

SCHEDULE 23

Gainsharing

1. Introduction

It is agreed that Gainsharing shall be calculated and shared between TfL and the Service Provider in accordance with this schedule.

2. General

2.1 The Gainsharing payment mechanism shall operate from the Effective Date.

2.2 The Service Provider shall:

- (A) provide an annual statement setting out the calculation of Excess Profits for each Operating Period in the relevant period (referred to in paragraph 2.4 below), based upon the Project Accounts (each a “**Period Statement**”);
- (B) provide each Period Statement to TfL within the time periods set out in paragraph 5 below;
- (C) include in its Period Statement details of all transactions between Service Provider Group members relating to this Agreement; and
- (D) ensure that all transactions between Service Provider Group members relating to this Agreement are undertaken at competitive rates and on an arms length basis.

2.3 The Service Provider shall apply its normal accounting policies in calculating the Gainsharing payments and in constructing the Period Statements. Each Period Statement will include a statement of the accounting policies applied in its production and a confirmation that these are consistent with the Service Provider's normal accounting policies.

2.4 The amount of excess profits (“**Excess Profits**”) payable to TfL shall be calculated in relation to the following periods:

- (A) the Implementation Phase and the Operational Phase to the end of the Initial Term (the “**First Period**”); and
- (B) if the Term is extended, the Extended Term (the “**Second Period**”),

assessing the Profits, adjusted for accounting provisions, in accordance with this schedule. This shall be done by reference to the following formula:

$$EP = ((CP - (CRT \times PT\%)) \times AR) - PP$$

Where:

EP = Excess Profits payable to TfL;

CP = the total of all Profit relating to the provision of Services in the relevant period;

CRT = cumulative reported turnover, being the total of all Milestone Payments, Service Charges and other sums received by the Service Provider under or in relation to this Agreement in the relevant period;

PT% = the maximum percentage (profit threshold) of the CRT that the Service Provider shall wholly retain, being **[Information Redacted]**;

AR = the apportionment of Excess Profits due to TfL, being **[Information Redacted]**; and

PP = the aggregate of all payments made by the Service Provider to TfL in respect of Gainsharing.

2.5 Any payment of compensation amounts (or payment in respect of the purchase of Assets) payable to the Service Provider in the event of the expiry or termination of this Agreement, except for profit-related compensation, shall be disregarded for the purposes of calculation or determination of Profit pursuant to this schedule.

2.6 Any calculation of Profit shall exclude corporation tax.

3. **Project Accounts**

3.1 The Service Provider shall prepare the Project Accounts on a monthly basis and provide them to TfL within ten (10) Working Days of the end of the relevant Month, or within such other period as the Parties may expressly agree in writing.

4. **Audit**

4.1 Without prejudice to TfL's other rights under clause 49 (Audit and Inspection), TfL reserves the right to commission an independent auditor to provide an audit certification for any Period Statement and/or any Project Accounts.

4.2 In the event of discovery through such independent audit of material discrepancies in the calculation of Excess Profit the Service Provider shall:

(A) revise and re-submit the Period Statement within ten (10) Working Days of written notification by TfL requiring it to do so; and

(B) on written demand of TfL pay to TfL all costs incurred in undertaking, and incurred by TfL in relation to, such audit certification.

5. **Period Statement**

5.1 The Service Provider shall provide TfL with a Period Statement within five (5) Working Days of the publication of the Service Provider's audited annual Financial Statements. The Period Statement must show full working details of calculations of payments to be made to either TfL or the Service Provider under this schedule for the relevant period. The Service Provider shall provide the Period Statement in a printable and electronically transferable format.

5.2 Following the final Operating Period, the Service Provider shall provide a Period Statement based on the Project Accounts made up to the same date as the first Financial Statements (whether interim or final) that are produced within six (6) Months following the expiry or termination of the Agreement.

6. **Payment**

- 6.1 The Gainsharing payment, if any, in relation to the First Period shall, if this Agreement is extended in accordance with clause 2.2, be set-off against the Service Charges in the next Monthly Invoice following such payments being agreed or determined.
- 6.2 The Gainsharing payment, if any, in respect of either: (i) the First Period if this Agreement is not extended in accordance with clause 2.2; and/or (ii) in respect of the Second Period, shall be made within thirty (30) days of the issue of the Period Statement for the final Operating Period.