

SCHEDULE 27
Deed of Novation

DATED [] _____

TRANSPORT FOR LONDON

and

[OTHER SERVICE PROVIDER]
as Original Contracting Party

and

[SERVICE PROVIDER]

relating to

The transfer of Transport for London's obligations and benefits under a contract with [●]
for the provision of [●] to the Service Provider

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THIS DEED is dated the • day of • and made

BETWEEN:

- (1) **[OTHER SERVICE PROVIDER]**, (the “**Original Contracting Party**”), registered in England and Wales as company number [•] and having its registered office at [•];
- (2) **TRANSPORT FOR LONDON** (“**TfL**”), (which expression shall include any firm, corporation or other contracting authority succeeding to the functions of TfL in relation to the Services to be provided under this Agreement), of Windsor House, 42-50 Victoria Street, London SW1H 0TL; and
- (3) **[SERVICE PROVIDER]**, (the “**Service Provider**”), a company registered in [•] with company number [•] and having its registered office at [•].

Background:

- (A) The Original Contracting Party and TfL entered into an agreement for the provision of [•] on [date] (the “**Original Contract**”).
- (B) The parties hereto have agreed to transfer the rights, obligations and liabilities of TfL under the Original Contract to the Service Provider in accordance with the terms of this Deed.

NOW IT IS HEREBY AGREED as follows:

1. **Definitions and Construction**

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

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

- 1.2 The headings and sub-headings are inserted for convenience only and shall not affect the construction of this Deed.

- 1.3 References to clause(s) unless otherwise stated are references to clause(s) of and to this Deed.

- 1.4 References to any party include its successors and permitted assigns.

2. **Novation**

- 2.1 As from the date of this Deed (the “**Effective Date**”) TfL novates the Original Contract to the Service Provider and transfers all of its rights, benefits and interest in the Original Contract to the Service Provider.

2.2 **Service Provider’s obligations**

The Service Provider undertakes to the Original Contracting Party that it will, from the Effective Date discharge the obligations of TfL under the Original Contract,

observe all the provisions of the Original Contract and be liable to the Original Contracting Party for the performance of any obligations on the part of TfL under or in connection with the Original Contract whether arising on or after the Effective Date, in each case as if the Service Provider had been a party to the Original Contract instead of TfL from the date on which the Original Contract was made.

2.3 Release of TfL's obligations

In consideration of the undertaking by the Service Provider under clause 2.2, with effect from the Effective Date, subject to clause 2.7, the Original Contracting Party releases and discharges TfL from performance of its obligations under the Original Contract and from all liabilities, claims and demands (including without limitation claims for negligence) of any kind arising under or in connection with the Original Contract, whether arising prior to, on or after the Effective Date.

2.4 Original Contracting Party's obligations

The Original Contracting Party undertakes to the Service Provider that it will continue to be bound by and discharge its obligations under the Original Contract and, from the Effective Date, be liable to the Service Provider for the performance of any obligations on its part under or in connection with the Original Contract whether arising prior to, on or after the Effective Date, as if the Service Provider had been a party to the Original Contract instead of TfL and the obligations of the Original Contracting Party had been owed to the Service Provider instead of TfL from the date on which the Original Contract was made.

2.5 Cessation of TfL's rights

Without prejudice to clauses 2.2 and 2.4 and subject to clause 2.6 with effect from the Effective Date, TfL shall cease to have any rights under the Original Contract in respect of any acts or omissions of the Original Contracting Party, whether arising prior to, on or after the Effective Date, arising under or in connection with the Original Contract, except to the extent provided for in any separate collateral deed entered into by TfL, the Service Provider and the Original Contracting Party.

2.6 Acknowledgment and Warranty of the Original Contracting Party

Without limitation to the generality of the other provisions of this Deed:

- (A) the Original Contracting Party acknowledges that the Service Provider has relied on the works and/or services performed by the Original Contracting Party prior to the date of this Deed under the Original Contract; and
- (B) without prejudice to clause 2.4 and subject to any limitation of liability in the Original Contract, the Original Contracting Party shall be liable for any loss, damage, cost or expense (including the cost of settling any action) incurred by the Service Provider arising from any act, omission or default of the Original Contracting Party (whether based in negligence or any other form of legal liability) in performance of the Original Contract prior to the execution of this Deed whether or not such act, omission or default would have caused TfL to suffer any loss, damage, cost or expense.

2.7 Existing claims

- (A) In this Deed the “**Existing Claims**” mean such disputes arising under the Original Contract as are at the date of this Deed the subject of arbitration, adjudication, litigation or binding tribunal decision between TfL and the Original Contracting Party and as are briefly described in the schedule to this Deed.
- (B) Nothing in this Deed shall operate to release or discharge TfL or the Original Contracting Party in respect of the Existing Claims and the Service Provider shall have no liability in respect of the Existing Claims.

2.8 TfL Indemnity

TfL undertakes to the Service Provider that it will indemnify and fully reimburse the Service Provider against all losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal fees) which the Service Provider may suffer or incur by reason or on account of or arising from any action, claim or other legal recourse of any kind arising out of any act, omission or default of TfL in connection with the Original Contract prior to the Effective Date.

3. Warranties

- 3.1 Each of TfL and the Original Contracting Party warrants to the Service Provider that as at the Effective Date:
 - (A) the Original Contract constitutes the entire agreement between TfL and the Original Contracting Party relating to the subject matter of the Original Contract;
 - (B) so far as either of them is aware, except for the Existing Claims, neither TfL nor the Original Contracting Party is in default under the Original Contract which could lead to termination of the Original Contract; and
 - (C) all fees and payments which have become due to the Original Contracting Party have been duly paid by TfL.

4. Notices

- 4.1 A notice (including any approval, consent or other communication) in connection with this Deed:
 - (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 Effective Date are:

Name: [Original Contracting Party]

[For the attention of:]

Address:

Name: [TfL]

[For the attention of:]

Address:

Name: [Service Provider]

[For the attention of:]

Address:

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

4.2 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 4.3 below.

4.3 Subject to clause 4.4 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.

4.4 A notice received or deemed to be received in accordance with clause 4.3 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.

5. **Provisions relating to this Deed**

5.1 **Entire agreement**

(A) 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.

(B) 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.

5.2 **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 the others.

5.3 **Variation**

No variation of this Deed shall be effective unless made in writing and signed/executed as a Deed by the duly authorised representatives of the parties.

5.4 **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.

5.5 **Confidentiality**

Notwithstanding clause 2 above, the Original Contracting Party and TfL will continue to be bound by the confidentiality provisions in clause 75 of the Original Contract.

5.6 **Costs and expenses**

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

5.7 **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.

5.8 **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.

5.9 **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.

5.10 **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.

6. **Governing Law and Jurisdiction**

6.1 **English law**

This Deed shall be governed by and construed in accordance with English law.

6.2 **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.

Schedule: Existing Claims

[]

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

SIGNED by [Director])
And [Director or Company Secretary])
And thereby executed by)
[the Other Service Provider] as its Deed)

THE COMMON SEAL of TRANSPORT FOR)
LONDON was hereunto affixed)
)
)

Authenticated by [Secretary/Assistant Secretary/Commissioner/Chief Officer (delete as appropriate)]

SIGNED by [Director])
And [Director or Company Secretary])
And thereby executed by)
[the Service Provider] as its Deed)