

“Drawing(s)” means drawing reference(s) ULEX-RSM-TSL-ZZ-DR-TE-SDAIS-0001 and ULEX-RSM-PRD-15-DR-TE-02-0001 attached at Schedule 1;

“Signage” means the advanced information sign together with mounting post and retention sockets shown on the Drawings.

“Highway Land” means that part of the local highway network shown on the Drawings, on which the Highway Works are proposed to be carried out including, all footpaths, verges, service strips, service margins, vehicular crossings and road surface water drainage systems (if any);

“Highway Works” means the installation of the Signage on the Highway Land;

“Legal Fee” the sum of £1,000.00 (one thousand pounds) incurred in connection with the preparation, completion and registration of this Agreement;

“Maintenance Scheme” means the Drawings and any specifications and method statements as may be agreed with Havering from time to time for maintenance of the Signage in accordance with the maintenance standards set out in Chapter 1 of the Department for Transport's Traffic Signs Manual 2018 or such replacement standards as may be in place from time to time to the satisfaction of Havering and “Maintenance” shall be construed accordingly;;

“Party or Parties” means a party or the parties to this Agreement;

“Statutory Undertaker” a statutory undertaker as defined in section 329(1) of the Highways Act 1980 and including:

- (a) persons authorised under any enactment to carry on an undertaking for the supply of electricity, gas, water or any sewerage undertaking;
- (b) the Environment Agency;
- (c) a holder of a licence to operate telecommunication systems;

(d) the Civil Aviation Authority; or

(e) the holder of a licence to supply cable television;

“Working Day” any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.3 the Schedule(s) form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule(s);
- 1.4 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.5 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.6 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.7 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.8 a reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of Havering or TfL the successors to its respective statutory functions;
- 1.9 unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.10 unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision;
- 1.11 a reference to writing or written excludes e-mail;

- 1.12 any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.13 any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Transfer of Highway Functions

- 2.1 In accordance with section 8 of the Highways Act 1980, Havering's functions as a highway authority of:
- (a) construction for the purpose only of undertaking the Highways Works;
 - (b) maintenance for the purpose only of undertaking the Maintenance Scheme

shall be exercised by TfL in accordance with Clause 3 of the Agreement.

- 2.2 The exercise of such functions by TfL is subject to the detailed provisions of this Agreement and to the residual and ongoing responsibilities of Havering in respect of maintained highway.

3 The Highway Works

- 3.1 Prior to commencement of the Highway Works TfL shall obtain Havering's written approval to the:
- (a) the Detailed Design; and
 - (b) a programme of works; and
 - (c) the Maintenance Scheme; and
 - (d) any traffic and/or any activity management measures.
- 3.2 TfL may from time to time seek the approval of Havering to amend or alter the Detailed Design and/or the programme of works and/or the Maintenance Scheme and/or any traffic and/or any activity management measures.

- 3.3 TfL shall carry out the Highways Works at its expense in accordance with the Detailed Design and/or any traffic and/or any activity management measures as approved by Havering.
- 3.4 TfL shall carry out the Maintenance Scheme at its expense..
- 3.5 TfL shall act as sole client for the purposes of the Construction (Design and Management) Regulations 2015 in respect of the Highway Works.
- 3.6 TfL shall ensure that the Highway Land is maintained in a safe condition at all times while the Highways Works and Maintenance are being undertaken.
- 3.7 TfL shall ensure that the Highways Works and Maintenance Scheme (or relevant part thereof) once commenced are undertaken and fully completed to the reasonable satisfaction of Havering.
- 3.8 TfL shall notify Havering upon completion of the Highway Works.
- 3.9 TfL shall ensure that any defects or other remedial works reasonably required to the Highway Works are carried out as soon as reasonably practicable following receipt by TfL of a notice from Havering specifying such defects or remedial works. Havering shall serve any such notice within 28 days of receipt of the relevant notice given by TfL in accordance with clause 3.8 FOR THE AVOIDANCE OF DOUBT clause 3.9 shall not apply in an emergency in which case Havering shall be entitled to undertake the works without notice and recover the costs thereof from TfL in accordance with Clause 11.2.

4 Defects Correction Period

- 4.1 For a period of twelve months following completion of the Highways Works TfL shall, to the reasonable satisfaction of Havering, maintain the Highway Works and carry out any remedial works to the Highway Works to remedy any defects at its own cost (“Defects correction Period”).
- 4.2 During the Defects Correction Period, TfL shall ensure that any defects or other remedial works in relation to the Highway Works, as may be required by Havering, are carried out as soon as reasonably practicable following receipt by TfL of a notice from Havering specifying such defects or remedial works.

- 4.3 If TfL does not carry out and / or complete the works specified in a notice served by Havering within such a reasonable timescale as may be set out in the notice Havering shall be entitled to carry out and / or complete the works in question and to recover the costs thereof from TfL in accordance with Clause 11.2.

5 Permanent Maintenance

Upon completion of the Defects Correction Period and certification by Havering that all defects to the Highway Works during the Defects Correction Period have been satisfactorily remedied:

- (a) Havering shall assume responsibility for maintaining the carriageways and footways within the Highway Land;
- (b) TfL shall be responsible for Maintenance of the Signage.

6 Environmental Protection

For the duration of the Highway Works TfL shall ensure that the Highway Land is so far as practicable kept clean and clear of litter and refuse pursuant to Havering's duty under section 89 of the Environmental Protection Act 1990 from the date of commencement of the Highway Works until the date Havering resumes responsibility for managing and maintaining the Highway Land.

7 Access Arrangements

TfL shall ensure that Havering's servants and agents have continuous access to the Highway Land for the purposes of inspecting the Highway Works, carrying out any remedial works not carried out or not properly carried out by TfL and for the purposes of undertaking or discharging Havering's powers and duties as highway authority and as traffic authority in relation to the maintained highway.

8 Havering Works

- 8.1 Where Havering proposes to carry out any works which would directly affect

the Highway Land and / or its use and operation, Havering shall consult with TfL with a view to minimising the impact of the works upon the Highway Land and its use and operation.

9 Indemnity

TfL shall indemnify Havering against all damages, losses, costs, expenses, actions, demands, proceedings, claims and liabilities incurred by Havering which may arise out of or be incidental to the discharge of functions referred to in Clause 2 and other obligations of TfL pursuant to the Agreement save where any such damages, losses, costs, expenses, actions, demands, proceedings, claims and liabilities result from any act, omission or negligence of Havering or its servants, agents or contractors PROVIDED THAT Havering shall:

- 9.1 As soon as reasonably practicable give notice in writing to TfL of any such any claims or causes of action to which this indemnity applies;
- 9.2 Take into account any representations made by TfL in response to the notice given under clause 9;
- 9.3 Take all reasonable steps to mitigate their actual or potential loss arising out of or in connection with any matters arising under clause 9;
- 9.4 Not admit liability in respect of, nor settle or compromise such action or claim without first providing TfL a period of 14 days within which to make representations to Havering which will be considered by Havering prior to Havering agreeing to any compromise or settlement.

10 Street Works

- 10.1 Where TfL undertakes any street works within the meaning of Section 48(3) of the New Roads and Street Works Act 1991 ("the 1991 Act"), TfL shall comply with the notification and other relevant requirements of the 1991 Act.
- 10.2 Where any statutory undertaker (other than TfL) gives notice under the 1991 Act or otherwise advises Havering of its intention to undertake works directly or indirectly affecting the use or operation of the Highway Land, Havering shall

as soon as reasonably practicable following receipt of each notice or advice provide TfL with details of the notice or advice including the statutory undertaker's contact details (where known).

11 Costs

- 11.1 Prior to completion of this Agreement TfL shall pay the Legal Fee.
- 11.2 TfL shall reimburse Havering for any costs incurred by Havering in carrying out remedial works within 28 days of receipt of a notice demanding payment.

12 Reasonableness

Where any agreement, consent or approval of Havering is required in connection with any provision of the Agreement such agreement, consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

13 Notices

- 13.1 Any notice or other communication to be given under this Agreement must be sent to the relevant party as follows:

- (a) to Havering at: Street Management, London Borough of Havering, Town Hall, Main Road, Romford RM1 3BD marked for the attention of The Assistant Director or Environment
- (b) to TfL at: Transport for London, Palestra, 4th Floor, 4Y6, 167 Blackfriars Rd, London SE1 8NJ marked for the attention of Krzysztof Klidzia;

or as otherwise specified by the relevant party by notice in writing to each other party.

- 13.2 Any notice or other communication given in accordance with this Agreement shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a

Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the Working Day after posting.

13.3 This clause does not apply to the service of any proceedings or other documents in any legal action.

14 Contracts (Rights of Third Parties)

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

15 Statutory Powers and Duties

15.1 The Parties shall each ensure that they comply with all relevant statutory requirements in the discharge of their respective obligations contained in this Agreement.

15.2 Nothing in this Agreement shall fetter the discretion of the Parties in the exercise of their statutory powers and duties (whether as highway authority or traffic authority or otherwise).

15.3 Nothing in the Agreement shall fetter the discretion of the Parties in respect of their obligations under the Data Protection Act 1998, the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

16 Termination

16.1 This Agreement shall terminate upon either party giving 6 months prior notice.

16.2 Havering reserves the right to terminate this Agreement by giving 14 days notice to TfL in the event of any material breach by TfL of its obligations in this Agreement.

16.3 Prior to termination of this Agreement or the permanent cessation of the Maintenance Scheme, TfL shall make prompt arrangements for the removal of the Signage and all associated equipment and apparatus and for the

reinstatement of the Highway Land affected by such removal to the reasonable satisfaction of Havering.

17 Dispute Resolution

- 17.1 If any dispute, controversy or claim arises out of or in relation to this Agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this Agreement, the parties shall make all reasonable efforts to resolve the dispute by negotiation, through a meeting of both Parties' officers appointed to manage this Agreement and any other relevant personnel.
- 17.2 If the Parties are unable to settle the dispute by negotiation then the parties agree to enter into mediation in good faith to settle the dispute and will do so in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR Notice") to the other party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 17.3 Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR Notice.
- 17.4 If the parties are unable to settle the dispute by mediation the parties may agree to the appointment of an arbitrator in accordance with the Arbitration Act 1996. It is agreed that:
- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
 - (b) in default of the parties' Agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Institution of Civil Engineers;
 - (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator

makes no direction, then equally); and

- (d) the seat of the arbitration shall be London or wherever else the parties hereto agree.

18 Law and Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

IN WITNESS OF TfL and Havering have hereunto executed this instrument as a Deed in the presence of the persons mentioned the day and year first before written

Executed as a deed by affixing the **COMMON SEAL of TRANSPORT FOR LONDON**

in the presence of:

Authorised signatory.....

THE COMMON SEAL of THE MAYOR AND)
)
BURGESSES OF THE LONDON BOROUGH)
)
OF HAVERING was hereunto affixed in)
)
the presence of:-

Authorised signatory.....

Schedule 1 – Drawings

ULEX-RSM-TSL-ZZ-DR-TE-SDAIS-0001 and ULEX-RSM-PRD-15-DR-TE-02-0001