

**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 Supply Contract  
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 and obligations 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. **Construction**

- 1.1 The headings and sub-headings are inserted for convenience only and shall not affect the construction of this Deed.
- 1.2 References to clause(s) unless otherwise stated are references to clause(s) of and to this Deed.
- 1.3 References to any party include its successors and permitted assigns.

2. **Novation**

2.1 **Service Provider’s obligations**

The Service Provider undertakes to the Original Contracting Party that it will, from the date of this Deed (the “**Effective Date**”):

- (A) discharge the obligations of TfL under the Original Contract and observe all the provisions of the Original Contract; and
- (B) 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 prior to, on or after][from] the Effective Date,

in each case as if the Service Provider [had been][is] a party to the Original Contract in lieu of TfL from the [date on which the Original Contract was made][Effective Date].

## 2.2 Release of TfL's obligations

In consideration of the undertaking by the Service Provider under clause 2.1, with effect from the Effective Date[, subject to clause 2.6,] the Original Contracting Party releases and discharges TfL from further performance of its obligations under the Original Contract and from all liabilities, claims and demands of any kind arising under or in connection with the Original Contract[, whether past, present or future,][from the Effective Date].

## 2.3 Original Contracting Party's obligations

The Original Contracting Party undertakes to the Service Provider that it will, from the Effective Date:

- (A) discharge its obligations under the Original Contract and observe all the provisions of the Original Contract; and
- (B) be liable to the Service Provider for the performance of any obligations on its part under or in connection with the Original Contract whether prior to, on or after the Effective Date,

in each case as if the Service Provider had been a party to the Original Contract in lieu of TfL and the obligations of the Original Contracting Party had been owed to the Service Provider in lieu of TfL from the date on which the Original Contract was made[Effective Date].

## 2.4 Cessation of TfL's rights

Without prejudice to clauses 2.1 and 2.3 and subject to clause 2.5 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 past, present or future,[from 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.

## 2.5 Acknowledgment and Warranty of the Original Contracting Party

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

- (A) the Original Contracting Party acknowledges that the Service Provider has relied on the works and/or services performed by him prior to the date of this Agreement under the Original Contract; and
- (B) without prejudice to clause 2.3(A) and subject to any limitation of liability in the Original Contract the Original Contracting Party shall be liable for [continued performance of any warranty or other obligation given prior to the Effective Date to the extent that the benefit of such warranty or other obligation was expressed or intended to continue, survive or operate beyond the Effective Date][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.]

## 2.6 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) [TfL hereby transfers to the Service Provider and the Service Provider accepts the said transfer of the right to pursue or defend the Existing Claims in the name of TfL, subject to the following:
  - (1) The Service Provider shall indemnify TfL and keep TfL indemnified in respect of any and all costs, damages or expenses for which TfL may become liable under or in relation to the Existing Claims (whether in consequence of the Service Provider pursuing or defending the Existing Claims or otherwise); and
  - (2) TfL shall account to the Service Provider in respect of any sums which he may receive from the Original Contracting Party in respect of the Existing Claims.]
- (C) 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].

## 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. Provisions relating to this Deed

### 4.1 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.

- (C) No variation of this Deed shall be effective unless made in writing and signed/executed as a Deed by each of the parties.

**4.2 Costs**

Subject to any express provisions to the contrary each party to this Deed shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Deed.

**4.3 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.

**4.4 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.

**5. Law and Jurisdiction**

**5.1 English law**

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

**5.2 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 )