

SCHEDULE 22

Collateral Deed

DATED _____ []

[TRANSPORT FOR LONDON]

and

[SERVICE PROVIDER]

and

[KEY SUB-CONTRACTOR]

KEY SUB-CONTRACTOR'S COLLATERAL DEED

THIS DEED is made on []

BETWEEN:-

- (1) **TRANSPORT FOR LONDON**, ("TfL") (which expression shall include any firm, corporation or other contracting authority undertaking the functions of TfL or succeeding to the functions of TfL), of Windsor House, 42-50 Victoria Street, London SW1H 0TL;
- (2) [], (the "**Sub-Contractor**"), a company incorporated under the laws of England and Wales with registered number [], whose registered office is at []; and
- (3) [], (the "**Service Provider**"), a company incorporated under the laws of England and Wales with registered number [], whose registered office is at [].

BACKGROUND:

- (A) TfL and the Service Provider have agreed the terms on which the Service Provider will provide the Services (as defined below) to TfL and, accordingly, have entered into the Services Agreement (as defined below).
- (B) The Sub-Contractor has entered into the Sub-Contract (as defined below) with the Service Provider to support certain elements of the Service Provider's obligations under the Services Agreement.
- (C) It is all the parties' intention to enter into this Deed as a collateral deed as contemplated by the Services Agreement.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Deed the following terms shall, unless the context otherwise requires, have the following meanings:

"New Service Provider" means any person nominated by TfL to provide part or all of the Services or substantially similar services as successor or partial successor to the Service Provider under the Services Agreement;

"Novation Agreement" means an agreement in the form set out in Annex 1 hereto or in such other form as TfL in its sole discretion may agree;

"Novation Effective Date" means in relation to novation of the Sub-Contract from the Service Provider to the New Service Provider or TfL, the date on which such novation becomes effective;

"Novation Notice" means a notice from TfL to the Sub-Contractor specifying TfL's intention to require the Sub-Contract to be novated to a New Service Provider or to itself in circumstances of the termination or partial termination of the Services Agreement and stating the identity of the New Service Provider (where applicable) and the Proposed Novation Date;

"Proposed Novation Date" means the date (being no later than thirty (30) Working Days following the date of issue of the Novation Notice) on which the Sub-Contract is to be novated to the New Service Provider or to TfL;

"Services" means the services to be provided by the Service Provider under the Services Agreement;

"Services Agreement" means the Services Agreement dated [●] between TfL and the Service Provider for the provision of the Services;

"Step-In Action" means such action as may be taken by TfL from time to time whereby TfL steps-in in relation to the Services in accordance with the terms of the Services Agreement;

"Sub-Contract" is the contract between the Service Provider and the Sub-Contractor entered into on [] in relation to [●]; and

"Working Day" means any day other than any Saturday, Sunday or public holiday in England.

1.2 Construction

Save to the extent that the context or the express provisions of this Deed otherwise require:

- (A) headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Deed;
- (B) all references to Clauses are references to clauses of this Deed;
- (C) all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- (D) all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- (E) any reference to time of day shall be a reference to London time;
- (F) words importing the singular include the plural and vice versa;
- (G) words importing a particular gender include all genders;
- (H) **"person"** includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;
- (I) references to **"party"** means a party to this Deed and references to **"parties"** shall be construed accordingly;

- (J) references to the word "**includes**" or "**including**" are to be construed without limitation; and
- (K) the obligations of any party under this Deed are to be performed at that party's own cost and expense.

2. **Step-in**

2.1 If TfL exercises its right to take Step-in Action in respect of the Services Agreement, the Sub-Contractor shall, for the period during which such rights are exercised:

- (A) to the extent that the particular Step-in Action relates to the Services that are the subject of the Sub-Contract:
 - (1) observe and perform its obligations under the Sub-Contract and observe any restrictions therein; and
 - (2) treat TfL for all purposes as though it is the Service Provider, such that TfL is and able to enforce the terms of the Sub-Contract against the Sub-Contractor; and
- (B) in all other instances, co-operate with all reasonable requirements of TfL to assist in relation to such Step-in Action.

2.2 TfL shall have no liability for any acts or omissions of the Service Provider arising from or in connection with the Sub-Contract prior to TfL taking Step-in Action.

2.3 The Sub-Contractor shall not exercise any right of termination of the Sub-Contract whilst TfL takes Step-in Action.

2.4 Subject to Clause 2.3 nothing in this Clause 2 shall impose any obligations on TfL or affect the Sub-Contractor's rights and obligations vis-a-vis the Service Provider.

2.5 TfL shall have no liability to the Sub-Contractor for any cost, loss, liability, claim or damage arising from, in relation to, or in connection with TfL taking Step-in Action.

3. **Novation**

3.1 Within thirty (30) days of service of a Novation Notice by TfL (or such other time as the parties may agree in writing), the Sub-Contractor, the Service Provider and the New Service Provider to the Sub-Contractor (or TfL) shall enter into the Novation Agreement and any other requisite agreements, pursuant to which the New Service Provider (or TfL) shall be granted all of the rights and assume all of the obligations and liabilities of the Service Provider under the Sub-Contract from the Novation Date.

3.2 The New Service Provider or TfL (as the case may be) and the Sub-Contractor shall each use all reasonable endeavours to agree any amendments to the terms of the novated Sub-Contract necessary to reflect the fact that the Services Agreement or relevant part(s) thereof will have terminated at the time of the Novation Effective Date.

4. **Assignment**

- 4.1 Subject to Clause 4.2, no party shall assign or transfer any part of its respective rights or obligations under this Deed without the prior consent of each of the other parties.
- 4.2 TfL shall be entitled to assign any part or all of its rights and obligations under this Deed to such third party or parties as it deems appropriate but only in connection with a corresponding assignment of its rights and obligations under the Services Agreement to the same third party or parties.

5. **Notices**

- 5.1 A notice (including any approval, consent or other communication) in connection with this Agreement:
- (A) must be in writing in the English language;
 - (B) must be left at the address of the addressee or sent by pre-paid recorded delivery (airmail if posted from a place outside the United Kingdom) to the address of the addressee in each case which is specified in this Clause in relation to the party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address in the United Kingdom, and/or marked for the attention of such other person as the relevant party may from time to time specify by notice given in accordance with this Clause.

The relevant details of each party at the date of this Agreement are:

Name: Transport for London

For the attention of: James Summers

Address: 4R2, Palestra, 197 Blackfriars Road, London SE1 8NJ

Name: [Service Provider]

For the attention of:

Address:

Name: [Sub-Contractor]

For the attention of:

Address:

- (C) for the avoidance of doubt, must not be sent by electronic mail.
- 5.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 5.3 below.
- 5.3 Subject to Clause 5.4 below, a notice is deemed to be received:
- (A) in the case of a notice left at the address of the addressee, upon delivery at that address; and
 - (B) in the case of a posted letter, on the third day after posting or, if posted from a place outside the United Kingdom, the seventh day after posting.
- 5.4 A notice received or deemed to be received in accordance with Clause 5.3 on a day

that is not a Working Day, or after 5pm on any Working Day, shall be deemed to be received on the next following Working Day.

6. **Waiver**

Failure by any party at any time to enforce any provision of this Deed or to require performance by the other parties of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

7. **Counterparts**

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

8. **Severability**

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

9. **Costs and Expenses**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Deed.

10. **Third Party Rights**

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

11. **Amendments**

No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representatives of the parties.

12. **Governing Law and Jurisdiction**

12.1 **Law**

This Deed shall be governed by and construed in all respects in accordance with English Law.

12.2 **Jurisdiction**

In relation to any legal action or proceedings to enforce this Deed or arising out of or in connection with this Deed (for the purposes of this Clause, “**proceedings**”) each of the parties irrevocably submits to the jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inappropriate forum.

IN WITNESS whereof the parties have executed and delivered this Deed as a Deed on the date first before written.

THE COMMON SEAL of TRANSPORT FOR)
LONDON was hereto affixed by order.)
)

Secretary/Assistant Secretary

EXECUTED AS A DEED)
by [**SERVICE PROVIDER**])
acting by)

.....
Director

.....
Secretary

EXECUTED AS A DEED)
by [**SUB-CONTRACTOR**])
acting by)

.....
Director

.....
Secretary

ANNEX 1
Deed of Novation

DATED

[]

(1) ("Service Provider ")

- and -

(2) ("New Service Provider")

- and -

(3) ("Sub-Contractor")

DEED OF NOVATION

relating to

The transfer of the Service Provider's obligations and benefits under a Sub-Contract to the
New Service Provider

THIS DEED OF NOVATION is made on []

BETWEEN

- (1) [] ("**Service Provider**")
- (2) [] ("**New Service Provider**")
- (3) [] ("**Sub-Contractor**")

BACKGROUND

- (1) The Service Provider and Sub-Contractor entered into an agreement for the provision of [●] on [date].
- (2) Pursuant to clause 3.1 of the Collateral Deed (as defined below) the Service Provider, New Service Provider and Sub-Contractor are required to enter into this deed of novation ("**Deed**") to novate the Sub-Contract (as defined below) from the Service Provider to the New Service Provider.
- (3) The Service Provider wishes to be released and discharged from the Sub-Contract as from [] (the "**Effective Date**") and the Sub-Contractor has agreed to release and discharge the Service Provider from the Sub-Contract from the Effective Date upon the New Service Provider undertaking to be bound by the terms of the Sub-Contract in place of the Service Provider.

THE PARTIES AGREE AS FOLLOWS:

1. **Definitions and Construction**

In this Deed the following terms shall, unless the context otherwise requires, have the following meanings:

"**Collateral Deed**" means the collateral deed entered into between Transport for London, the Service Provider and the Sub-Contractor dated [];

"**Sub-Contract**" means the contract entered into between the Service Provider and Sub-Contractor for the provision of [●] dated [] and

"**Working Day**" means any day other than any Saturday, Sunday or public holiday in England.

- 1.1 References to any party include its successors and permitted assigns.
- 1.2 Headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Deed;
- 1.3 All references to Clauses are references to clauses of this Deed;
- 1.4 All references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.5 All references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the

same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;

- 1.6 Any reference to time of day shall be a reference to London time;
- 1.7 Words importing the singular include the plural and vice versa;
- 1.8 Words importing a particular gender include all genders;
- 1.9 "Person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;
- 1.10 References to "party" means a party to this Deed and references to "parties" shall be construed accordingly;
- 1.11 References to the word "includes" or "including" are to be construed without limitation; and
- 1.12 The obligations of any party under this Deed are to be performed at that party's own cost and expense.

2. **Purpose**

Save as provided in Clauses 4, 5 and 6 the Service Provider and the Sub-Contractor hereby mutually release each other from their obligations to each other under the Sub-Contract as from the Effective Date.

3. **Novation**

As from the Effective Date:

- 3.1 the Service Provider novates the Sub-Contract to the New Service Provider and transfers all of its rights, benefits and interest in the Sub-Contract to the New Service Provider;
- 3.2 the New Service Provider undertakes to be bound by the terms of the Sub-Contract, to perform the duties and obligations under the Sub-Contract and be liable to the Sub-Contractor for the performance of any obligations under the Sub-Contract, in each case to the extent arising on or after the Effective Date, in every way as if the New Service Provider had been a party to it in place of the Service Provider; and
- 3.3 the Sub-Contractor undertakes to the New Service Provider that it will continue to be bound by and discharge its obligations under the Sub-Contract as if the New Service Provider is a party to the Sub-Contract in place of the Service Provider.

4. **Release and discharge**

Subject to Clause 6, the Sub-Contractor releases and discharges the Service Provider from any further performance of the Sub-Contract and from all liabilities, claims and demands (including without limitation claims for negligence) whatsoever in respect of the Sub-Contract arising on or after the Effective Date and accepts the liability of the New Service Provider to perform under the Sub-Contract from the Effective Date.

5. **Cessation of Service Provider's rights**

Without prejudice to Clauses 3.2 and 4 with effect from the Effective Date, the Service Provider shall cease to have any rights under the Sub-Contract in respect of any acts or omissions of the Sub-Contractor on or after the Effective Date arising under or in connection with the Sub-Contract, except to the extent provided for in any separate collateral deed entered into by the Sub-Contractor, the Service Provider and the New Service Provider.

6. **Claims**

Nothing in this Deed shall affect or prejudice any claim or demand whatsoever which either the Sub-Contractor or the Service Provider may have against the other relating to matters arising prior to the Effective Date.

7. **Indemnity**

The Service Provider shall fully indemnify the New Service Provider and keep the New Service Provider fully indemnified at all times against any loss, liability, damage, expenses or costs suffered or incurred by the New Service Provider as a result of any breach, claim or demand in respect of the subject matter of the Sub-Contract, where such breach, claim or demand occurred or first occurred prior to the Effective Date. The New Service Provider shall fully indemnify the Service Provider and keep the Service Provider fully indemnified at all times against any loss, liability, damage, expenses or costs suffered or incurred by the Service Provider as a result of any breach, claim or demand in respect of the subject matter of the Sub-Contract, where such breach, claim or demand occurred or first occurred on or after the Effective Date. In each case the party providing the indemnity shall be given prompt notice and permitted full conduct of any claim made by a third party which, if successful, would give rise to liability under the relevant indemnity.

8. **Warranties**

8.1 Each of the Service Provider and the Sub-Contractor warrants to the New Service Provider that as at the Effective Date:

- (A) the Sub-Contract and this Deed constitute the entire agreement between the Service Provider and the Sub-Contractor relating to the subject matter of the Sub-Contract;
- (B) so far as either of them is aware, neither the Service Provider nor the Sub-Contractor is in default under the Sub-Contract which could lead to termination of the Sub-Contract; and
- (C) all fees and payments which have become due to the Sub-Contractor have been duly paid by the Service Provider.

9. **Assignment**

No party shall assign, novate or otherwise transfer any part of its respective rights or obligations under this Deed without the prior consent of each of the other parties.

10. **Notices**

10.1 A notice (including any approval, consent or other communication) in connection

with this Agreement:

- (A) must be in writing in the English language;
- (B) must be left at the address of the addressee or sent by pre-paid recorded delivery (airmail if posted from a place outside the United Kingdom) to the address of the addressee in each case which is specified in this Clause in relation to the party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address in the United Kingdom, and/or marked for the attention of such other person as the relevant party may from time to time specify by notice given in accordance with this Clause.

The relevant details of each party at the date of this Agreement are:

Name: [Service Provider]

[For the attention of:]

Address:

Name: [Sub-Contractor]

[For the attention of:]

Address:

Name: [New Service Provider]

[For the attention of:]

Address:

- (C) for the avoidance of doubt, must not be sent by electronic mail.

10.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 10.3 below.

10.3 Subject to Clause 10.4 below, a notice is deemed to be received:

- (A) in the case of a notice left at the address of the addressee, upon delivery at that address; and
- (B) in the case of a posted letter, on the third day after posting or, if posted from a place outside the United Kingdom, the seventh day after posting.

10.4 A notice received or deemed to be received in accordance with Clause 10.3 on a day that is not a Working Day, or after 5pm on any Working Day, shall be deemed to be received on the next following Working Day.

11. **Waiver**

Failure by any party at any time to enforce any provision of this Deed or to require performance by the other parties of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

12. **Entire agreement**

12.1 This Deed, together with any documents referred to in it, constitutes the whole

agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

- 12.2 Each party acknowledges that it has not been induced to enter into this Deed by any representation or warranty other than those contained in this Deed and, having negotiated and freely entered into this Deed, agrees that it shall have no remedy in respect of any other such representation or warranty except in the case of fraud.

13. **Counterparts**

This Deed may be executed in one or more counterparts. Any single counterpart of a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

14. **Further Assurance**

The parties hereto shall perform, execute and deliver such further acts and documents as may be required by law or reasonably requested by each other to implement the purpose of and to perfect this Deed.

15. **Confidentiality**

Notwithstanding Clause 3 above, the Sub-Contractor and Service Provider will continue to be bound by the confidentiality provisions in clause [●] of the Sub-Contract.

16. **Severability**

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

17. **Costs and Expenses**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation, execution and carrying into effect of this Deed.

18. **Third Party Rights**

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

19. **Variation**

No variation to this Deed shall be binding unless in writing and signed by the duly authorised representatives of the parties.

20. **Governing Law and Jurisdiction**

20.1 **Law**

This Deed shall be governed by and construed in all respects in accordance with English Law.

20.2 **Jurisdiction**

In relation to any legal action or proceedings to enforce this Deed or arising out of or in connection with this Deed (for the purposes of this Clause, “**proceedings**”) each of the parties irrevocably submits to the jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inappropriate forum.

IN WITNESS whereof the parties hereto have caused this Deed to be duly executed on the day and year first before written.

EXECUTED AS A DEED (but not)
delivered until the date hereof) by)
SERVICE PROVIDER acting by)

Director

Secretary

EXECUTED AS A DEED (but not)
delivered until the date hereof) by)
NEW SERVICE PROVIDER acting by)

Director

Secretary

EXECUTED AS A DEED (but not)
delivered until the date hereof) by)
SUB-CONTRACTOR acting by:)

Director

Secretary