

SCHEDULE 11

Employees And Key Personnel

1. Relevant Transfer

- 1.1 It is acknowledged by TfL and the Service Provider that the commencement of the provision of the services by the Service Provider constitutes a "relevant transfer" for the purposes of the TUPE Regulations. In accordance with and pursuant to the provisions of the TUPE Regulations (subject always to the provisions of this Schedule), the Transferring Employees shall become employees of the Service Provider with effect from the Relevant Transfer Date.
- 1.2 It is the intention of both TfL and the Service Provider to follow the Cabinet Office Statement of Practice in relation to staff transfers in the public sector issued in January 2000 (and revised in November 2007) where applicable.

2. Obligations and Indemnities on Commencement

- 2.1 The Service Provider shall comply with its obligations to inform and/or consult in relation to the Transferring Employees in connection with the commencement of the provision of the Services, including for the avoidance of doubt providing such information to the Incumbent Service Provider as is necessary for the Incumbent Service Provider to comply with its information and/or consultation duties. The Service Provider shall indemnify TfL against any losses, costs, expenses (including taxes, management time and legal fees/expenses), liabilities and damages incurred by TfL arising from, as a result of, or otherwise in connection with the Service Provider's failure to comply with this paragraph 2.1.
- 2.2 TfL shall comply (and shall use reasonable endeavours to procure that the Incumbent Service Provider complies) with its obligations, if any, to inform and/or consult in relation to the Transferring Employees in connection with the commencement of the provision of the Services.

Service Provider Indemnity on Commencement

- 2.3 Subject at all times to the provisions of paragraph 8 (TUPE True-Up) of Schedule 7 (Charging and Operational Pricing), the Service Provider shall indemnify TfL and hold TfL harmless against all and any costs, expenses (including any taxes, management time and legal fees/expenses), liabilities, damages and losses arising from, as a result of or otherwise in connection with any demand, claim, action or proceeding by or from or on behalf of a Transferring Employee which arises or is alleged to arise or is made against or otherwise incurred or suffered by TfL:
- (A) by virtue of any actual or alleged act, omission, obligation or liability of the Service Provider or any Sub-Contractor (or any employer to whom the Service Provider or a Sub-Contractor transfers such employee) or any other matter in relation to a Transferring Employee which arises or occurs on or after the Relevant Transfer Date (including for the avoidance of doubt, the termination of that employment (howsoever arising));
- (B) by virtue of any changes made or proposed by the Service Provider or any Sub-Contractor (or any employer to whom the Service Provider or a Sub-

Contractor transfers such employee) in the working conditions or terms of employment of all or any of the Transferring Employees that taken individually or collectively are to the detriment of all or any of the Transferring Employees; or

- (C) by virtue of any rights, obligations or entitlements arising from, out of or in relation to a breach by the Service Provider of the TUPE Regulations.

TfL indemnity on Commencement

2.4 TfL shall indemnify the Service Provider and hold the Service Provider harmless against all and any costs, expenses (including taxes, management time and legal fees/expenses), liabilities, damages and losses arising from, as a result of, or otherwise in connection with any demand, claim, action or proceeding which arises or is alleged to arise or is made against the Service Provider by virtue of any actual or alleged act, omission, obligation or liability of TfL, the Incumbent Service Provider or any other employer (other than the Service Provider) or any other matter in relation to a Transferring Employee which arises or occurs prior to the Relevant Transfer Date, excluding:

- (A) any claim relating to an obligation to make any payment in respect of the Transferring Employee's period of continuous employment prior to the Relevant Transfer Date arising from, as a result of, or otherwise in connection with, the termination of any Transferring Employee's employment on or after the Relevant Transfer Date;
- (B) any claim relating to the continuation after the Relevant Transfer Date of any employment practice, policy, terms or conditions applicable to any Transferring Employee prior to the Relevant Transfer Date.

Assistance with Employment Claims

2.5 If any of the Transferring Employees or any other person who is or has been, or purports to be or have been, employed in connection with all or any of the services provided by the Incumbent Service Provider makes a claim against the Service Provider in relation to a matter which arises or occurs prior to the Relevant Transfer Date, the Service Provider shall:

- (A) as soon as practicable notify TfL that such claim has been made;
- (B) not seek to compromise the claim or take any action which could reasonably be expected to prejudice the ability to defend the claim.

2.6 The indemnity in paragraph 2.3 is given on the condition that the provisions of paragraph 2.5 shall apply *mutatis mutandis*.

3. Obligations During The Provision of the Services

Service Provider Personnel

3.1 The Service Provider will use sufficient, suitable, appropriately qualified and competent Personnel in the provision of the Services and will use all reasonable endeavours to ensure continuity of its Personnel.

- 3.2 The Service Provider agrees that, for the period of six months following the Relevant Transfer Date, it shall not, unless approved by TfL in writing (such consent not to be unreasonably withheld or delayed), redeploy or reassign any member of Service Provider Personnel (including any member of Key Personnel) away from the Services. For the avoidance of doubt, this paragraph shall not apply:
- (A) where an individual is removed or redeployed due to redundancy, resignation, dismissal for Good Cause or long-term illness; or
 - (B) in respect of any member of Service Provider Personnel who was engaged in providing the Services during the Implementation Phase but who is not engaged in providing any Services (other than any assistance required pursuant to paragraph 3.7) during the Operational Phase.
- 3.3 The Service Provider shall ensure that all Service Provider Personnel having access to Personal Data in respect of which TfL is the data controller are fully aware of the measures to be taken in accordance with this Agreement when processing Personal Data on behalf of TfL, including in particular Clause 49 (Information Governance).
- 3.4 If TfL, acting reasonably, considers any member of the Service Provider Personnel (including any Key Personnel) unsatisfactory in any respect, then TfL may, by written notice to the Service Provider, request the Service Provider to take remedial action in relation to such individual. If within twenty (20) Working Days of such notice TfL reasonably considers that the matter is still unresolved then TfL will have the right, by written notice to the Service Provider, to require the removal of such individual with immediate effect and the terms of paragraph 3.14 shall apply in respect of the replacement of any Key Personnel. The exercise of this right will not relieve the Service Provider of its obligations under this Agreement.
- 3.5 If the Service Provider replaces any member of the Service Provider Personnel (including any Key Personnel) for whatever reason (including for the avoidance of doubt, pursuant to paragraph 3.4 above), the cost of effecting such replacement shall be borne solely by the Service Provider (including, for the avoidance of doubt, any costs of training, induction or other efforts involved in bringing the replacement up to the requisite level of knowledge and skill).
- 3.6 For the term of this Agreement and for twelve (12) months thereafter, the Service Provider shall not, whether directly or indirectly and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, contractor or otherwise:
- (A) solicit, induce or entice away or endeavour to solicit, induce or entice away or cause to be solicited, induced or enticed away from TfL or any of its Affiliates; and/or
 - (B) employ, engage or appoint

any person employed by or contracted to TfL or any of TfL's Affiliates in a senior and/or skilled capacity, whether or not such person would breach his or her contract of employment or engagement by leaving TfL or any relevant Affiliate of TfL. The restriction not to employ, engage or appoint such individual shall not apply:

- (A) if an individual is employed, engaged or appointed by the Service Provider as a result of a response by the individual to a public advertisement;
- (B) if an individual is employed, engaged or appointed by the Service Provider as a result of the operation of the TUPE Regulations;
- (C) if, at the Termination Date, the Service Provider had no material confidential information in relation to such individual (including in relation to the individual's experience, attributes, remuneration) and if the Service Provider had not worked with the individual at any time in the 12 months prior to the Service Provider making the offer of employment, engagement or appointment.

3.7 Notwithstanding the foregoing, the Service Provider shall ensure that there are sufficient Service Provider Personnel available with an appropriate level of knowledge and who have been involved in providing the Services during the Implementation Phase during the period from the Relevant Transfer Date to four (4) weeks after such, to resolve any problems arising from the provision of the Services and the operability of the Service Systems in relation thereto.

3.8 Nothing contained in this Agreement shall be construed or have effect as creating or constituting any employment, agency or partnership relationship between TfL and any member of Service Provider Personnel and the Service Provider shall be solely responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider Personnel.

Key Personnel

3.9 The Service Provider shall make available for the provision of the Services the services of the Key Personnel and shall ensure that each member of Key Personnel devotes their time and effort exclusively to the performance of the Services, as set out in Annex 1. The Service Provider acknowledges that the Key Personnel are essential to the provision of the Services and shall ensure that all Key Personnel have appropriate relevant work experience.

3.10 The Service Provider shall, promptly on request, provide job descriptions ("**Job Descriptions**") for the Key Personnel positions to TfL which shall include as a minimum:

- (A) key accountabilities;
- (B) key competencies;
- (C) the scope of each role; and
- (D) the minimum qualifications and experience required to fulfil the role.

3.11 The Job Descriptions shall be subject to approval by TfL prior to appointment.

3.12 The Service Provider shall take all reasonable steps to ensure it retains the Key Personnel and shall not remove or change Key Personnel without TfL's prior written consent (except that such consent is not required where the removal or change is due to the dismissal for Good Cause, resignation or long-term illness of any

member of Key Personnel).

- 3.13 The Service Provider shall promptly notify TfL if a member of Key Personnel leaves the employment of the Service Provider (including, for the avoidance of doubt, where such member is a seconded to the Service Provider whose secondment ends) and, unless prevented by law or a pre-existing binding obligation of confidentiality, shall include in such notice the reason for their leaving.
- 3.14 The Service Provider will ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and shall ensure that, within ten (10) Working Days of his/her commencing work on the Services, any replacement will be fully competent to carry out the tasks assigned to the role. For the avoidance of doubt, nothing in this paragraph 3.14 shall prevent the Service Provider from using temporary staff in the role of Key Personnel while it is recruiting a permanent replacement, provided that the Service Provider complies with the provisions of this paragraph 3.14 in respect of such temporary staff.
- 3.15 Before assigning any replacement Key Personnel, the Service Provider will provide TfL with a curriculum vitae and any other information about the individual as requested by TfL.
- 3.16 TfL shall from time to time notify the Service Provider of the key points of contact within TfL for the Services.

Service Provider Personnel – Information and Accrued Liabilities True-Up

- 3.17 The Service Provider shall update and provide to TfL, no later than two (2) weeks following the Effective Date and thereafter within two (2) Working Days of any changes, a manual in such form as is appropriate which shall set out:
- (A) the organisational structure of the Service Provider in relation to the Services; and
 - (B) details of the roles and responsibilities (including reporting lines) and a curriculum vitae for all Key Personnel.
- 3.18 At any time during the period after the Relevant Transfer Date until the date 18 (eighteen) months prior to the Termination Date or Partial Termination Date, the Service Provider shall (subject to any relevant Data Protection Laws) within twenty (20) Working Days following a request by TfL deliver up, or procure the delivery up, to TfL of the information set out in Annex 2. TfL shall have the right to request such information on a quarterly basis during this period and there shall be no obligation on the Service Provider to update such information or notify TfL of any material changes (unless and until a further request for information is made by TfL in the next quarter).
- 3.19 At any time in the period after the date 18 (eighteen) months prior to the Termination Date or Partial Termination Date and the Termination Date or Partial Termination Date (as applicable), the Service Provider shall (subject to any relevant Data Protection Laws) within twenty (20) Working Days following a request by TfL deliver up, or procure the delivery up, to TfL of the information set out in Annex 3. If any of the information provided pursuant to this paragraph 3.19 changes in any material respect, the Service Provider shall notify TfL promptly, and in any event at

the next Project Review Meeting.

- 3.20 In supplying information to TfL pursuant to paragraph 3.18 and/or 3.19 the Service Provider warrants to TfL the accuracy of the information and in supplying information to TfL pursuant to paragraph 3.19 only the Service Provider consents to the disclosure of such information to any actual or prospective New Service Provider and to TfL's professional advisers.
- 3.21 No later than ten (10) Working Days following the expiry or termination of this Agreement or Partial Termination, the Service Provider shall provide or procure the provision to TfL or any New Service Provider (as appropriate) updated payroll information following the final payroll run and P45 details in respect of the Re-Transferring Employees (if any) and:
- (A) agrees to pay or to provide to the Re-Transferring Employees (if any) all emoluments due or accrued in the period up to but excluding the Termination Date, Partial Termination Date or Expiry Date (as applicable) and shall pay to the New Service Provider or TfL (as applicable) an apportioned sum in respect of accrued but untaken holiday pay (less any holiday pay for holiday taken but not yet accrued) and accrued but unpaid bonuses, benefits and any and all other accrued, but unpaid liabilities or costs in respect of the Re-Transferring Employees as at the Termination Date, Partial Termination Date or Expiry Date (as applicable); and
 - (B) shall provide personnel records relevant to any Re-Transferring Employees (if any) requested by TfL.

4. **Obligations and Indemnities on and Leading up to Expiry, Termination or Partial Termination**

Service Provider Obligations (No Changes during a Relevant Period)

- 4.1 During any Relevant Period, the Service Provider shall not, and shall procure that none of its Sub-Contractors shall, without the written permission of TfL:
- (A) amend the rate of remuneration (including, without limitation, eligibility to receive payment pursuant to the expiry or termination of this Agreement or Partial Termination) or any other terms of employment or engagement of the Service Provider Personnel (or, in the event of a Partial Termination only, such Service Provider Personnel as are affected by the Partial Termination), including without limitation the terms of any pension entitlement. TfL's consent shall not be unreasonably withheld or delayed where such amendments do not exceed the mean amendments made to the relevant grades across the whole of the Service Provider's or Sub-Contractor's business for that year, as certified by the Human Resources Director of the Service Provider or Sub-Contractor (as appropriate) acting in good faith;
 - (B) redeploy, or terminate without Good Cause the employment or engagement of, any of the Service Provider Personnel (or, in the event of a Partial Termination only, such Service Provider Personnel as are affected by the Partial Termination);
 - (C) recruit any person for employment or engagement in connection with, or

assign any additional member of current staff to, all or any of the Services provided under this Agreement (or, in the event of a Partial Termination only, such Services as are to be Partially Terminated). Subject to the provisions of paragraphs 3.1 and 3.12, TfL's consent shall not be unreasonably withheld or delayed where the Service Provider is replacing Service Provider Personnel on a one-for-one basis with appropriately skilled employees on substantially similar remuneration to the member(s) of Service Provider Personnel being replaced; or

- (D) amend any existing, compulsory or voluntary Collective Obligation or enter into any new Collective Obligations.

Service Provider Obligations (Co-Operation and Satisfaction of Liabilities)

4.2 The Service Provider shall:

- (A) co-operate and procure co-operation from any other employer (save for TfL or any actual or prospective New Service Provider) in the orderly management of issues relating to the Service Provider Personnel in connection with the expiry or termination of this Agreement or Partial Termination;
- (B) comply promptly and procure prompt compliance from any other employer (save for TfL or any actual or prospective New Service Provider) with all reasonable instructions from TfL with regard to the Service Provider Personnel in connection with the expiry or termination of this Agreement or Partial Termination;
- (C) comply with its obligations, if any, to inform and/or consult the Service Provider Personnel in connection with the expiry or termination of this Agreement or Partial Termination and shall indemnify TfL and/or any New Service Provider against any losses, costs, expenses (including taxes, management time and legal fees/expenses), liabilities and damages incurred or suffered by TfL and/or any New Service Provider arising from, as a result of, or otherwise in connection with the Service Provider's failure to comply with such obligations;
- (D) enable and assist TfL and/or any New Service Provider (as appropriate), if requested, to inform and/or consult or communicate with and meet any relevant Service Provider Personnel or their trade union or other representatives; and
- (E) insofar as it is within the Service Provider's control and without prejudice to the Service Provider's obligations to comply with its obligations under this Agreement (including but not limited to compliance with Law and the Exit Plan), take all commercially reasonable steps to reduce the circumstances under which TfL or any New Service Provider may incur cost in connection with the Service Provider Personnel as a result of the expiry or termination of this Agreement or Partial Termination.

4.3 The Service Provider agrees to satisfy, and will procure that any Sub-Contractor will satisfy, all of its obligations up to expiry or termination of this Agreement or Partial Termination (as applicable) with respect to all outgoings and accrued liabilities in

respect of the Service Provider Personnel (including for the avoidance of doubt any and all accrued, but untaken holiday and any accrued, but unpaid bonus amounts, benefits and/or other employment related costs, which accrued prior to the Further Transfer Date) and in accordance with paragraph 3.21(A) above shall pay to the New Service Provider or TfL (as applicable) an apportioned sum in respect of any outstanding accrued sums.

Service Provider Indemnity on Exit

- 4.4 The Service Provider shall indemnify TfL and any New Service Provider and hold TfL and any New Service Provider harmless against all and any costs, expenses (including taxes, management time and legal fees/expenses), liabilities, damages and losses arising from, as a result of or otherwise in connection with any demand, claim, action or proceeding which arises or is alleged to arise or is made against or incurred or suffered by TfL or any New Service Provider by virtue of the operation of the TUPE Regulations or otherwise in connection with the performance of the Services and/or expiry or termination of this Agreement or Partial Termination or the termination of employment or engagement (including without limitation, any dismissal or alleged dismissal by the Service Provider, a Sub-Contractor or otherwise) and that is made or brought by or on behalf of:
- (A) one or more of the Service Provider Personnel or former Service Provider Personnel (other than a Transferring Employee or Re-Transferring Employee) and relates to facts or events occurring at any time whether before, on or after the Further Transfer Date;
 - (B) a Transferring Employee (who is not a Re-Transferring Employee) and relates to facts or events occurring at any time after the Relevant Transfer Date;
 - (C) a Re-Transferring Employee and relates to facts or events occurring at any time prior to the Further Transfer Date (except that in respect of any Re-Transferring Employee who was originally a Transferring Employee, the indemnity shall be limited to any time after the Relevant Transfer Date); and
 - (D) a trade union and/or appropriate representatives in connection with all or any of the Service Provider Personnel or former Service Provider Personnel and which relates to facts or events occurring at any time prior to the Further Transfer Date (including without limitation in relation to obligations to inform and consult or any rights, entitlements or liabilities under any Collective Obligations);

save to the extent any such demand, claim, action or proceeding arises as a result of any failure of TfL or any New Service Provider to comply with its obligations under the TUPE Regulations.

TfL Indemnity on Exit

- 4.5 TfL shall indemnify the Service Provider and hold the Service Provider harmless (or shall procure that the New Service Provider indemnifies the Service Provider and holds the Service Provider harmless) against all and any costs, expenses (including taxes, management time and legal fees/expenses), liabilities, damages and losses arising from, as a result of or otherwise in connection with any demand, claim,

action or proceeding which arises or is alleged to arise or is made against or is suffered or incurred by the Service Provider and that is made or brought by:

- (A) one or more Re-Transferring Employees; or
- (B) a trade union and/or appropriate representatives in connection with all or any of the Re-Transferring Employees,

and which in either case relates to facts or events occurring at any time after the expiry, termination or Partial Termination of this Agreement in connection with the Re-Transferring Employee's employment or engagement by TfL or the New Service Provider (as applicable) in respect of the provision of replacement services equivalent to the Services or the termination of employment or engagement (including without limitation, any dismissal or alleged dismissal by TfL or the New Service Provider) or, at any time, by virtue of any rights, obligations or entitlements arising from, out of or in relation to a breach by TfL or any New Service Provider of the TUPE Regulations (save where such breach relates to a failure by the Service Provider to comply with its obligations under this Agreement and/or under the TUPE Regulations to provide information).

Assistance with Employment Claims

- 4.6 In the event that any of the Re-Transferring Employees or any other person who is or has been, or purports to be or have been, employed in connection with all or any of the Services, makes a claim against TfL or a New Service Provider or Sub-Contractor in relation to a matter which arises or occurs prior to the date on which the Re-Transferring Employee's employment or engagement transfers to TfL or a New Service Provider or Sub-Contractor, TfL shall, and shall use reasonable endeavours to procure that the New Service Provider or Sub-Contractor shall:
- (A) as soon as practicable notify the Service Provider that such claim has been made;
 - (B) not seek to compromise the claim or take any action which could reasonably be expected to prejudice the ability to defend the claim.
- 4.7 The indemnity in paragraph 4.4 is given on the condition that the provisions of paragraph 4.6 shall apply *mutatis mutandis*.

Annex 1

Key Personnel

1. Introduction

This Annex sets out the key roles and responsibilities to which the Service Provider shall assign Key Personnel.

2. Implementation Phase

During the Implementation Phase, the Service Provider shall assign the below named Service Provider Personnel to the following roles:

Role	Description	Proportion of time required	Name
Implementation Programme Manager	Implementation team lead responsible for ensuring that all implementation milestones are delivered on time and that the solution is fit for purpose meeting TfL Requirements.	FT	
IT Implementation Manager	Lead for the IT elements of the implementation, managing the IT teams and accountable to the Implementation Programme Manager.	FT	
Architecture Delivery Manager	Responsible for maintaining the integrity of the overall solution ensuring that the architecture is delivered in line with Requirements.	FT	
Head of Service Operations	Responsible for gathering requirements, developing detailed processes and procedures , and maintaining requirements traceability matrix	FT	
Test Manager	Responsible for executing test plans in support of the Implementation Manager	FT	
Commercial Manager	Responsible for commercial management of the contract	PT	
Financial Manager	Responsible for maintaining and monitoring accounts and financial arrangements	PT	

3. Operational Phase

During the Operational Phase, the Service Provider shall assign the below named Service Provider Personnel to the following roles:

Role	Description	Proportion of time required	Name
Contract Manager	Single, strategic point of contact with overall accountability to TfL for service and financial performance of the Services.	FT	
Head of Service Operations	Responsible for all aspects of operational delivery and the main contact for the day to day running of the Services.	FT	
Head of Training and Organisational Development	Give strategic guidance around all aspects of training design and delivery.	PT	
Call Centre Manager	Manages primary interface for customer services, handling all enquiries and telephone transactions.	FT	
Back Office Manager	Manages teams delivering business processing functions including handling of emails or scanned white mail and for providing second line advice on queries, transferred from the contact centre.	FT	
Commercial Manager	Responsible for commercial management of the contract	FT	
Financial Manager	Responsible for maintaining and monitoring accounts and financial arrangements	FT	
IT Lead	Responsible for delivering the ICT service, with line management responsibility for staff permanently assigned to support and deliver the ICT services. Single point-of-contact for managing third party suppliers on a day to day basis	FT	
Security Manager	Ongoing management and monitoring of the solution to ensure compliance with the agreed security policies and to ensure a proactive approach to the identification and rectification of new threats and vulnerabilities.	FT	

Annex 2

Service Provider Personnel Information (Partial) to be provided prior to the date 18 months prior to the Termination Date or Partial Termination Date pursuant to paragraph 3.18

Number	Visa	Place of Work	Job title / Function	Grade	Reports to	Hours of Work	Salary	Proportion of Time Spent working on the Services (last 12 months)
1					B.N.Other	40	£10,000.00	
2								
3								
4								
5								
6								
7								
8								
9								
10								

Annex 3

Service Provider Personnel Information (Full) to be provided in the 18 months prior to the Termination Date or Partial Termination Date pursuant to paragraph 3.19

Number	Employer	Name	Gender	Date of Birth	Visa	Place of Work	Job title / Function	Grade	Reports to	Hours of Work	Date of commencement of continuous employment
1		A.N.Other		1 January 1990					B.N.Other	40	1 January 1990
2											
3											
4											
5											
6											
7											
8											
9											
10											

Annex 3 (continued)

Number	Date joined SP (if TUPE transferred)	Salary	Bonuses / Commissions	Other Benefits (Pension / Insurance)	Holiday Entitlement (Days)	Notice Period (weeks / months)	Restrictive Covenants (type/duration)	Termination Date (if known / if fixed term)	Miscellaneous - any employee specific terms / comments*	Proportion of Time Spent working on the Services (last 12 months)
1		£10,000.00								
2										
3										
4										
5										
6										
7										
8										
9										
10										

* This should include any information regarding any current or recent (within the last two years) disciplinary, grievance, tribunal or court action taken by/against the employee, any unexpired written disciplinary warnings, any long-term leave which the employee is currently on or likely to be on in the foreseeable future (sick, maternity, parental or adoption) details of any collective agreements which directly affect the employee and any intention indicated by the employee that he/she will object to a future TUPE transfer to the New Service Provider.