maintain employer's liability and motor insurance cover as required by law and insurance cover in terms approved by the Authority in respect of the types of insurance cover referred to in Clauses 20.1.1, 20.1.2, 20.1.3 and 20.1.4 to cover the Services ("**the Insurances**") and will ensure that the Insurances include an Indemnity to Principal clause:

20.1.1 public liability to cover injury and loss to third parties in the sum of not less than £10 million per incident;

20.1.2 employers liability of £5 million per incident;

20.1.3 product liability in the sum of £10 million per incident and £10 million in aggregate; and

20.1.4 professional indemnity or, where professional indemnity insurance is not available, a "financial loss" extension to the public liability insurance referred to in Clause 20.1.1 or, if applicable, the product liability insurance referred to in Clause 20.1.3 in each case in the sum of not less than £2 million per incident and in the aggregate per annum for the Term and for 6 years after expiry or termination of this Agreement. Any professional indemnity insurance or "financial loss" extension shall be renewed for a period of 6 years (or such shorter period as the Authority may stipulate) following the expiry or termination of this Agreement.

20.2 The insurance cover will be maintained with a reputable insurer.

20.3 The Concessionaire will produce evidence to the Authority on reasonable request of the insurance policies set out in Clause 20.1 and payment of all premiums due on each policy.

20.4 The Concessionaire warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clause 20.1 being or becoming void, voidable or unenforceable.

20.5 In the event that any of the Insurances are cancelled or not renewed, the Concessionaire shall immediately notify the Authority and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the Authority (acting reasonably).

21. **The Authority's Data**

- 21.1 The Concessionaire acknowledges the Authority's ownership of Intellectual Property Rights which may subsist in the Authority's data. The Concessionaire shall not delete or remove any copyright notices contained within or relating to the Authority's data.
- 21.2 The Concessionaire and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Authority's data and to prevent any corruption or loss of the Authority's data.

22. **Intellectual Property Rights**

- 22.1 The Concessionaire hereby assigns with full title guarantee to the Authority all Intellectual Property Rights in the Portal (including the design of the Portal and its branding, but excluding (i) any third party-owned content and (ii) any trade marks, trade names, logos or other Intellectual Property Rights of the Concessionaire or the Concessionaire Group ("**the Products**") provided that such assignment shall not include items not prepared or developed for the purposes of this Agreement.
- 22.2 The Concessionaire shall provide the Authority with copies of all materials relied upon or referred to in the creation of the Products with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.
- 22.3 The Concessionaire shall have no right (save where expressly permitted under this Agreement or with the Authority's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Authority.
- 22.4 The Authority shall have no right (save where expressly permitted under this Agreement or with the Concessionaire's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Concessionaire.
- 22.5 The Concessionaire shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with this Agreement have been paid.

23. **Protection of Personal Data**

- 23.1 The Concessionaire shall comply with all of its obligations under the Data Protection Act 1998 and, if Processing Personal Data (as such terms are defined in section 1(1) of that Act) on behalf of the Authority, shall only carry out such Processing for the purposes of providing the

Services in accordance with this Agreement and shall act in accordance with instructions from the Authority.

23.2 When the Concessionaire is Processing bank card details under this Agreement, it shall comply with the Payment Card Industry Data Security Standard (PCI DSS) as updated from time to time. The Concessionaire shall demonstrate compliance on an annual basis to the Authority by providing confirmation in writing from a qualified Security Assessor of its compliance with PCI DSS.

24. Confidentiality, Announcements and Transparency

24.1 Subject to Clause 24.6 and Clause 25, the Parties agree to keep confidential:

24.1.1 the terms of this Agreement; and

24.1.2 any and all Confidential Information that they may acquire in relation to one another.

24.2 The Parties agree not to use each other's Confidential Information for any purpose other than to perform their respective obligations under this Agreement. The Parties agree to ensure that their respective officers and employees comply with the provisions of Clause 24.1.

24.3 The obligations set out in Clause 24.1 will not apply to any Confidential Information:

24.3.1 which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 24);

24.3.2 which a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or

24.3.3 to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.

24.4 The Parties shall keep secure all materials containing any information in relation to this Agreement and its performance.

24.5 The Concessionaire shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of this Agreement or that it is providing the Services to the Authority or in relation to any matter under or arising from this Agreement unless specifically granted permission to do so in writing by the Authority. The Parties shall agree a joint announcement to be made upon the signing of this Agreement.

- 24.6 The Concessionaire acknowledges that the Authority is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 24.1 and Clause 25, the Concessionaire hereby gives its consent for the Authority to publish the Agreement Information to the general public subject to the redaction of the Commercially Sensitive Information.
- 24.7 The Authority may in its absolute discretion redact all or part of the Agreement Information prior to its publication. In so doing and in its absolute discretion the Authority may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation (as defined in Clause 25.1 below). The Authority may in its absolute discretion consult with the Concessionaire regarding any redactions to the Agreement Information to be published pursuant to Clause 24.6. The Authority shall make the final decision regarding publication and/or redaction of the Agreement Information.
- 24.8 The provisions of this Clause 24 will survive any termination of this Agreement for a period of 6 years from termination.

25. **Freedom of Information**

25.1 For the purposes of this Clause 25:

25.1.1 **“FOI Legislation”** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

25.1.2 **“Information”** means information recorded in any form held by the Authority or by the Concessionaire on behalf of the Authority; and

25.1.3 **“Information Request”** means a request for any Information under the FOI Legislation.

25.2 The Concessionaire acknowledges that the Authority:

25.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and

25.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Concessionaire.

25.3 Without prejudice to the generality of Clause 25.2, the Concessionaire shall and shall procure that its sub-contractors (if any) shall:

- 25.3.1 transfer to the Authority Contract Manager (or such other person as may be notified by the Authority to the Concessionaire) each Information Request relevant to this Agreement, the Services or any member of the TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within 2 Business Days of receiving such Information Request; and
- 25.3.2 in relation to Information held by the Concessionaire on behalf of the Authority, provide the Authority with details about and/or copies of all such Information that the Authority requests and such details and/or copies shall be provided within 5 Business Days of a request from the Authority (or such other period as the Authority may reasonably specify), and in such forms as the Authority may reasonably specify.
- 25.4 The Authority shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Concessionaire shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.
26. **Dispute Resolution**
- 26.1 The Authority and the Concessionaire shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement ("**Dispute**") before resorting to litigation.
- 26.2 If the Dispute is not settled through discussion between the Authority Contract Manager and a representative of the Concessionaire within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 26.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party ("**Notice**") that a structured mediation or negotiation be entered into with the assistance of a mediator.
- 26.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.

- 26.5 Where a dispute is referred to mediation under Clause 26.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 26.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 26.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 41.
- 26.8 For the avoidance of doubt, the Concessionaire shall continue to provide the Services in accordance with this Agreement and without delay or disruption while the Dispute is being resolved pursuant to this Clause 26.
- 26.9 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 26 and this Clause 26 shall not apply in respect of any circumstances where such remedies are sought.

27. **Breach and Termination of Agreement**

- 27.1 Without prejudice to the Authority's right to terminate at common law, the Authority may terminate this Agreement immediately upon giving notice to the Concessionaire if:
- 27.1.1 except as provided in and without prejudice to Clauses 27.1.3, the Concessionaire has committed any material breach (which term includes a Persistent Breach) of this Agreement and in the case of such a breach that is capable of remedy fails to remedy that breach within 20 Business Days (or such other longer timeframe as specified in writing by the Authority) from the date of written notice to the Concessionaire giving details of the breach and requiring it to be remedied. The termination right set out in this Clause 27.1.1 may not be exercised by the Authority in respect of a breach of Clause 5.1, or a breach by the Concessionaire of the Service Levels prior to 30th November 2012
 - 27.1.2 the Concessionaire is subject to an Insolvency Event;
 - 27.1.3 in the event that there is a change of ownership referred to in Clause 10.3 or the Concessionaire is in breach of Clause 10.3;

- 27.1.4 the Authority is not satisfied (acting reasonably) on the issue of any conflict of interest in accordance with Clause 11;
- 27.1.5 the Concessionaire commits any of the money laundering related offences listed in the Public Contract Regulations 2006.
- 27.2 Without prejudice to any of the Authority's other rights, powers or remedies (whether under this Agreement or otherwise) if the Concessionaire is in breach of any of its warranties and/or obligations under Clause 7 and/or any of its other obligations in respect of the Services under this Agreement, the Concessionaire shall promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. If the Concessionaire fails to remedy or reperform the Services, nothing in this Clause 27.2 shall prevent the Authority from procuring the provision of any Services or any remedial action in respect of any Services from an alternative contractor and, where the Authority so procures any Services or any remedial action, the Authority shall, subject to Clause 19, be entitled to recover from the Concessionaire all additional cost, loss and expense incurred by the Authority and attributable to the Authority procuring such Services or remedial action from such alternative contractor.
- 27.3 Neither Party shall be deemed to be in breach of this Agreement, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under this Agreement ("**the Affected Party**"), then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate this Agreement immediately upon giving notice to the Affected Party. If this Agreement is terminated in accordance with this Clause 27.3 then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.
- 27.4 Without prejudice to the Authority's right to terminate this Agreement under Clause 27.1 or to terminate at common law, but subject to Clause 27.6 the Authority may terminate this Agreement at any time without cause subject to giving the Concessionaire written notice of the period specified in Schedule 1.
- 27.5 Without prejudice to the Authority's right to terminate this Agreement under Clauses 27.1, 27.4 or at common law, but subject to Clause 27.6 the Authority may terminate this Agreement at any time following a Declaration of Ineffectiveness in accordance with the provisions of Clause 29.

- 27.6 The Authority undertakes that upon:
- 27.6.1 the termination of this Agreement by the Authority pursuant to Clauses 27.1.3, 27.4 or 27.5; or
 - 27.6.2 the termination of this Agreement by the Concessionaire pursuant to Clause 6.7,
- the Authority shall pay to the Concessionaire on the date of such termination, the relevant sum set out in Schedule 4 (the “**Termination Fee**”).

- 27.7 To the extent that the Authority has a right to terminate this Agreement under this Clause 27.1.1 then, as an alternative to termination, the Authority may by giving notice to the Concessionaire require the Concessionaire to provide part only of the Services with effect from the date specified in the Authority’s notice (“**Change Date**”) whereupon the provision of the remainder of the Services will cease and the definition of “the Services” shall be construed accordingly. The Fees applicable with effect from the Change Date will be adjusted proportionately or if in the Authority’s opinion a proportionate adjustment would not be reasonable in such manner as the Authority may reasonably determine.

28. **Consequences of Termination or Expiry**

- 28.1 Notwithstanding the provisions of Clause 24, wherever the Authority chooses to put out to tender for a replacement service provider some or all of the Services, Clause 17.4 shall apply.
- 28.2 The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 28.3 The Parties agree that the Exit Plan shall apply in the event of expiry or termination of this Agreement (howsoever caused) and the Parties shall comply with the Exit Plan, subject to the remaining provisions of this Clause 28 (and in particular Clause 28.6 which shall take priority over the Exit Plan if and to the extent only of any inconsistency between them).
- 28.4 The Concessionaire will:
- 28.4.1 prepare the initial Exit Plan within sixty (60) days of the Service Commencement Date. Within thirty (30) days of submission of the initial Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the initial Exit Plan based on the requirements that apply under Clause 28.3 upon expiry or termination of this Agreement (howsoever caused). The Concessionaire shall draft the final version of the initial Exit Plan taking into account the

Authority's reasonably required changes, if any. If the Parties are unable to agree the contents of the initial Exit Plan within that thirty (30) day period, such dispute shall be resolved in accordance with Clause 26; and

28.4.2 review and (if appropriate) update the Exit Plan in the first month of each contractual year (commencing with the second contract year) to reflect any and all changes in the Services. Following such update the Concessionaire will submit the revised Exit Plan to the Authority for review. Within thirty (30) days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan, based on the requirements that apply under Clause 28.3 upon expiry or termination of this Agreement (howsoever caused) and the changes that have occurred in the Services since the Exit Plan was last agreed. The Concessionaire shall draft the final version of the updated agreed Exit Plan taking into account the Authority's reasonably required changes, if any. If the Parties are unable to agree the contents of the revised Exit Plan within that thirty (30) day period, such dispute shall be resolved in accordance with Clause 26.

28.5 The Concessionaire warrants that the Exit Plan shall, at the time of its initial preparation and upon each submission by the Concessionaire of a revised Exit Plan pursuant to Clause 28.4:

28.5.1 document how the Services will transfer to the Authority and/or the Replacement Concessionaire;

28.5.2 provide a timetable and identify critical issues for the transition of Services from the Concessionaire to the Authority and/or the Replacement Concessionaire on a Location by Location basis;

28.5.3 set out the management structure to be put in place and employed while the transition of the Services from the Concessionaire to the Authority and/or Replacement Concessionaire is being carried out; and

28.5.4 be fit for purpose and appropriate for the Concessionaire to transfer the Services to the Authority and/or a Replacement Concessionaire promptly, without undue delay and with the minimum of interruption and inconvenience to the Authority and Users.

28.6 Upon expiry or termination of this Agreement (howsoever caused):

28.6.1 the Concessionaire shall, at no further cost to the Authority:

- 28.6.1.1 cease to provide the Services at each Location unless the Authority requires the Concessionaire by means of a written request to continue to provide the Services at any specific Location until such time as the responsibility for the provision of the Services at that Location has been transferred to the Authority (and/or its nominee) and/or a Replacement Concessionaire in accordance with the Exit Plan;
 - 28.6.1.2 take all such steps as shall be necessary for the orderly handover of Services to the Authority (or its nominee), such that the Services can be carried on with the minimum of interruption and inconvenience to the Authority and Users and to effect such handover in accordance with the provisions of this Clause 28;
 - 28.6.1.3 provide reasonable access to the Concessionaire's personnel and/or representatives to the Authority (and/or its nominee) and/or a Replacement Concessionaire for the purposes of coordinating the transfer of the Services from the Concessionaire to the Authority (and/or its nominee) and/or Replacement Concessionaire;
 - 28.6.1.4 on receipt of the Authority's written instructions to do so (but not otherwise), provide to the Authority a copy of all electronically held information belonging to the Authority and remove all copies of such information (including the purging of all disk-based information and the reformatting of all disks) by a date reasonably requested by the Authority, provided that the Concessionaire can retain such information for the purposes of and until such time as it has complied with its continuing obligations under this Agreement or under Communications Laws for which such information is required; and
- 28.6.2 the Concessionaire shall (subject to provisions of any security for due performance supplied by the Concessionaire) pay the Authority any Fees remaining due up to the date of termination or expiry calculated so far as is possible in accordance with Schedule 4 or otherwise reasonably determined by the Authority.
- 28.7 On termination of this Agreement under Clause 27.1 (but excluding Clause 27.1.3) or a cessation of any Services under Clause 27.4 (but in the case of the latter only insofar as the right to cease any Services

arises as a result of a right for the Authority to terminate under Clause 27.1 (but excluding Clause 27.1.3)), the Authority may enter into any agreement with any third party or parties as the Authority thinks fit to provide any or all of the Services and the Concessionaire shall, subject to Clause 19, be liable for all additional expenditure reasonably incurred by the Authority in having such services carried out and all other costs and damages reasonably incurred by the Authority in consequence of such termination. The Authority may recover such costs from the Concessionaire as a debt.

28.8 The Concessionaire will procure that whenever the Authority so requires on reasonable notice at any time during the continuance in force of this Agreement and for 12 months following the date of expiry or earlier termination of this Agreement the Authority will be given access to and be allowed to consult with any person, consultant or employee who, at that time:

28.8.1 is still an employee or sub-contractor of the Concessionaire or any of the Concessionaire's associated companies; and

28.8.2 was at any time employed or engaged by the Concessionaire in order to exercise the Rights or provide the Services under this Agreement,

and such access and consultation will be provided free of charge. The Concessionaire will further procure that all such persons co-operate with the Authority's requests.

29. **Declaration of Ineffectiveness**

29.1 The Parties do not anticipate that the Public Contracts Regulations 2006 or the Utilities Contracts Regulations 2006 apply to the grant of the Rights under this Agreement. The following provisions are included to deal with any possibility that such Regulations do apply.

29.2 In the event that a court makes a Declaration of Ineffectiveness, the Authority shall promptly notify the Concessionaire. The Parties agree that the provisions of Clause 28 and this Clause 29 shall apply as from the date of receipt by the Concessionaire of the notification of the Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of Clause 28 and this Clause 29 or the Cessation Plan, the provisions of this Clause 29 and the Cessation Plan shall prevail.

29.3 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness.

29.4 As from the date of receipt by the Concessionaire of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the

Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:

- (a) an orderly and efficient cessation of the Services or (at the Authority's request) a transition of the Services to the Authority or such other entity as the Authority may specify; and
- (b) minimal disruption or inconvenience to the Authority or to public passenger transport services or facilities,

in accordance with the provisions of this Clause 29 and to give effect to the terms of the Declaration of Ineffectiveness.

29.5 Upon agreement, or determination by the Authority, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

29.6 The Authority shall pay the Concessionaire's reasonable costs in assisting the Authority in preparing, agreeing and complying with the Cessation Plan. Such costs shall be reasonably determined by the Authority.

30. **Survival**

The provisions of Clauses 1, 4, 7, 9.1, 10.2.2, 10.2.3, , 13.1.4, 13.1.5.1, 13.1.5.3, 13.1.5.4, 13.1.6, 13.1.10, 13.1.14, 15, 17-21 (inclusive), 22.2-22.4, 23-26 (inclusive), 27.6, 28, 30, 31, 34-43 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of this Agreement. In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement shall do so.

31. **Rights of Third Parties**

31.1 Save that any member of the TfL Group has the right to enforce the terms of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the Parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Third Party Act by any person not a party to it, save pursuant to Clause 42.10.

31.2 Notwithstanding Clause 31.1, the Parties are entitled to vary or rescind this Agreement without the consent of any other person including any member of the TfL Group and any Games Body as defined in Clause 42.1.

32. Agreement Variation

32.1 Save where the Authority may require an addition or amendment to the London Underground Locations in accordance with Clause 6.11, or where there has been or there is a likelihood of a Change of Communications Law, this Agreement may only be varied or amended with the written agreement of both Parties substantially in the form set out in Schedule 6, and such variation or amendment shall not be binding upon the Parties unless completed in accordance with this Clause.

32.2 Where there has been or there is a likelihood of a Change of Communications Law, the Authority shall be entitled to require a variation to any of the provisions of this Agreement to the extent that the Authority considers that the terms of the Agreement are affected by such Change of Communications Law. The Authority shall provide to the Concessionaire a document in writing (a "Variation Notice") setting out:

32.2.1 the scope of the proposed variation to the term(s) of this Agreement, in a reasonable level of detail to allow the Concessionaire to understand the scope and impact of the proposed variation;

32.2.2 details of the reasons for and assumptions underlying such Change of Communications Law in a reasonable level of detail to allow the Concessionaire to understand the rationale for the proposed variation; and

32.2.3 the date on which the variation will take effect

32.3 Within fifteen (15) Business Days of receipt of a Variation Notice, the Concessionaire shall notify the Authority in writing (a "Response Notice") stating:

32.3.1 that it accepts the Variation Notice on the terms set out in the Variation Notice; or

32.3.2 that it rejects the Variation Notice.

The Concessionaire shall not be entitled to reject a Variation Notice under this Clause 32.3 except in such circumstances where (and to the extent only that): (i) the Variation Notice is not required to ensure compliance with a Change of Communications Laws; or (ii) the Variation Notice would substantially render the Concessionaire's obligations impossible to perform.

32.4 If the Concessionaire legitimately issues a Response Notice to the Authority pursuant to Clause 32.3.2, the Parties shall discuss and seek to agree the terms of the Variation Notice, acting in good faith

and expeditiously. Without prejudice to Clause 43 the Parties shall continue to comply with their respective obligations under this Agreement notwithstanding the issue of a Response Notice pursuant to Clause 32.3.2.

- 32.5 Once the terms of the Variation Notice have been agreed between the Parties, the Parties shall effect a variation to this Agreement in accordance with Clause 32.7 in order to implement the variation on the agreed terms.
- 32.6 If the Parties are unable to agree the changes to this Agreement following a Response Notice under Clause 32.3.2 in respect of a Change of Communications Law within thirty (30) Business Days either Party may refer any matter for resolution in accordance with the Dispute Resolution Procedure under Clause 26.
- 32.7 Without prejudice to the Concessionaire's express obligations under this Agreement and the Authority's right of suspension under Clause 43, no variation to this Agreement as a result of a Change of Communications Law shall be effective unless made in writing and signed by or on behalf of the Parties.
- 32.8 Each Party shall bear their own costs of preparing and/or evaluating a Variation Notice.
- 32.9 The Authority may withdraw a Variation Notice given under Clause 32.2 at any time prior to the terms of such variation being implemented in accordance with Clause 32.7.

33. **Novation**

- 33.1 The Authority may novate or otherwise transfer this Agreement (in whole or in part).
- 33.2 Within 10 Business Days of a written request from the Authority, the Concessionaire shall at its expense execute such agreement as the Authority may reasonably require to give effect to any such transfer all or part of its rights and obligations under this Agreement to one or more persons nominated by the Authority.
- 33.3 Subject to Clause 10, the Concessionaire shall not assign the benefit or delegate the burden of this Agreement or otherwise transfer any right or obligation under this Agreement to any third party other than a member of the Concessionaire Group without the prior written consent of the Authority.
- 33.4 Notwithstanding Clause 33.3, the Authority agrees that it will consent to the assignment of the benefit or the delegation of the burden of this Agreement or any other transfer of rights or obligations of the Concessionaire under this Agreement to an entity in which the

Concessionaire holds at least 10% of the issued shared capital unless there is a reasonable basis for the Authority to object to such assignment, delegation or transfer.

34. Non-Waiver of Rights

No waiver of any of the provisions of this Agreement is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 36. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

35. Illegality and Severability

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

36. Notices

Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, prepaid recorded delivery first class post or facsimile addressed to the recipient at its registered office, the address stated in Schedule 1 or any other address (including a facsimile number) notified to the other Party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

- 36.1 if delivered by hand, at the time of delivery;
- 36.2 if delivered by post, 2 Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or
- 36.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party within 24 hours after transmission.

37. Entire Agreement

- 37.1 Subject to Clause 37.2:

37.1.1 this Agreement and all documents referred to in this Agreement, contains all of the terms which the Parties have agreed relating to the subject matter of this Agreement and such documents and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into this Agreement by a statement which this Agreement does not contain; and

37.1.2 without prejudice to the Concessionaire's obligations under this Agreement, the Concessionaire is responsible for and shall make no claim against the Authority in respect of any misunderstanding affecting the basis of the Concessionaire's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.

37.2 Nothing in this Clause 37 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

38. Counterparts

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

39. Relationship of the Parties

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

40. Further Assurance

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement.

41. Governing Law

The Agreement shall be governed by and construed in accordance with the law of England and Wales. Without prejudice to Clause 26, the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement provided that the Authority has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Concessionaire is incorporated or in which any assets of

the Concessionaire may be situated. The Parties agree irrevocably to submit to that jurisdiction.

42. 2012 Games – No Marketing Rights

42.1 For the purposes of this Clause 42, unless the context indicates otherwise, the following expressions shall have the following meanings:

- "Ambush Marketing"** any activity, commercial or non-commercial, undertaken by any person or entity, whether public or private, that creates, implies or refers to a direct or indirect association of any kind (including an association in the minds of members of the public) with any Games Body or the Games (including by reference to the city of London and the year 2012), and includes the display or distribution of advertising materials or products with the intention of Games exposure for any brand in or within the vicinity of Games Venues, which has not been authorised by LOCOG or any other Games Body;
- "Games"** the Games of the thirtieth Olympiad and the Paralympic Games that are to take place in 2012 in London;
- "Games Body"** each of the International Olympic Committee, the International Paralympic Committee, the British Olympic Association, the British Paralympic Association, LOCOG or any other organising committee of an Olympic and/or Paralympic Games;
- "Games Event"** an event (whether a sporting event or not, and whether held in London or not) held as part of the Games;
- "Games Venue"** a venue (including any public area) at, in or through which a Games Event is to be held or takes place and any official training venue of the Games, and includes any construction sites at which such venues are being constructed;
- "LOCOG"** The London Organising Committee of the Olympic Games Limited of 1 Churchill Place, Canary Wharf, London E14 5LN with Company

Number 05267819;

“ODA”

the Olympic Delivery Authority; and

"Protected Marks"

any trade marks, trade names, logos or other intellectual property rights of any Games Body, including marks and designs relating to the Games, any Olympic or Paralympic teams, the Olympic Symbol (i.e. the five interlocking rings of the International Olympic Committee), the Paralympic Symbol (i.e. the three agitos of the International Paralympic Committee), the words "Olympic", "Olympian", "Olympiad", "Paralympic", "Paralympian", "Paralympiad" (and their plurals) and/or any other word(s), motto, symbol or representation protected by the Olympic Symbol etc. (Protection) Act 1995, the London Olympic Games and Paralympic Games Act 2006 (whether as now in force or as amended in the future) or by any other legislation enacted in relation to the Games.

42.2 For the avoidance of doubt, the Authority has no right to grant any rights in respect of the Protected Marks or any trade marks, trade names, logos or other intellectual property rights of the ODA (including for the avoidance of doubt the name, "the Olympic Delivery Authority", and the Concessionaire hereby acknowledges that it shall not, by this Agreement, acquire any right, title or interest in the Protected Marks or any right to associate itself with the Games Bodies, the ODA or the Games (whether prior to, during or after the Games take place).

42.3 The Concessionaire shall not:

42.3.1 undertake any form of Ambush Marketing;

42.3.2 use any trade marks, trade names or logos so resembling the Protected Marks as to be likely to cause confusion with the Protected Marks; or

42.3.3 cause or permit anything to be done which might damage or endanger the validity or distinctiveness of, or the goodwill in, the Protected Marks or other intellectual property rights of any Games Body.

42.4 The Concessionaire shall not, and shall draw to the attention of its employees that they shall not, without the prior written approval of LOCOG in each case:

- 42.4.1 represent, directly or indirectly, that any product or service provided has been endorsed or approved by or in any way associated with the Games or any Games Body; or
 - 42.4.2 use in advertising, publicity or any other communication, whether written, electronic or any other means any Protected Mark, the name of any Games Body, or of any of its directors or employees.
- 42.5 In relation to any of the Concessionaire's own suppliers, sub-contractors or agents who provide goods or services in relation to this Agreement (each an "**Associated Party**") the Concessionaire shall take the following steps to prevent each Associated Party from carrying out any of the activities described in Clauses 42.2 to 42.4 (the "**Prohibited Activities**"):
- 42.5.1 draw the Prohibited Activities to the attention of each Associated Party;
 - 42.5.2 diligently monitor the marketing and other activities of each Associated Party and immediately notify LOCOG, providing full written particulars, as soon as it becomes aware that an Associated Party is carrying out, has carried out or plans to carry out any of the Prohibited Activities;
 - 42.5.3 if requested by the Authority procure that the Associated Party signs a deed in favour of LOCOG in a form to be provided by the Authority; and
 - 42.5.4 subject to Clause 42.6, provide such assistance as is reasonably required by LOCOG to help it prevent or stop an Associated Party from carrying out a Prohibited Activity.
- 42.6 Unless expressly instructed to do so under Clause 42.5.4:
- 42.6.1 the Concessionaire shall not bring any claim, proceedings or other action against an Associated Party in relation to the Prohibited Activities;
 - 42.6.2 LOCOG will have control over the conduct of all claims related to the Prohibited Activities; and
 - 42.6.3 LOCOG will be entitled to retain any damages, expenses or other amounts awarded in respect of any such claim;

provided that the Parties agree that in no circumstances will LOCOG be obliged to bring or defend any such claim and LOCOG in its sole discretion may decide what action (if any) to take regarding any such claim.

- 42.7 LOCOG (and after its dissolution, an appropriate Games Body) shall have the right to enforce the terms of Clause 42.2 to 42.6 and the Concessionaire acknowledges the provisions therein are of such importance to LOCOG that damages may not be an adequate remedy for breach of Clauses 42.2 to 42.6 by the Concessionaire and that injunctive relief may be a more appropriate remedy.
- 42.8 The Concessionaire hereby acknowledges that all Games Venues must be clean of all advertising, marketing and other branded materials, other than such materials approved by LOCOG, and, to the extent that it is relevant to this Agreement, the Concessionaire shall follow the reasonable instructions of LOCOG in this regard.
- 42.9 This Clause 42 shall continue to apply after termination of the Contract without limit of time (except in the case of Clause 42.8 which shall only apply until the end of the Games).
- 42.10 Notwithstanding Clause 31, a Games Body may enforce the terms of this Clause in accordance with the Contracts (Rights of Third Parties) Act 1999.

43. **Suspension**

The Authority shall be entitled to suspend any rights granted to the Concessionaire under this Agreement (including the grant of rights under Clause 6.1), or require the Concessionaire to suspend the provision of the Services, to the extent necessary and with immediate effect to ensure compliance with any Communications Laws, including any Special Conditions. The Parties shall work together in accordance with Clauses 32.2 to 32.10 to reinstate the Concessionaire's rights or to resume the operation of the Services as soon as reasonably practicable and to the fullest extent possible in the circumstances after such suspension has been implemented.

44. **Security and Guarantees**

- 44.1 As a condition precedent to this Agreement, the Concessionaire shall (to the extent that it has not already done so) provide at its expense a parent company guarantee (from such Holding Company as the Authority may require unless otherwise agreed with the Authority) in such form as may be set out in the Appendices to this Agreement.
- 44.2 The Concessionaire shall be regarded as being in material breach of this Agreement which is incapable of remedy in the event that any parent company guarantee and/or performance bond (as the case may be) is or becomes invalid or otherwise unenforceable.
- 44.3 Where the Concessionaire has provided the Authority with a performance bond and thereafter any variation is made to the Services under Clause 32, the Authority may in its discretion require the Concessionaire to provide at its expense a replacement performance

bond for a greater sum where such variation either alone or when aggregated with any other variations has resulted in a material increase to the value of this Agreement to the Authority.

44.4 The Concessionaire shall give notice to the Authority within 10 Business Days where there is any change in the ownership of the Guarantor of the parent company guarantee where such change relates to 50% or more of the issued share capital of the Guarantor being transferred outside of the Concessionaire Group. The Authority shall, subject to Clause 27.6, have the right to terminate this Agreement within sixty (60) calendar days of receipt of the required notice from the Concessionaire, or in the event that the Concessionaire fails to give the required notice, within sixty (60) calendar days of the Authority becoming aware of such event, unless the Concessionaire has within such period provided a parent company guarantee or other appropriate security from a replacement guarantor acceptable to the Authority (acting reasonably) on terms identical to the parent company guarantee.

THIS AGREEMENT has been signed for and on behalf of the Parties the day and year written above.

Signed by)
for and on behalf of)
The Authority)
Signature Print name and position
Date:

Signed by)
for and on behalf of)
the **Concessionaire**)
Signature Print name and position
Date:

SCHEDULE 1 - KEY CONTRACT INFORMATION

1. **Contract Reference Number:** LUC0114
2. **Name of the Concessionaire:** Virgin Media Business Limited
3. **Commencement:**
 - (a) **Agreement Commencement Date:** the date of this Agreement
 - (b) **Service Commencement Date:** to be agreed by the Parties (but which date shall be no later than 30th June 2012)
4. **Duration/Expiry Date:** Subject to Clause 2.2, 5 years from 1st April 2012
5. **Address where invoices shall be sent:**

Virgin Media Finance
Bartley Wood Business Park
Bartley Way
Hook
RG27 9UP
6. **Electronic format required (if any) for submission of orders by the Authority and of invoices by the Authority to the Concessionaire:**

N/A
7. **Time for payment where not 30 days (see Clause 4.6):** For payment of the Initial Contribution Fee, see paragraph 1.2 of Schedule 4.
8. **Details of the Authority Contract Manager**

Name: Steven Lewis
Address: London Underground Limited
8th Floor, West Wing
55 Broadway
London
SW1H 0BD
Telephone: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

9. Concessionaire's Key Personnel:

Name & Position	Contact Details	Area of Responsibility
[REDACTED] Contract Manager	TBA	Contract Manager

10. Notice period in accordance with Clause 27.4 (termination without cause):

90 days

11. Address for service of notices and other documents in accordance with Clause 36:

For the Authority:

**Windsor House
42-50 Victoria Street
London
SW1H 0TL**

Facsimile number: [REDACTED]

For the attention of: General Counsel


For the Concessionaire:

Media House
Bartley Wood Business Park
Hook
Hants RG27 9UP

Facsimile number: [REDACTED]

For the attention of: Assistant General Counsel (Networks, Business and IT)

12. Details of the individual employee of the Concessionaire who shall be responsible at Board level for dispute resolution (Clause 26.2):


Executive Director, Broadband
Media House
Bartley Wood Business Park
Hook
Hants RG27 9UP

SCHEDULE 2 – COMMERCIALY SENSITIVE INFORMATION

No.	Clause/Item(s)	Duration of Confidentiality
1	1.1 Definition of Initial Contribution Fee - reference to [REDACTED]	7 years or 3 years from the end of the Term whichever is the greater
2	Schedule 1- Details in paragraphs 9 (Key Personnel), 11, (Notices) and 12 (dispute resolution)	7 years or 3 years from the end of the Term whichever is the greater
3	Schedule 3- Technical Principles and High Level Design	7 years or 3 years from the end of the Term whichever is the greater
4	Schedule 3A – Table (except the information in columns labelled “Station”, “No of AP’s”, “Foot-Fall (Millions) 2010” and “% of total Footfall”)	7 years or 3 years from the end of the Term whichever is the greater
5	Schedule 4	7 years or 3 years from the end of the Term whichever is the greater
6	Schedule 5- Project Plan	7 years or 3 years from the end of the Term whichever is the greater
7	Schedule 7 Appendix 1- Operational Agreement principles	7 years or 3 years from the end of the Term whichever is the greater
8	Schedule 10- Portal	7 years or 3 years from the end of the Term whichever is the greater
9	Schedule 11- Service Levels	7 years or 3 years from the end of the Term whichever is the greater

SCHEDULE 3 – SPECIFICATION AND LIST OF LOCATIONS

This Schedule 3 consists of the following:

- High Level Design, which forms part of the Specification and contains details of the Infrastructure that the Authority is providing in order to allow the Concessionaire to provide the WiFi Service to the public in accordance with the terms of the Agreement.
- Technical Principles, which outlines the principles agreed between the Parties that will be complied with by the Authority in agreeing the low level design to implement the Infrastructure; and
- Schedule 3A (Locations), which contains a list of locations that may be amended in accordance with the terms of this Agreement from time to time, at which the Infrastructure is to be installed by the Authority pursuant to Clause 6 of the Agreement and the WiFi Service is to be made available to the public.

The Parties acknowledge that the High Level Design is based on technical and regulatory standard or industry best practice that is known at the date of the Agreement. Accordingly, the Parties agree that some changes to the High Level Design may need to be made in order to incorporate the Technical Principles to enable the WiFi Service to be provided to the Users in accordance with the terms of the Agreement. Any such change shall be agreed by the Parties in writing.

The High Level Design forms the basis of all low level designs for the Infrastructure that the Authority is providing at each of the Locations listed in Schedule 3A (Locations). The Parties agree to comply with the Technical Principles in creating the appropriate low level designs for the Infrastructure and to jointly approve any low level designs in accordance with the Technical Principles.

Once the Parties have approved the appropriate low level designs for the Infrastructure, these low level designs shall form part of the Specification and be incorporated into the Agreement. In the event of any conflict between the agreed low level design and the High Level Design, the provisions contained in the low level design shall prevail.

The Authority shall provide the Infrastructure at the Locations indicated in Schedule 3A (Locations) in accordance with Clause 6 of the Agreement and the principles contained in the Technical Principles in order to allow the provision of WiFi Service to the public by the Concessionaire in accordance with this Agreement.

All capitalised terms used but not defined in this Schedule 3 or any part of the Agreement shall be interpreted in accordance with the applicable industry standard and practices

Schedule 3A - Locations

Introduction:

This Schedule 3A sets out:

- (a) a list of Locations at which the Infrastructure is to be installed and at which the WiFi Service is to be made available pursuant to the Agreement; and
- (b) details of what bandwidth is required by the Concessionaire at the Service Commencement.

The Authority shall be responsible for providing the bandwidth detailed in this Schedule in order to enable the provision of the WiFi Service by the Concessionaire. Any request for an increase in bandwidth shall follow the process set out in the Operational Agreement.

In the event that the Authority is unable to provide any of the Locations identified within this Schedule 3A the Concessionaire agrees that the Authority can substitute those Locations with alternative Locations with equivalent levels of footfall.

No	Station	No of AP's	Day 1 B/Width 2012	Foot-Fall (Millions) 2010	% of total Footfall	Annual Fee	Quarterly Fee
1	Waterloo	53		81.6	4.3%		
2	Victoria	19		79.9	4.2%		
3	King's Cross St. Pancras	51		72.6	3.8%		
4	Oxford Circus	51		70.1	3.7%		
5	Liverpool Street	20		62.7	3.3%		
6	London Bridge	30		60.8	3.2%		
7	Paddington	22		44.0	2.3%		
8	Bank & Monument	71		43.5	2.3%		
9	Canary Wharf	17		41.5	2.2%		
10	Piccadilly Circus	24		39.7	2.1%		
11	Leicester Square	25		36.9	1.9%		
12	Bond Street	26		36.9	1.9%		
13	Tottenham Court Road	25		34.5	1.8%		
14	Euston	35		33.6	1.8%		
15	Holborn	23		31.3	1.6%		
16	Stratford	31		29.8	1.6%		
17	South Kensington	19		29.8	1.6%		
18	Green Park	35		29.4	1.5%		
19	Hammersmith (Dis)	17		27.9	1.5%		
20	Baker Street	34		26.3	1.4%		
21	Finsbury Park	21		23.5	1.2%		
22	Tower Hill	18		21.8	1.1%		
23	Shepherd's Bush (Cen)	15		21.7	1.1%		
24	Charing Cross	25		21.4	1.1%		
25	Brixton	11		21.3	1.1%		
26	Earl's Court	20		21.2	1.1%		
27	Moorgate	20		21.0	1.1%		
28	Camden Town	24		21.0	1.1%		
29	Embankment	29		20.2	1.1%		
30	Knightsbridge	14		20.2	1.1%		
31	Westminster	23		20.1	1.1%		
32	Old Street	18		20.1	1.1%		

33	Covent Garden	14		19.6	1.0%			
34	Vauxhall	11		19.3	1.0%			
35	Elephant & Castle	30		18.2	1.0%			
36	Notting Hill Gate	18		17.9	0.9%			
37	Angel	12		17.8	0.9%			
38	Marble Arch	9		17.8	0.9%			
39	North Greenwich	11		17.7	0.9%			
40	Farringdon	8		16.8	0.9%			
41	St. Paul's	11		16.2	0.8%			
42	Chancery Lane	12		15.3	0.8%			
43	Bethnal Green	11		15.1	0.8%			
44	Gloucester Road	22		14.5	0.8%			
45	Russell Square	15		14.2	0.7%			
46	Highbury & Islington	17		13.9	0.7%			
47	Walthamstow Central	12		13.8	0.7%			
48	Warren Street	24		13.6	0.7%			
49	St. James's Park	10		13.3	0.7%			
50	Mile End	7		13.2	0.7%			
51	Tooting Broadway	11		12.9	0.7%			
52	Seven Sisters	22		12.4	0.7%			
53	Marylebone	13		11.4	0.6%			
54	Wood Green	11		10.9	0.6%			
55	Balham	14		10.9	0.6%			
56	Southwark	17		10.4	0.5%			
57	Euston Square	12		10.0	0.5%			
58	Temple	7		9.4	0.5%			
59	Turnpike Lane	12		9.4	0.5%			
60	Queensway	15		9.3	0.5%			
61	Goodge Street	17		9.0	0.5%			
62	Wembley Park	13		9.0	0.5%			
63	Canada Water	15		9.0	0.5%			
64	Aldgate East	9		9.0	0.5%			
65	Clapham Common	11		9.0	0.5%			
66	Barbican	8		8.9	0.5%			
67	Manor House	12		8.8	0.5%			
68	Tottenham Hale	11		8.3	0.4%			
69	Pimlico	11		8.2	0.4%			
70	Canning Town	17		8.2	0.4%			
71	Archway	12		8.1	0.4%			
72	Stockwell	23		8.0	0.4%			
73	Heathrow Terminals 123	9		8.0	0.4%			
74	Holloway Road	14		7.7	0.4%			
75	Clapham South	12		7.5	0.4%			
76	Kentish Town	16		7.4	0.4%			
77	Mansion House	10		7.2	0.4%			
78	Great Portland Street	9		6.8	0.4%			
79	Bermondsey	11		6.6	0.3%			
80	Lancaster Gate	17		6.5	0.3%			
81	St. John's Wood	10		6.4	0.3%			
82	Tooting Bec	15		6.3	0.3%			
83	Swiss Cottage	11		6.2	0.3%			
84	Belsize Park	17		6.2	0.3%			
85	Blackhorse Road	11		6.1	0.3%			
86	Hyde Park Corner	9		5.9	0.3%			
87	Clapham North	13		5.7	0.3%			
88	Oval	18		5.6	0.3%			
89	Colliers Wood	11		5.6	0.3%			

90	Bayswater	7		5.5	0.3%			
91	Acton Town	9		5.4	0.3%			
92	Bounds Green	11		5.3	0.3%			
93	Chalk Farm	13		5.3	0.3%			
94	Southfields	6		5.2	0.3%			
95	Caledonian Road	14		5.1	0.3%			
96	Borough	13		5.1	0.3%			
97	Gants Hill	9		5.1	0.3%			
98	Highgate	14		5.0	0.3%			
99	Mornington Crescent	17		4.7	0.2%			
100	Hampstead	19		4.5	0.2%			
101	Edgware	10		4.4	0.2%			
102	Wembley Central	7		4.4	0.2%			
103	Kennington	26		4.3	0.2%			
104	Warwick Avenue	11		4.3	0.2%			
105	Stepney Green	9		4.1	0.2%			
106	Cannon Street	7		3.9	0.2%			
107	Kilburn Park	11		3.8	0.2%			
108	Tufnell Park	19		3.8	0.2%			
109	Regent's Park	15		3.7	0.2%			
110	South Wimbledon	11		3.6	0.2%			
111	Lambeth North	17		3.6	0.2%			
112	West Ham	14		3.4	0.2%			
113	Holland Park	14		3.4	0.2%			
114	Heathrow Terminal 5	9		3.1	0.2%			
115	Maida Vale	12		3.1	0.2%			
116	Arsenal	13		3.0	0.2%			
117	Hatton Cross	7		2.8	0.1%			
118	Redbridge	6		2.6	0.1%			
119	Heathrow Terminal 4	6		2.1	0.1%			
120	Wimbledon Park	6		2.0	0.1%			
TOTALS		1988.0		1902.3				

SCHEDULE 4 - FEES

1. INITIAL CONTRIBUTION FEE

- 1.1. The Authority shall issue an invoice for the Initial Contribution Fee to the Concessionaire on 2nd April 2012.
- 1.2. The Concessionaire shall pay the Initial Contribution Fee to the Authority within 10 days of receiving the invoice specified in paragraph 1.1 above by way of BACS (Bank Automated Clearance System) transfer to the Authority's nominated bank account or by such other method as reasonably notified by the Authority to the Concessionaire.
- 1.3. The Initial Contribution Fee is payable by the Concessionaire in respect of the Concessionaire's ability to access the Infrastructure over the Term.

2. ANNUAL CONCESSION FEE

- 2.1. Subject to paragraphs 2.2 and 3 below and paragraph 4.2 of Schedule 11, a sum of [REDACTED] (the "Annual Concession Fee") shall be payable by the Concessionaire to the Authority each year during the Term from the Service Commencement Date in accordance with the provisions of this Schedule. The Annual Concession Fee is calculated on the availability of the 120 Locations set out in Schedule 3A.
- 2.2. The Authority shall invoice the Concessionaire a pro rata sum of the Annual Concession Fee quarterly in arrears on the Invoices Dates set out below and the Concessionaire shall pay to the Authority the invoiced amount within 30 days of receipt of such invoice in accordance with Clause 4.6 of the Agreement.

	Quarter Dates	Invoice Dates
Q1	1 April – 23 June	25 June
Q2	24 June – 15 September	17 September
Q3	16 September – 8 December	10 December
Q4	9 December – 31 March	1 April

- 2.3. The invoice to be submitted by the Authority pursuant to paragraph 2.2 above shall specify the period to which the invoice relates.

3. ADJUSTMENTS FOR UNAVAILABLE STATIONS

3.1. For the purposes of this Schedule 4 the following term shall have the following meaning:

Traffic Hour Period – the period that shall commence when the London Underground passenger service comes into operation (usually 05:30) until the London Underground passenger service for that day terminates for engineering works (usually 01:30 the following day).

3.2. If following the Service Commencement Date the Infrastructure at any of the initial 120 London Underground Locations listed in Schedule 3A as may be varied by agreement from time to time (the “Stations”) is unavailable to Users:

3.2.1. for Station closures (but excluding Emergency Suspension as defined in Clause 3.2.2 or failure of circuits provided by the Concessionaire or a member of the Concessionaire Group) for longer than two full consecutive Traffic Hour Periods, the Annual Concession Fee shall be adjusted in accordance with paragraph 3.3.1 below.

3.2.2. If the Authority has failed to deliver the Infrastructure at a Station in whole or part the Annual Concession Fee shall be adjusted in accordance with paragraph 3.3.2 below

3.3. The following shall apply in determining the amount of the adjustment to be made (calculated on a quarterly basis) to the Annual Concession Fee in the event of unavailability of the Infrastructure to Users at a Station :

3.3.1. For non-availability set out in 3.2.1:

- Adjustments are only made by the Authority where Infrastructure at Stations is unavailable for full Traffic Hour Periods.
- Adjustments do not apply to the first two consecutive Traffic Hour Periods of unavailability.
- Adjustments are calculated at $1/365^{\text{th}}$ of the Annual Concession Fee per station (as stated in the Schedule 3A).

3.3.2. For non availability set out in 3.2.2:

- Where there is a non delivery (in whole or in part) of Infrastructure at a Station the adjustment for the relevant Quarter shall be calculated in accordance with the following formula:

$(\text{PAP} - \text{AAP})/\text{PAP} \times \text{Quarterly Fee for the Location (set out in Schedule 3A)}$

Where:-

"PAP" means for a Location the Planned number of Access Points (set out in schedule 3A)

"AAP" means for a Location the Number of actual Access Points (as recorded in the CMDB) delivered at the beginning of the relevant Quarter (provided that where the Service Commencement Date falls after the beginning of the

relevant Quarter then the Number of actual Access Points shall be those delivered on the Service Commencement Date)

3.4. The Authority shall notify the Concessionaire of the details and amount of the adjustment that the Concessionaire is entitled to under this paragraph 3 and shall deduct such amount from the Annual Concession Fee payable by the Concessionaire to the Authority each Quarter pursuant to paragraph 2 above. The Authority's invoice to the Concessionaire in respect of the Annual Concession Fee shall set out the adjustment

4. REVENUE SHARE FEE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 4.2. The Revenue Share Fee payable to the Authority in accordance with this Agreement shall be [REDACTED] of the Total Annual Net Revenue.
- 4.3. The Concessionaire shall pay the Revenue Share Fee to the Authority annually in arrears throughout the Term in accordance with this paragraph 4. The Revenue Share Fee shall be determined as follows:
- 4.3.1. Within 30 days of the end of each Revenue Share Period, the Concessionaire shall prepare (or procure that its auditors prepare) and deliver to the Authority a statement detailing the Revenue Share Fee payable by the Concessionaire.
- 4.3.2. If the statement submitted by the Concessionaire pursuant to paragraph 4.3.1 above is not agreed by the Authority, the Parties shall use reasonable endeavours to discuss the matter in dispute as soon as practicable and if they fail to do so, the Parties may refer the dispute for resolution in accordance with Clause 26 of the Agreement.
- 4.3.3. If the Authority agrees with the statement submitted by the Concessionaire pursuant to paragraph 4.3.1 above the Concessionaire shall within 7 days of such agreement provide a purchase order for the Revenue Share Fee and the Authority shall then issue the Concessionaire an invoice in respect of the Revenue Share Fee which shall be payable in accordance with Clause 4.6 of this Agreement.
- 4.4. The Parties agree that during the period of the Games (as defined in Clause 42 of the Agreement), which period shall end on 9th September 2012, the Concessionaire shall provide the WiFi Services at the Locations free of charge and accordingly the Parties agree that there will be no Wholesale Net Revenue or Pay as You Go Net Revenue during the Games period and that this shall be taken into account when determining the amount of Revenue Share Fee payable by the Concessionaire in the first Revenue Share Period.

5. MARKET RESEARCH SURVEY FEE

- 5.1. The Concessionaire shall pay to the Authority a sum of [REDACTED] (the "Market Research Survey Fee") annually throughout the Term to cover the Authority's reasonably incurred expenses in carrying out market research survey.
- 5.2. The Market Research Survey Fee shall be invoiced by the Authority at least 30 days prior to 31st March in each year of the Term and shall be payable by the Concessionaire on 31st March in each year of the Term. The first Market Research Survey Fee shall be paid to the Authority on 31st March 2013.

6. EXTENSION OF THE AGREEMENT

6.1. In the event that the Parties agree to extend the Agreement beyond the initial 5 year period as specified in Schedule 1 of the Agreement, the Annual Concession Fee and the Market Research Survey Fee shall continue to be paid in accordance with paragraphs 2 and 5 of this Schedule, unless otherwise agreed by the Parties at the time of extension.

6.2. If the Parties agree to extend the duration of the Agreement beyond the initial 5 year period specified in Schedule 1 of the Agreement, the amount of Revenue Share Fee that is payable by the Concessionaire during the additional term of the Agreement, shall be [REDACTED] of the Total Annual Net Revenue achieved by the Concessionaire during the relevant period (unless otherwise agreed).

7. ADDITIONAL LOCATIONS

7.1. If the Authority adds more London Underground Locations to the public WiFi Service in addition to the Locations set out in Schedule 3A, the revenue generated from these additional London Underground Locations shall be subject to the applicable Revenue Share Fee at that time.

7.2. [REDACTED]

7.3. The process for adding additional London Underground Locations is set in Clause 6.11 of this Agreement

8. TERMINATION FEE

8.1. In respect of a termination of the Agreement as set out in Clause 27.6.1 the Termination Fee shall be as set out below:

Year of the Agreement in which the termination takes effect	Termination Fee
1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]

In respect of a termination of the Agreement as set out in Clause 27.6.2 the Termination Fee shall not exceed [REDACTED] and shall be calculated based on the following fees:

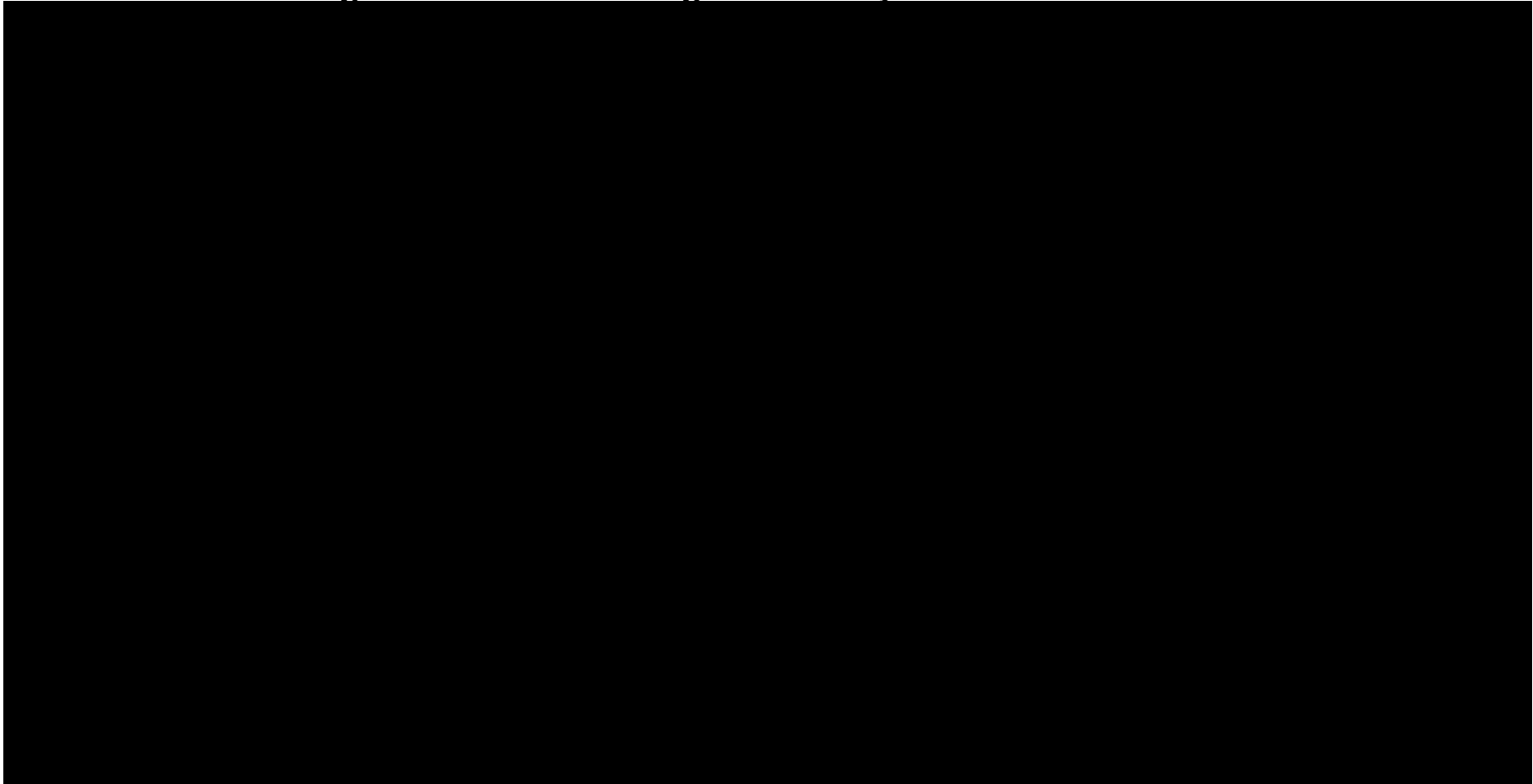
[REDACTED]

9. Details of Period for Financial Year 2012/2013 to 2016/2017

Period / Financial Year	2012-13	2013-14	2014-15	2015-16	2016-17
Start of Period 1	01-Apr-12	01-Apr-13	01-Apr-14	01-Apr-15	01-Apr-16
Start of Period 2	29-Apr-12	28-Apr-13	27-Apr-14	03-May-15	01-May-16
Start of Period 3	27-May-12	26-May-13	25-May-14	31-May-15	29-May-16
Start of Period 4	24-Jun-12	23-Jun-13	22-Jun-14	28-Jun-15	26-Jun-16
Start of Period 5	22-Jul-12	21-Jul-13	20-Jul-14	26-Jul-15	24-Jul-16
Start of Period 6	19-Aug-12	18-Aug-13	17-Aug-14	23-Aug-15	21-Aug-16
Start of Period 7	16-Sep-12	15-Sep-13	14-Sep-14	20-Sep-15	18-Sep-16
Start of Period 8	14-Oct-12	13-Oct-13	12-Oct-14	18-Oct-15	16-Oct-16
Start of Period 9	11-Nov-12	10-Nov-13	09-Nov-14	15-Nov-15	13-Nov-16
Start of Period 10	09-Dec-12	08-Dec-13	07-Dec-14	13-Dec-15	11-Dec-16
Start of Period 11	06-Jan-13	05-Jan-14	04-Jan-15	10-Jan-16	08-Jan-17
Start of Period 12	03-Feb-13	02-Feb-14	01-Feb-15	07-Feb-16	05-Feb-17
Start of Period 13	03-Mar-13	02-Mar-14	01-Mar-15	06-Mar-16	05-Mar-17

SCHEDULE 5 - PROJECT PLAN

London Underground Public WiFi High Level Project Plan & Workstreams v6



SCHEDULE 6 - FORM FOR VARIATION

Contract Parties: *[to be inserted]*

Contract Number: *[to be inserted]*

Variation Number: *[to be inserted]*

Authority Contact Telephone *[to be inserted]*

Fax *[to be inserted]*

Date: *[to be inserted]*

AUTHORITY FOR VARIATION TO CONTRACT (AVC)

Pursuant to Clause 32 of the Contract, authority is given for the variation to the Contract as detailed below. The duplicate copy of this form must be signed by or on behalf of the Concessionaire and returned to the Authority Contract Manager as an acceptance by the Concessionaire of the variation shown below.

• DETAILS OF VARIATION	• AMOUNT (£)
•	•
•	•
• ALLOWANCE TO THE CONCESSIONAIRE	•
• EXTRA COST TO THE CONCESSIONAIRE	•
• TOTAL	•

.....
For the Authority (signed)

.....
(print name)

.....
For the Concessionaire (signed)

.....
(print name)

SCHEDULE 7 -

CONTRACT MANAGEMENT AND OPERATIONAL AGREEMENT PRINCIPLES

1. Introduction

This Schedule 7 sets out the Contract management procedures to manage the relationship between the Parties under the Agreement.

2. Contract Management

- 2.1. The Parties shall each appoint a representative who shall be responsible for the oversight of the operation and management of each Party's obligations under the Agreement, and who will liaise on all matters pertaining to the Agreement (such representative on behalf of the Authority being the "**Authority Contract Manager**", and such representative on behalf of the Concessionaire being the "**Concessionaire Contract Manager**").
- 2.2. Each Party shall provide the other with details of their respective Authority Contract Manager or Concessionaire Contract Manager as soon as reasonably practicable following the Agreement Commencement Date, and each Party agrees that it shall not change the identity of the Authority Contract Manager or Concessionaire Contract Manager, as the case may be, without notifying the other Party of such change.
- 2.3. The Parties shall develop and agree the Operational Agreement in accordance with the principles set out in Appendix 1 of this Schedule by 1 May 2012. To the extent that the Parties agree that any of the provisions of the Operational Agreement are required to be incorporated into this Agreement, Clause 32 shall apply.
- 2.4. The Authority Contract Manager and the Concessionaire Contract Manager shall work together to develop and agree as soon as reasonably practicable following the Agreement Commencement Date (but in no event later than 1 May 2012) the form and content of a report to be used between them in order to manage each Party's obligations under the Agreement, including the monitoring and tracking of any performance and operational issues relating to the Infrastructure and the Services (the "**Contract Review Report**").
- 2.5. For the avoidance of doubt, each of the Authority and the Concessionaire shall be responsible for their own costs in the preparation of information required by the Contract Review Report.

2.6. The Authority Contract Manager and the Concessionaire Contract Manager shall be responsible for the management of this Agreement on behalf of the Parties. Each of the Authority Contract Manager and the Concessionaire Contract Manager may delegate his/her tasks to the relevant Party's employees as deemed appropriate by the relevant Party, provided that such delegation is made in writing.

2.7. The Parties agree that all issues arising under this Agreement should be raised in the first instance with the Authority Contract Manager and the Concessionaire Contract Manager as appropriate.

3. Meetings

3.1 The Concessionaire Contract Manager and the Authority Contract Manager shall meet to discuss the content of the Contract Review Report on a quarterly basis throughout the Term ("Contract Review Meetings"). The timing and location of Contract Review Meetings shall be agreed by the Authority Contract Manager and the Concessionaire Contract Manager in advance of the meetings.

3.2 The Parties shall co-operate with a view to ensuring that there is effective communication between the Parties during the Term and that the Parties are aware of the issues or potential issues which may affect the provision of the Services and are able to deal with any such issues promptly.

4. Customer Surveys

4.1 The Authority shall conduct customer surveys of the Services annually in order to measure Users' satisfaction level when using the Services and to identify any areas of improvement for the Services.

4.2 The Authority shall submit the result of the customer surveys referred to in paragraph 4.1 to the Concessionaire as soon as reasonably practicable and discuss its findings and recommendations for the improvement of the Services with the Concessionaire during the Contract Review Meetings.

SCHEDULE 7 - APPENDIX 1
OPERATIONAL AGREEMENT PRINCIPLES

SCHEDULE 8 – BRANDING GUIDELINES (APPENDIX 1, APPENDIX 2 AND APPENDIX 3)

All advertisements on London Underground premises shall be in accordance with the Branding Guidelines which can be found at:

<http://www.tfl.gov.uk/corporate/media/12523.aspx>, and as may be amended from time to time.

SCHEDULE 9 – ADVERTISING STANDARDS

All advertisements on London Underground premises shall be in accordance with the Advertising Standards which can be found at:

<http://www.tfl.gov.uk/assets/downloads/businessandpartners/tfl-advertising-policy.pdf>, and as may be amended from time to time.

SCHEDULE 10 – CUSTOMER INFORMATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

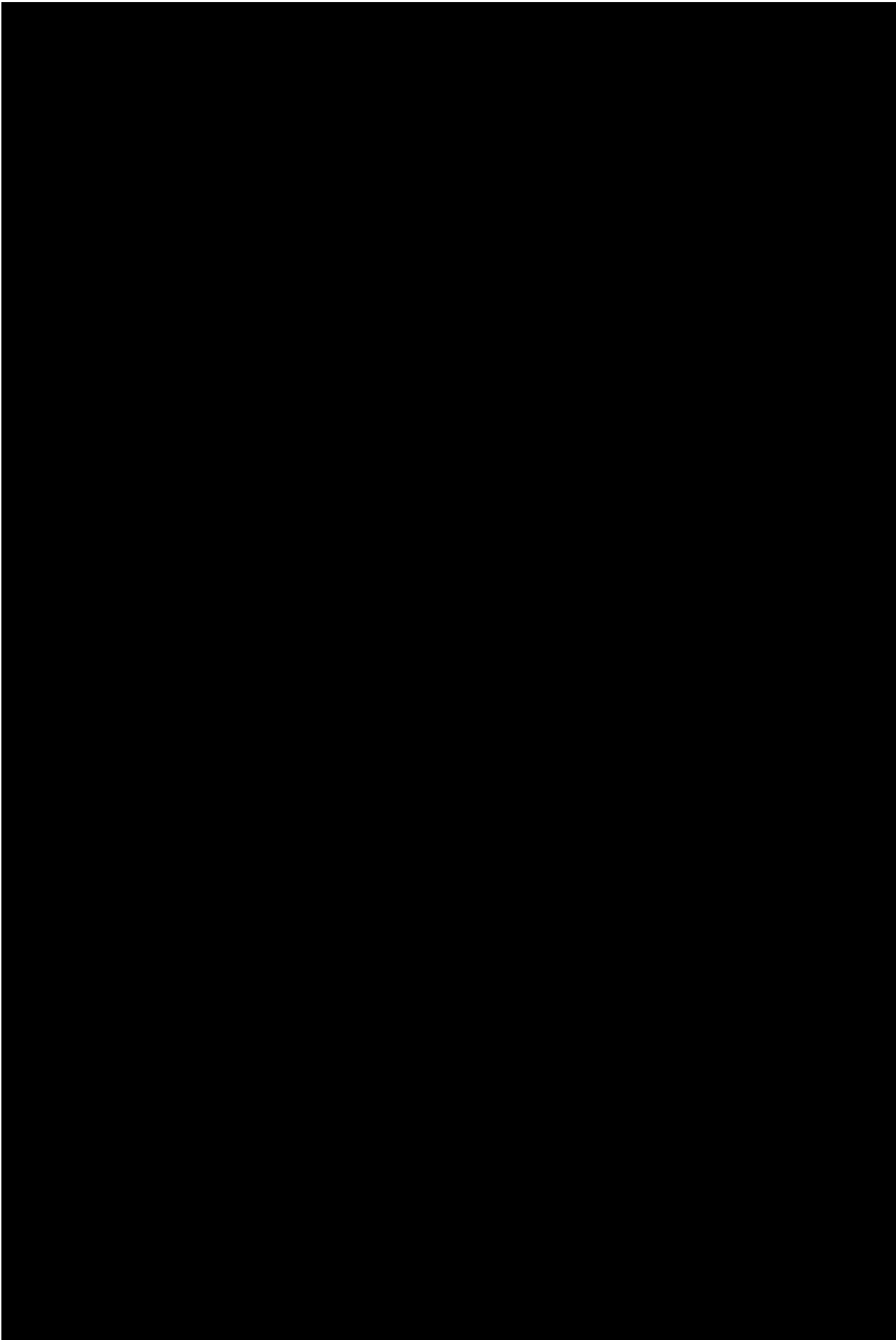
[REDACTED]

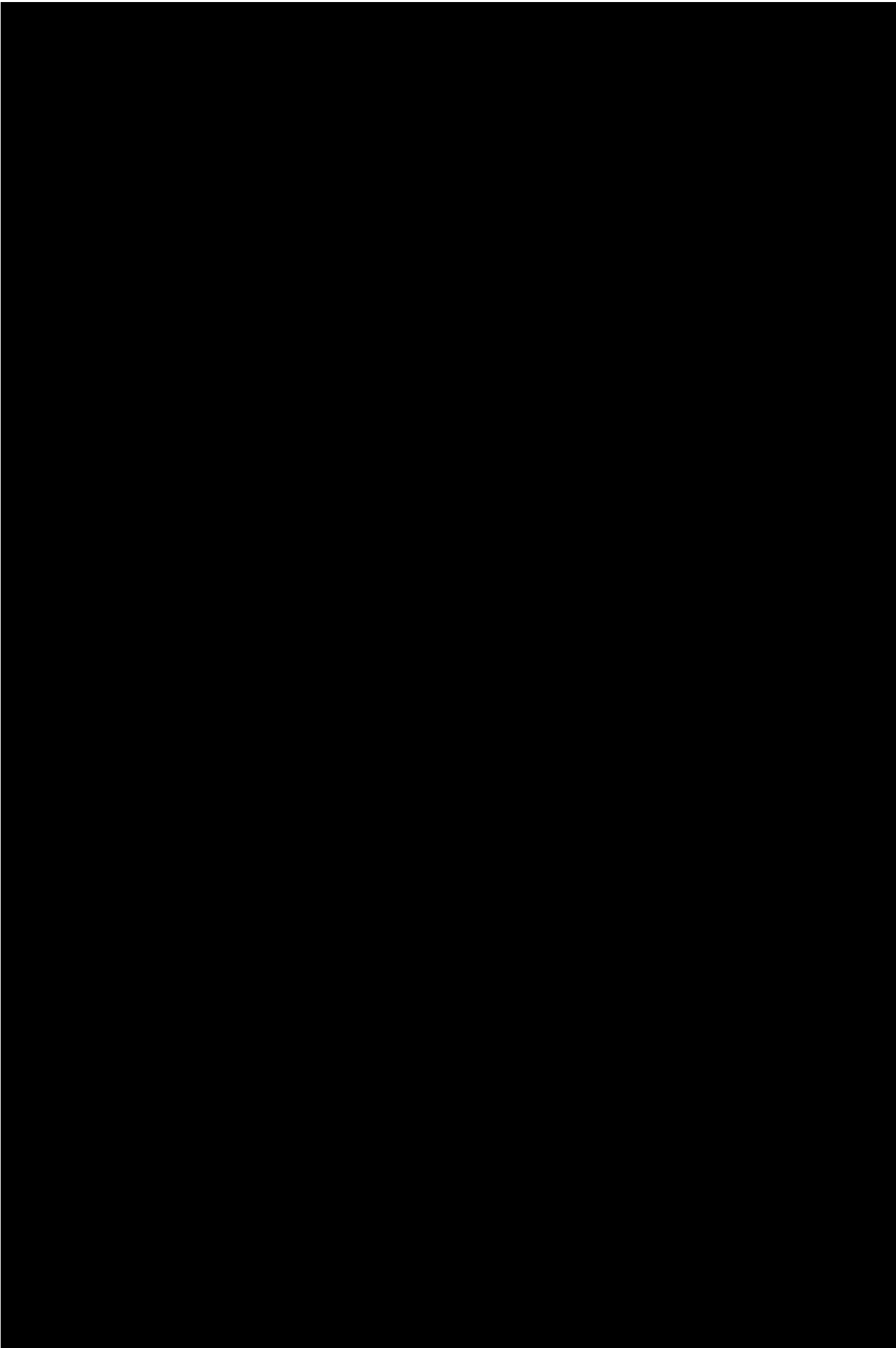
[REDACTED]

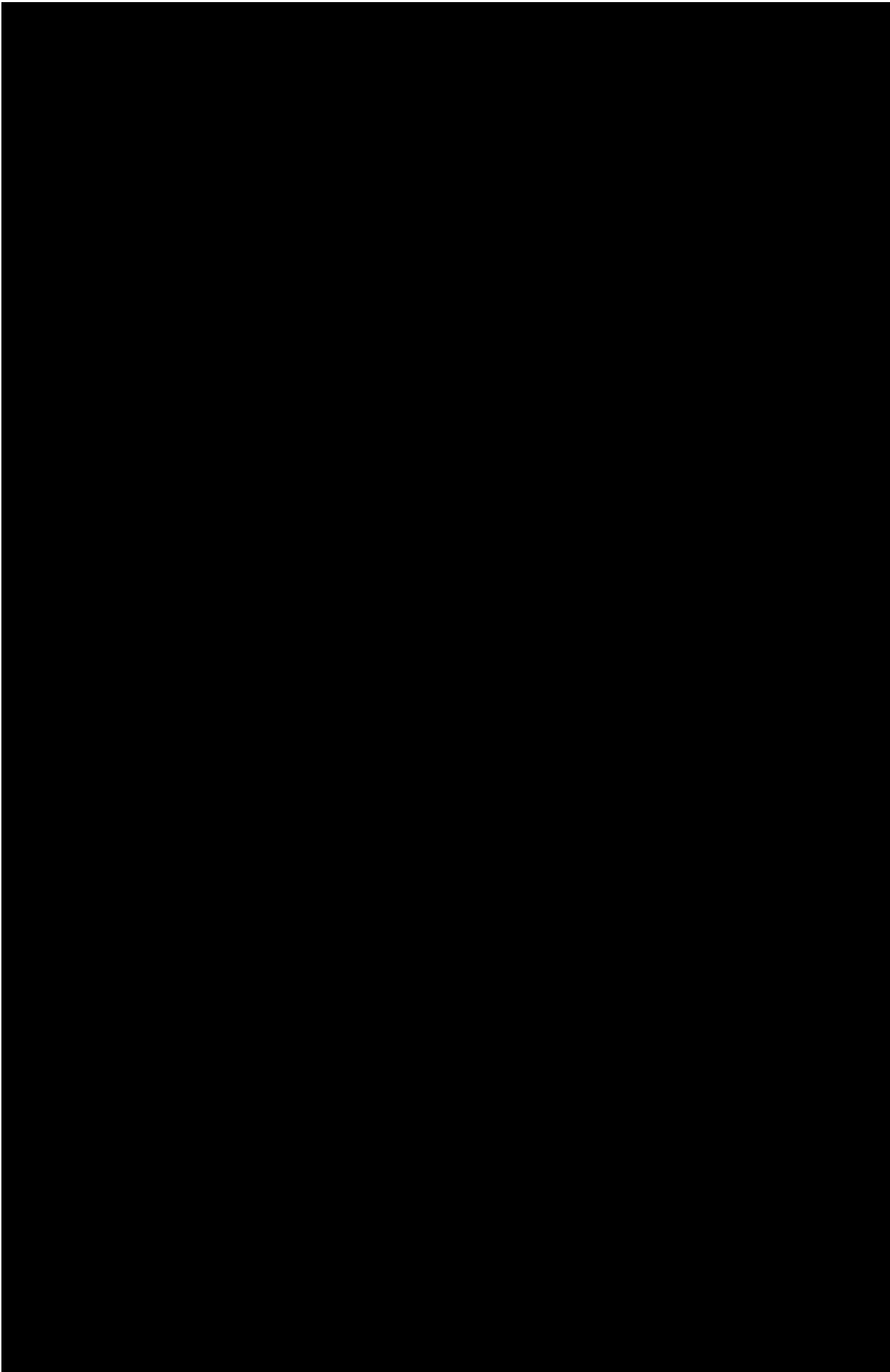
[REDACTED]

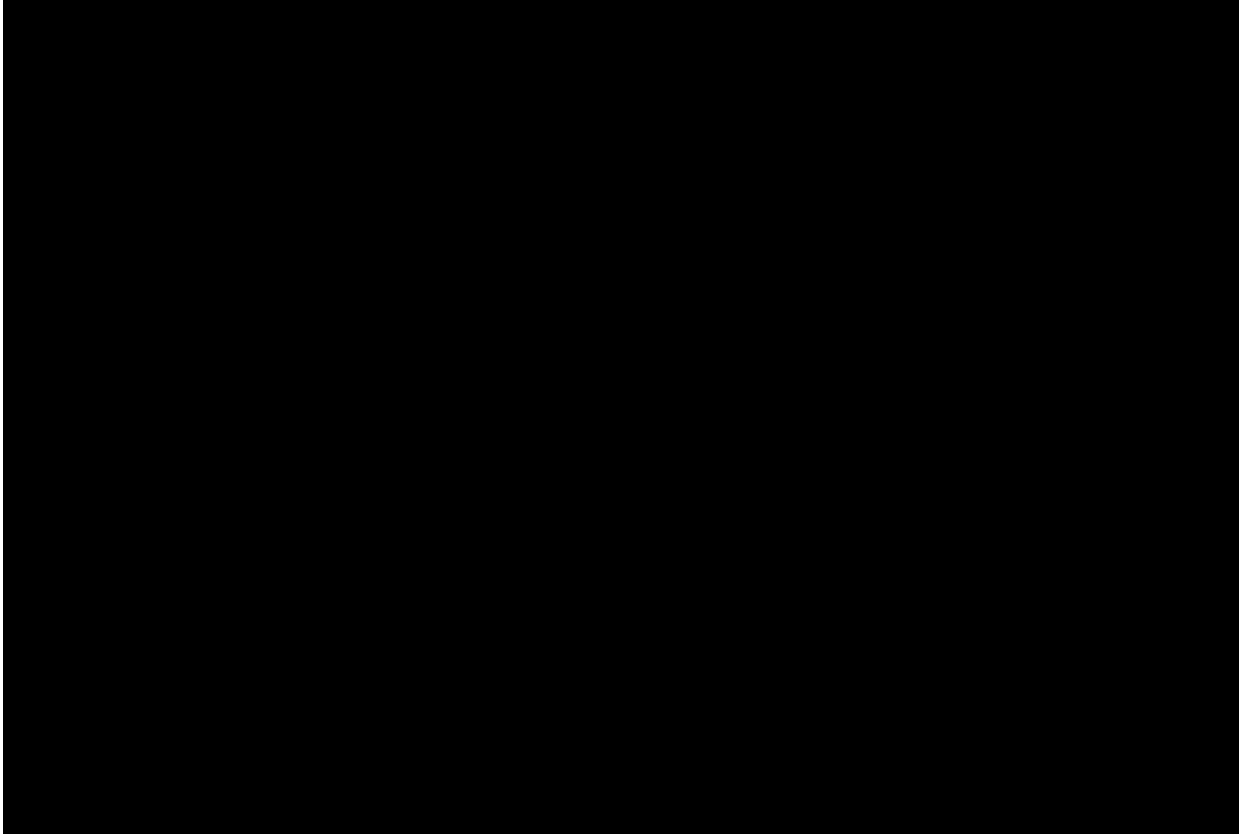
[REDACTED]

[REDACTED]









SCHEDULE 11 – SERVICE LEVELS

1. INTRODUCTION

This Schedule sets out the metrics, resolutions and measurements that constitute the service levels agreed by the Parties, based upon the following:

- Portal availability (including Concessionaire Content and Authority Content);
- Internet service availability;
- Radio access network availability; and
- Capability of the Infrastructure in supporting the WiFi service.

2. PORTAL AVAILABILITY (including Concessionaire Content and Authority Content)

2.1.

[REDACTED]

2.2.

[REDACTED]

2.3. The Concessionaire shall be responsible for collecting and providing information and data detailing performance against the Portal Availability Target. The Concessionaire and the Authority shall work together to agree by 30 April 2012 the form and content of a report to be used between them for the purposes of reporting and monitoring Portal availability.

3. INTERNET SERVICE AVAILABILITY

3.1.

[REDACTED] he

[REDACTED]

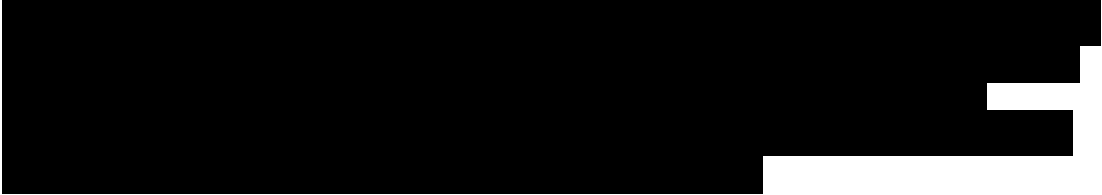
- 3.2. In the event that the Concessionaire fails to achieve the Internet Service Availability Target for two consecutive Periods, the Concessionaire shall submit to the Authority in the following Period an improvement plan detailing the activities that the Concessionaire will implement in order to remedy internet service availability (the “**Internet Service Availability Improvement Plan**”), and shall implement the Internet Service Availability Improvement Plan. If the Concessionaire fails to meet the Internet Service Availability Target, in the subsequent two periods, to the implementation of the Internet Service Availability Improvement Plan, such failure shall constitute a material breach of this Agreement.
- 3.3. The Concessionaire shall be responsible for collecting and providing information and data detailing performance against the Internet Service Availability Target. The Concessionaire and the Authority shall work together to agree by 30 April 2012 the form and content of a report to be used between them for the purposes of reporting and monitoring Internet Service availability.

4. RADIO ACCESS NETWORK AVAILABILITY

4.1. [REDACTED]

[REDACTED]

4.2. [REDACTED]



- 4.3. The Authority shall be responsible for collecting and providing information and data detailing performance against the RAN Availability Target. The Concessionaire and the Authority shall work together to agree by 30 April 2012 the form and content of a report to be used between them for the purposes of reporting and monitoring Radio Access Network availability.

5. CAPABILITY OF THE INFRASTRUCTURE IN SUPPORTING THE WIFI SERVICE

- 5.1. The Parties shall undertake monthly reviews led by the Authority to examine the success of the Infrastructure in supporting the Concessionaire's delivery of the WiFi Service (the "**Infrastructure Reviews**").

- 5.2. A large rectangular area of text is completely redacted with a solid black fill.

- 5.3. The Authority shall be responsible for collecting and providing information and data regarding the capability of the Infrastructure in supporting the WiFi Service. The Concessionaire and the Authority shall work together to agree by 30 April 2012 the form and content of a report to be used between them for the purposes of reporting and monitoring the capability of the Infrastructure in supporting the WiFi Service.

SCHEDULE 12 – PARENT COMPANY GUARANTEE

Appendix A - Form of Parent Company Guarantee

(Letterhead of Parent Company)

To: [insert name and address of the Authority]

Date:

Dear Sir/Madam

We, Virgin Media Investment Holdings Limited (“**the Guarantor**”), understand that you have agreed to enter into Contract No **LUC0114** (“**the Contract**”) with [insert name of Concessionaire] (“**the Concessionaire**”) in respect of [briefly describe nature of contract] on the condition that the obligations of the Concessionaire under the Contract be guaranteed by a Guarantor.

We are [recite the relationship of the Guarantor to the Concessionaire], and we warrant to you that this description of our relationship with/to the Concessionaire is true and accurate in all material respects.

WE HEREBY AGREE AND UNDERTAKE with you as follows:-

- (a) We unconditionally guarantee on demand:
- (i) the proper, complete and punctual performance by the Concessionaire of any and all its obligations, undertakings and responsibilities under the Contract and we shall forthwith make good any default thereunder on the part of the Concessionaire; and
 - (ii) the due and punctual payment by the Concessionaire of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable to you under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Concessionaire

when and as the same shall become due for performance or payment (as the case may be).

- (b) As a separate and primary obligation we unconditionally guarantee to you that in the case of default by the Concessionaire in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in paragraph (a) above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Concessionaire were the primary obligor. Any payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.

- (c) This Guarantee shall be a continuing security and shall remain in full force and effect until all obligations to be performed or observed by the Concessionaire under or arising out of the Contract have been duly and completely performed and observed and the Concessionaire shall have ceased to be under any actual or contingent liability to you thereunder.
- (d) Any demand or other notice made by you under this Guarantee shall be duly made if sent by first class recorded delivery post to us.
- (e) You shall be entitled to enforce this Guarantee without first notifying the Concessionaire of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Concessionaire or any other person or taking any action to enforce any other security, bond or guarantee held by you or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Concessionaire or any person.
- (f) If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to you, such sum shall still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.

PROVIDED THAT:

- 1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Contract if we had been named as the Concessionaire in the Contract.
- 2. Our obligations hereunder are those of primary obligor and shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Contract made by agreement between you and the Concessionaire (including, without limitation, any increase in the Concessionaire's obligations under the Contract or any alteration in the extent or nature or sequence or method or timing of the Services to be carried out under the Contract) or any novation of the Contract (in whole or in part); or
 - (b) any time being given to the Concessionaire or any other indulgence, waiver, concession, forbearance or forgiveness to the Concessionaire (whether express or by conduct) or any other thing done, omitted or neglected to be done under the Contract; or
 - (c) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Concessionaire under the Contract; or
 - (d) the release or waiver of any such bond, security or guarantee referred to in paragraph 2(c) above; or

- (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Concessionaire; or
 - (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Concessionaire; or
 - (g) any legal limitation, disability or incapacity relating to the Concessionaire or discharge by operation of law or any change in the constitution, name or style of the Concessionaire or any other person (whether or not known to you); or
 - (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Concessionaire under the Contract; or
 - (i) the termination or partial termination of the Contract or the cessation of any Services for any reason or the making of any variation to the Services in accordance with the Contract; or
 - (j) any claim or enforcement of payment from the Concessionaire or any other person;
 - (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.
3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Concessionaire in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Concessionaire in competition with you for any sums or liabilities owing or incurred to us by the Concessionaire in respect of any such payment by or recovery from us or take or hold any security from the Concessionaire in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you.
4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provision of this Guarantee.
5. This Guarantee is irrevocable.
6. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that you have the right in your absolute discretion to enforce a judgment and/or to take

proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.

[For non-UK resident Guarantors only:

7. For the purposes of this Guarantee we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.]
8. You will be entitled to assign the benefit of this Guarantee in whole or in part but we may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
9. If any provision (in whole or in part) of this Guarantee is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by) _____
Virgin Media Investment Holdings
Limited) Director
acting by a Director)
)

in the presence of:

Witness
(signature)

Witness name:

Address: