

SCHEDULE 23**Gainsharing****1. Introduction**

Gainshare payable by the Service Provider to TfL pursuant to Clause 26 shall be calculated in accordance with this Schedule.

2. Gainshare Evaluation

2.1 During the Operational Phase, the Service Provider shall, within ten (10) Working Days of the publication of each Service Provider Financial Statement:

- (A) provide the completed Open Book Accounts in accordance with Clause 37, reconciled to the Billing Model and including the Gainshare calculation as detailed in paragraph 2.3 below;
- (B) provide a written summary of the reported information, including details of all transactions between Service Provider Group members which relate in whole or in part to this Agreement; and
- (C) ensure that the requirements as set out in paragraphs 2.1(A) and 2.1(B) above are certified by the Service Provider's Divisional Finance Director, Justice and Secure Services

2.2 The Service Provider shall provide TfL with any supplementary information or explanation reasonably requested by TfL in relation to the information it provides pursuant to paragraph 2.1.

2.3 The Gainshare payable to TfL in respect of a Service Provider Financial Year, (G_t), shall be calculated as the greater of zero (0) and the following formula:

$$G_t = 50\% \times \left[\sum_0^{n=t} PBIT - \left(\sum_0^{n=t} VBM \times \left(1 - \frac{1}{1 + PM} \right) \right) \right]$$

where:

- t = Service Provider Financial Year in relation to which calculation is applied;
- PBIT = Profit, as declared in Open Book Accounts, for this Agreement and (in respect of any period during which the Service Provider is also the EOps Service Provider) the EOps Service Agreement;
- VBM = value of all Approved Billing Models (which, for the avoidance of doubt, includes the amount of any Gainshare for the previous years), for this Agreement and (in respect of any period during which the Service Provider is also the EOps Service Provider) the EOps Service Agreement;
- PM = **(Information Redacted)**

For the avoidance of doubt, the above formula is based on the cumulative sum of PBIT and VBM between $n = 0$ (Operational Commencement Date) and $n = t$

3. **Audit**

- 3.1 Without prejudice to TfL's other rights under Clause 36 (Audit and Inspection), TfL reserves the right to commission an independent auditor to provide an audit certification for any information provided by the Service Provider pursuant to this Schedule.
- 3.2 If such independent audit discovers a material discrepancy in the calculation of Gainshare, the Service Provider shall:
- (A) revise and re-submit the Open Book Accounts within ten (10) Working Days of receipt of the written notification by TfL requiring it to do so; and
 - (B) on the written demand of TfL, pay to TfL all costs incurred by TfL in relation to such audit certification.

4. **Partial Financial Years**

- 4.1 In relation to the two (2) Service Provider Financial Years in which Services are provided for part of the year (at the beginning and end of the Term), the Service Provider shall provide an Open Book Account for the relevant period, this being:
- (A) from the Effective Date to the Service Provider Financial Year end date, or
 - (B) from the Service Provider Financial Year start date to the date on which this Agreement terminated or expired,

for comparison by TfL against the Approved Billing Models for that period.

5. **Payment**

- 5.1 The Service provider shall pay any Gainshare due to TfL in respect of a Service Provider Financial Year within three (3) months from the date of publication of the Service Provider Financial Statement for that Service Provider Financial Year, such payment to be made in accordance with paragraph 3.3 of Schedule 7 (*Charging and Operational Pricing*). When paid by the Service Provider, Gainshare will be recorded in the Billing Model in accordance with Schedule 7 (*Charging and Operational Pricing*).
- 5.2 The Service Provider shall pay Gainshare into such account as may be designated by TfL from time to time, save to the extent that TfL notifies the Service Provider that it will set off such Gainshare against Service Charges.
- 5.3 For the avoidance of doubt, Capita shall not be obliged to pay any Gainshare twice. Accordingly, to the extent that any Gainshare calculated in accordance with this Schedule 23 (Gainsharing) is paid, or set off against Service Charges, under this Agreement, TfL shall not be entitled to such Gainshare under the EOps Services Agreement.