

LONDON CYCLE HIRE SCHEME AGREEMENT

Schedule 39 – Service Provider Personnel

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Service Provider Personnel

1 **Introduction**

This Schedule 39 sets out the Service Provider's obligations in respect of Service Provider Personnel.

2 **Service Provider Personnel**

2.1 In terms of the Service Provider Personnel, the Service Provider shall:

- (a) use sufficient, suitable, appropriately qualified, experienced and competent Service Provider Personnel to provide the Services (or any part thereof);
- (b) use all reasonable efforts to ensure continuity of Service Provider Personnel engaged in the provision of the Services (or any part thereof);
- (c) ensure that there are sufficient Service Provider Personnel available with an appropriate level of knowledge and skill and who have been involved in the Design Services and the Build Services during the period from the Effective Date to twelve (12) Months after the Operational Commencement Date, to resolve any problems arising from the:
 - (i) function, operation and maintenance of the:
 - (A) LCHS Assets; and
 - (B) Service Systems;
 - (ii) provision of the Operational Services; and
- (d) ensure that all Service Provider Personnel having access to Personal Data, in respect of which a member of the TfL Group is the Data Controller, are fully aware of the measures to be taken in accordance with:
 - (i) Clause 50 (*Information Compliance*); and
 - (ii) Schedule 15 (*Information Compliance*),when Processing Personal Data on behalf of TTL and the TfL Group.

3 **Removal/Replacement of Service Provider Personnel**

3.1 In the event that TTL, acting reasonably, considers that any member of the Service Provider Personnel is:

- (a) unsatisfactory (TTL acting reasonably);
- (b) not performing their role properly, efficiently or effectively; or
- (c) in any way disruptive to the business or activities of TTL or any member of the TfL Group,

TTL may, by written notice to the Service Provider, request the Service Provider to take remedial action in relation to such member of the Service Provider Personnel. If within

twenty (20) Working Days of such notice, TTL reasonably considers that the matter has not been resolved to the satisfaction of TTL or the relevant member of the TfL Group, TTL shall have the right, by written notice to the Service Provider, to require the removal of such member of the Service Provider Personnel with immediate effect. The exercise of TTL's rights under this paragraph 3.1 shall not relieve the Service Provider of any of its obligations under this Agreement.

- 3.2 In the event that the Service Provider replaces any member of the Service Provider Personnel for whatever reason, the cost of effecting such replacement shall be borne solely by the Service Provider (including, any costs associated with training, induction or other efforts involved in bringing the replacement member of the Service Provider Personnel up to the same level of knowledge as his predecessor).

4 Non-solicitation

- 4.1 During the Term and for a period of twelve (12) Months following Termination, neither Party shall, without the prior written consent of the other Party:

- (a) make any offer of employment or enter into any discussion or negotiations with a view to making any offer of employment to any person employed by the other Party at any time during the period of six (6) Months prior to the Effective Date of this Agreement and with whom it has had personal contact or dealing; or
- (b) solicit or attempt to solicit services from any employee of the other Party on their own account or entice or attempt to entice any such employee away from the other Party.

- 4.2 The provisions of paragraph 4.1 above shall not apply if such employee is employed as a result of:

- (a) a response by the employee to a public advertisement placed by the other Party; or
- (b) the operation of the TUPE Regulations.

5 Key Personnel

- 5.1 The Service Provider acknowledges and accepts that the Key Personnel set out in Schedule 11 (*Key Personnel*) are essential to the provision of the Services. Accordingly, the Service Provider shall:

- (a) provide job descriptions for all Key Personnel positions set out in Schedule 11 (*Key Personnel*) to TTL for its approval, including, as a minimum the:
 - (i) scope of each Key Personnel position;
 - (ii) minimum qualifications and experience required to fulfil the Key Personnel position;
 - (iii) key accountabilities and responsibilities of the Key Personnel position; and
 - (iv) core skills and competencies required for the Key Personnel position,(the "**Job Description**");
- (b) notify TTL Personnel of the identity of each member of the Key Personnel and make them available for the provision of the Services. TTL shall have the right to:
 - (i) request the curriculum vitae of; and/or

- (ii) interview and/or accept or reject,
any member of Service Provider Personnel proposed to fulfil the position of Key Personnel;
 - (c) ensure that all Key Personnel:
 - (i) have a minimum of six (6) Months' relevant work experience; and
 - (ii) devote their time and effort exclusively to the performance of the Services;
 - (d) ensure that the role of any Key Personnel is not vacant for longer than thirty (30) Working Days save to the extent that the role is vital for the proper provision of the Services in which circumstances the Service Provider shall ensure that the role is not vacant for longer than ten (10) Working Days; and
 - (e) ensure that any replacement member of Key Personnel will be fully competent to carry out the tasks assigned to the Key Personnel, which he has replaced within thirty (30) Working Days of his commencing work on the Services. Nothing in this paragraph 5.1(e) shall prevent the Service Provider from using temporary staff in the role of Key Personnel whilst it is recruiting a permanent replacement, provided that the Service Provider complies with the provisions of paragraph 5.3 below in respect of such temporary staff;
 - (f) take all reasonable steps to retain the services of the Key Personnel;
 - (g) not remove, change or replace any member of the Key Personnel without the prior written consent of TTL. Such consent shall not be required in respect of the removal of Key Personnel due to dismissal, resignation, illness or other significant circumstances; and
 - (h) promptly notify TTL in writing in the event that a member of Key Personnel leaves the employment of the Service Provider (including, where such member is a secondee to the Service Provider and the period of their secondment expires) and provide details of their proposed replacement.
- 5.2 TTL may, at its reasonable discretion, require the Service Provider to remove any member of Key Personnel that TTL considers is:
- (a) unsatisfactory (TTL acting reasonably);
 - (b) not performing their role properly, efficiently or effectively; or
 - (c) in any way disruptive to the business or activities of TTL or any member of the TfL Group,

and the terms of paragraph 3 (*Removal/Replacement of Service Provider Personnel*) above shall apply in respect of the replacement of that member of Key Personnel.

- 5.3 Prior to assigning a replacement Key Personnel, the Service Provider shall:
- (i) propose an individual to replace such Key Personnel and supply to TTL the curriculum vitae of any proposed replacement;
 - (ii) such individual shall have (in the opinion of TTL) the status, skills and experience at least equal to that of such Key Personnel that he is proposed to replace;

- (iii) TTL shall have the right to interview and/or accept or reject any proposed replacement; and
- (iv) in the event of an agreed redeployment or the resignation of any of the Key Personnel, the Service Provider shall:
 - (A) use their reasonable endeavours to ensure that such Key Personnel shall work such part of his or her notice period as is necessary to ensure appropriate knowledge transfer to his or her replacement; and
 - (B) demonstrate to TTL that an appropriate knowledge transfer plan has been implemented by such Key Personnel and his replacement.

6 TUPE Does Not Apply on Commencement

It is the Parties' view that the TUPE Regulations will not apply on the commencement of this Agreement. TTL will indemnify the Service Provider against all and any Employment Liabilities incurred in relation to any of its employees whose employment or claims arising out of their employment or its termination transfer to the Service Provider pursuant to or by virtue of the TUPE Regulations on commencement of this Agreement.

7 Indemnities

7.1 The Service Provider shall be liable for, and shall indemnify the TTL Indemnified Parties and/or any New Service Provider against, any Employment Liabilities incurred by the TTL Indemnified Parties and/or any New Service Provider, which arise out of or in connection with:

- (a) the employment or termination of employment of any person engaged in connection with the provision of the Services at any time on or after the Effective Date during the period from and including the Effective Date up to and including the Expiry Date, Termination Date or Partial Termination Date (as applicable); and
- (b) any Service Provider Personnel (other than any employee who immediately before the Expiry Date, Termination Date or Partial Termination Date (as applicable) is an Exit Transferring Employee and whose name is included on the final list of Exit Transferring Employees provided in accordance with the provisions of paragraph 8.2 (*Termination*) below) whose employment or claims or liabilities arising out of their employment or its termination transfers to any member of the TfL Group or a New Service Provider following the Expiry Date, Termination Date or Partial Termination Date (as applicable) pursuant to or by virtue of the TUPE Regulations or who claim that their employment or such claims or liabilities so transfer save where such person continues to be employed by any member of the TfL Group or a New Service Provider six (6) months after the employing company in the TfL Group or the New Service Provider becomes aware of the claim that their employment has transferred in which case the relevant Employment Liabilities shall be those relating to the period on or before the Expiry Date, Termination Date or Partial Termination Date (as applicable).

7.2 If, on Termination or Partial Termination, the TUPE Regulations do not apply, and within the period of three (3) Months following the Expiry Date, Termination Date or Partial Termination Date (as applicable), the Service Provider terminates the employment of any of its employees who would otherwise have been Exit Transferring Employees on the grounds of redundancy (as defined in section 139 of the Employment Rights Act 1996), TTL shall indemnify the Service Provider against that part of the statutory redundancy payment that is paid to the Exit Transferring Employees.

8 Termination

- 8.1 The Service Provider shall not, and shall procure that its Sub-Contractors shall not, during the period of twelve (12) Months immediately preceding Termination or Partial Termination or at any time after notice of the Termination or Partial Termination (whichever is earlier), without the prior written consent of TTL which shall not be unreasonably withheld or delayed:
- (a) other than for gross misconduct, terminate or give notice to terminate the employment of any Service Provider Personnel;
 - (b) increase or reduce the number of Service Provider Personnel by more than five percent (5%);
 - (c) except in the ordinary course of business propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of any Service Provider Personnel;
 - (d) replace, relocate or reassign to duties unconnected with the Services any Service Provider Personnel; or
 - (e) assign or redeploy to the Services any person who was not previously a member of the Service Provider Personnel except to the extent that such person is assigned or redeployed to the Services to replace a member of Service Provider Personnel as a result of the termination of their employment with the Service Provider.
- 8.2 Within seven (7) calendar days of notice of Termination or Partial Termination in the event that this Agreement is terminated early or no later than twelve (12) Months prior to the expiry of this Agreement (whichever is earlier), the Service Provider shall:
- (a) provide to TTL, or at its request a member of the TfL Group and/or a New Service Provider, a list of all Service Provider Personnel, or in the case of Partial Termination a list of Service Provider Personnel involved in the provision of the relevant part of such Services, and for each member of the Service Provider Personnel:
 - (i) their:
 - (A) job description;
 - (B) length of service;
 - (C) remuneration; and
 - (ii) the amount of time spent on the provision of the Services,and shall update such information at intervals requested by TTL;
 - (b) provide to TTL, or at its request a member of the TfL Group and/or a New Service Provider, a list of the names and job titles of all Exit Transferring Employees, and shall provide an updated version of such list at intervals requested by TTL;
 - (c) supply, and shall procure that its Sub-Contractors shall:
 - (i) supply, to TTL or at its request a member of the TfL Group and/or a New Service Provider in writing; and
 - (ii) allow the TfL Group and/or a New Service Provider to take copies of,

such information in the Service Provider's or its Sub-Contractors' possession and control, as the TfL Group and/or any New Service Provider may require for the purpose of establishing the terms and conditions of employment of all Exit Transferring Employees and assessing any payroll or other costs, including emoluments and outgoings (including pension contributions in respect of any employee):

- (A) all benefits (whether contractual or not);
- (B) the ages and start dates of all Exit Transferring Employees; and
- (C) the details of any other agreement or arrangement (including with any trade union or other representative body) that may affect the employment of any Exit Transferring Employee and which may fall upon any member of the TfL Group or a New Service Provider as a direct or indirect result of the transfer of the Services or the relevant part of such Services to any member of the TfL Group or a New Service Provider.

Thereafter, the Service Provider undertakes to notify TTL promptly of any changes to such information.

- 8.3 The Service Provider authorises all members of the TfL Group to use or disclose such of the foregoing information to any New Service Provider and to such other Third Parties as such member of the TfL Group may reasonably consider necessary for the purposes of putting the continued provision of the Services (or any part thereof) out to tender and, if requested by a member of the TfL Group to do so, the Service Provider shall liaise with and provide such information directly to any New Service Provider or such other Third Parties as such member of the TfL Group may direct.
- 8.4 The Service Provider undertakes to ensure that all information disclosed pursuant to this paragraph 8 shall be full, true and accurate and up-to-date to the best of its knowledge and belief having made due and careful enquiry.
- 8.5 At least thirty (30) calendar days prior to the Expiry Date or Termination Date, or in the case of Partial Termination the Partial Termination Date, the Service Provider shall provide to TTL, or at its request a member of the TfL Group and/or a New Service Provider, a final list of the names of all Exit Transferring Employees, which shall be complete, accurate and up to date and the Service Provider shall immediately notify TTL of:
- (a) any changes to such list prior to the Expiry Date, Termination Date or Partial Termination Date (as applicable); and
 - (b) any Exit Transferring Employee who has:
 - (i) objected to a transfer pursuant to Regulation 4(7) of the TUPE Regulations; and
 - (ii) given or been given notice of termination of his employment,prior to the Expiry Date, Termination Date or Partial Termination Date (as applicable).
- 8.6 The Service Provider shall, and shall procure that its Sub-Contractors shall:

- (a) comply with their duties to provide employee liability information in accordance with Regulation 11 of the TUPE Regulations, but in addition will provide the information specified in that Regulation 11 no later than thirty (30) calendar days before the, Expiry Date, Termination Date or Partial Termination Date (as applicable); and
- (b) indemnify TTL Indemnified Parties and any New Service Provider against any Employment Liabilities arising from such breach.

8.7 In accordance with and subject to Clause 74.2 (*Contract (Rights of Third Parties) Act*), any member of the TfL Group and/or a New Service Provider or contractor of TTL shall be entitled to enforce the provisions of this Schedule 39 pursuant to section 1 of the Third Parties Act.

9 Assistance with Employment Claims

9.1 In the event that any of the Service Provider Personnel 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 (or any part thereof), makes a claim against a TTL Indemnified Party or a New Service Provider arising out of or in connection with the provision of the Services, the relevant member of the TfL Group and the Service Provider shall:

- (a) notify the other Party that such claim has been made; and
- (b) give to the other as soon as practicable after such request all co-operation, assistance and information which may be reasonably required by the other party in relation to the claim.

9.2 The Service Provider shall procure that, whenever TTL or a member of the TfL Group so requires on reasonable notice at any time during the Term and for the period of six (6) years following the Expiry Date, Termination Date or Partial Termination Date (as applicable), TTL or a member of the TfL Group will be given access to and be allowed to consult with any person, consultant or employee who:

- (a) at that time is still an employee or sub-contractor of the Service Provider or any Affiliate of the Service Provider; and
- (b) was at any time employed or engaged by the Service Provider to provide the Services under this Agreement,

and such access and consultation will be provided free of charge and, thereafter, be charged at reasonable rates for the time spent by the Service Provider and/or its Sub-Contractors on such consultation. The Service Provider will further procure that all such persons co-operate with the requests of TTL or the relevant member of the TfL Group from time to time.

10 Pensions

10.1 The Service Provider shall make available a Service Provider Pension Plan for the provision of relevant benefits to the Service Provider Personnel in accordance with applicable Laws.

10.2 The terms of the Service Provider Pension Plan (including the benefits provided under it) shall be made available to TTL on request.

10.3 For the purposes of this paragraph 10, “**relevant benefits**” has the meaning given to it in section 612 of the Income and Corporation Taxes Act 1988.