

## SCHEDULE 21

### Dispute Resolution Procedure

#### 1. Dispute Resolution

- 1.1 The procedure set out in this Schedule 21 shall apply to any issue, dispute, claim or difference of any nature arising out of or relating to this Agreement (a "**Dispute**").
- 1.2 Unless this Agreement has already been repudiated (and such repudiation has been accepted) or validly terminated in accordance with the provisions of this Agreement, the Parties shall continue to carry out their obligations in accordance with this Agreement notwithstanding that any Dispute exists and/or has been referred to be resolved pursuant to this Schedule 21.
- 1.3 TfL may at its sole discretion at any time refer any Dispute directly to Adjudication in accordance with paragraph 4 without following the escalation procedure set out in paragraph 2 by serving a Notice of Adjudication under paragraph 4.1.
- 1.4 Notwithstanding any provision of this Schedule 21, and subject to agreement in writing, the Parties may elect to waive this Dispute Resolution Procedure and seek determination of any Dispute or any part or parts of that Dispute by English High Court proceedings.
- 1.5 No provision of this Schedule 21 shall impose any pre-condition on any party or otherwise prevent or delay any party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute in which that party seeks any one or more of the following orders or judgments:
  - (A) an order (whether interlocutory or final) restraining the other party from doing any act or compelling the other party to do any act; or
  - (B) summary judgment for a liquidated sum.

#### 2. Escalation Procedure

- 2.1 Subject to paragraph 1.3 above, the Parties may refer any Dispute to the Commercial Review Group by notice in writing (the "**Dispute Notice**") and it shall be discussed at the next Commercial Review Meeting. The Commercial Review Group shall meet and call such additional meetings as may be required and/or can immediately refer the Dispute to the Project Review Group or Operational Review Group in order to attempt to resolve the relevant Dispute within two (2) weeks.
- 2.2 If the Commercial Review Group and/or the Project Review Group or Operational Review Group is unable to resolve the Dispute within two (2) weeks, it shall be promptly referred to the Strategic Review Group by either Party by notice in writing (the "**Second Dispute Notice**") and shall be discussed at the next Strategic Review Meeting. The Strategic Review Group shall meet and call such additional meetings

as may be required in order to attempt to resolve the relevant Dispute within one (1) month.

- 2.3 If the Strategic Review Group is unable to resolve the Dispute within one (1) month, it shall be promptly referred to the Director of Congestion Charging and Traffic Enforcement by either Party by notice in writing (the "**Third Dispute Notice**") who shall consider the Dispute within ten (10) Working Days and call any such additional meetings as required in order to attempt to resolve the Dispute before the expiry of one (1) month following the receipt of the Third Dispute Notice.
- 2.4 TfL may at its sole discretion at any time escalate the Dispute through the stages of the escalation procedure without following the procedure or time limits set out in this paragraph 2.

### 3. **Mediation**

- 3.1 The Parties may agree at any time to refer the Dispute to mediation.
- 3.2 Where a Dispute is referred to mediation:
- (A) If the Parties are unable to agree on a mediator within five (5) days, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator within five (5) days.
  - (B) The Parties shall attempt to settle the Dispute by mediation in accordance with the model mediation procedure published by CEDR or such other procedure as the mediator may recommend.
- 3.3 In the event that the Dispute is not resolved by written agreement between the Parties within twenty eight (28) days of the appointment of the mediator, either Party may issue a Notice of Adjudication to the other Party in accordance with paragraph 4.1 below.

### 4. **Adjudication**

#### **Notice of Adjudication**

- 4.1 Subject to paragraph 1.3 above, if the Parties have been unable, either by means of the escalation procedure in paragraph 2 of this Schedule or (if a Mediation Agreement has been entered into) by mediation as provided in paragraph 3 of this Schedule, to resolve a Dispute, then either Party may at any time thereafter give written notice (the "**Notice of Adjudication**") to the other Party requiring the Dispute to be referred to an adjudicator (the "**Adjudicator**").
- 4.2 The Notice of Adjudication shall set out briefly:
- (A) the issues in dispute and in respect of which adjudication is required;
  - (B) a statement of the nature of the Dispute and the material facts to be relied on;
  - (C) the Clauses in the Agreement to be relied on; and
  - (D) the redress sought (including the quantum of any monetary relief).

- 4.3 More than one Notice of Adjudication may be given in relation to Disputes arising out of the Agreement. An Adjudicator may act in more than one adjudication under the Agreement at the same time.

### **Appointing the Adjudicator**

- 4.4 The Parties should within five (5) days of the Notice of Adjudication seek to agree to appoint an Adjudicator from the list of Adjudicators at Annex 1 to this Schedule, with the object of referring the Dispute to him within five (5) days of the date of the Notice of Adjudication.
- 4.5 If the Parties agree on the identity of the Adjudicator, the Party that gave the Notice of Adjudication (the "**Referring Party**") shall send to that person and to the other Party (the "**Responding Party**"):
- (A) a copy of the Notice of Adjudication;
  - (B) the Parties' names and addresses;
  - (C) a copy of this Schedule; and
  - (D) a copy of the Agreement with all other relevant schedules;
  - (E) a written request for him to confirm to the Parties his availability to act within two (2) days of receipt of the request from the Referring Party.
- 4.6 If such person named under paragraph 4.5 above confirms to the Parties within two (2) days of receipt of the request from the Referring Party his availability to act, he shall be the Adjudicator for any dispute stated in the Notice of Adjudication.
- 4.7 If the Parties do not agree within five (5) days on the identity of the Adjudicator, or the person named under paragraph 4.5 above does not within two (2) days confirm to the Parties his availability to act, then the Referring Party requiring adjudication shall request the first person named in Annex 1 to this Schedule to act as Adjudicator, and shall send to that person and the Responding Party the documents listed in paragraph 4.5 above.
- 4.8 If such person named under paragraph 4.7 above confirms to the Parties within two (2) days of receipt of the request from the Referring Party that he is available to act, he shall be the Adjudicator for any dispute stated within the Notice of Adjudication.
- 4.9 If such person named under paragraph 4.7 above does not confirm his availability to act, the Referring Party shall request the second person named in Annex 1 to this Schedule to act as Adjudicator, and shall send to that person and the Responding Party the documents listed in paragraph 4.5 above. If such person does not confirm his availability to act, the Referring Party shall request the next named person in Annex 1, and shall continue to request persons in the order that they appear in the list in Annex 1 until a person confirms availability to act or until all persons listed in Annex 1 have been requested to act as Adjudicator (in all instances sending to that person and the Responding Party the documents listed in paragraph 4.5 above.).
- 4.10 If no person named in the list of Adjudicators at Annex 1 confirms within two (2) days of a request to do so his availability to act and the Parties cannot agree on an

Adjudicator the Referring Party shall request a nomination from the LCIA (London Court of International Arbitration, 70 Fleet Street, London EC4Y 1EU) to be made within five (5) days and shall send to the LCIA:

- (A) a copy of the Notice of Adjudication;
- (B) the Parties' names and addresses;
- (C) a copy of this Dispute Resolution Procedure; and
- (D) anything else required by the LCIA for it to nominate an Adjudicator.

4.11 Following selection by the LCIA, the Referring Party shall send a written request to the selected Adjudicator for him to confirm to the Parties within two (2) days of receipt his availability to act. If he confirms to the Parties his availability to act within two (2) days, he shall be the Adjudicator for any dispute stated within the Notice of Adjudication. If not, the Referring Party shall send a further request to the LCIA in accordance with paragraph 4.10 above.

4.12 If, for any reason, an Adjudicator:

- (A) resigns or is unable to act; or
- (B) fails to reach his decision within the time required by these Rules, and the Parties are unable to agree with the Adjudicator an extension of time and/or are unable to agree a replacement Adjudicator;

the Referring Party shall follow the procedure set out in paragraph 4.9 above to ask the next named person in Annex 1 to act as Adjudicator, or to follow the procedure in paragraph 4.10 above to request a nomination from the LCIA.

4.13 An Adjudicator shall declare to the Parties and shall not act if he is or has been an employee agent or consultant of either Party, save where both Parties consent, and shall declare any interest, financial or otherwise, in any dispute referred to in the Notice of Adjudication.

4.14 Subject to paragraph 4.13 above, if a Party objects to a person selected as Adjudicator by the LCIA, that objection shall not prevent the Adjudicator being appointed, and it shall not invalidate the appointment or any decision he may reach.

4.15 The Adjudicator shall provide to the Parties, at the same time as confirming his availability to act, a copy of the terms on which he or she is prepared to act including information regarding fees and expenses.

### **Scope of the Adjudication**

4.16 The scope of the Adjudication shall be the dispute identified in the Notice of Adjudication, together with:

- (A) any further matters which all Parties agree should be within the scope of the Adjudication; and
- (B) any further matters which the Adjudicator determines must be included in order that the Adjudication may be effective and/or meaningful.

4.17 The Adjudicator may decide upon his own substantive jurisdiction and as to the scope of the Adjudication.

### **Purpose of the Adjudication**

4.18 The underlying purpose of the Adjudication is to decide disputes between the Parties that are within the scope of the Adjudication as rapidly and economically as is reasonably possible.

### **Role of the Adjudicator**

4.19 The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as arbitrator.

4.20 The Adjudicator shall have the power to open up and review any certificates or other things issued or made pursuant to the Agreement as would a court.

### **Referral of the Dispute**

4.21 Within five (5) days of the Notice of Adjudication, or within two (2) days of receipt of an Adjudicator's confirmation of his availability to act (whichever is the latest), the Referring Party shall refer the Dispute by notice in writing (the "**Referral Notice**") to the Adjudicator.

4.22 The Referral Notice shall include:

- (A) details of the circumstances giving rise to the Dispute;
- (B) the reasons for entitlement to the remedy sought; and
- (C) any documentary or other evidence that the Referring Party intends to rely upon in the adjudication.

4.23 The Referring Party shall, at the same time as it sends to the Adjudicator the Referral Notice and documents referred to in paragraph 4.22 above, send a copy of the Referral Notice and copies of those documents to every other party to the Dispute.

4.24 The date of the referral of the Dispute shall be the date on which the Referral Notice is received by the Adjudicator (the "**Date of Referral**"). The Adjudicator shall confirm to the Parties in writing the date of receipt of the Referral Notice.

4.25 Each Party to whom the Referral Notice is sent in accordance with paragraph 4.23 above shall be entitled to send a response to the Adjudicator, which shall at the same time be copied to every other party to the Dispute, within fourteen (14) days of the Date of Referral.

### **The Adjudication**

4.26 The Adjudicator shall establish the timetable and procedure for the adjudication, with which the Parties will comply, subject always to the time limits in paragraph 4.34 of this Schedule 21, and may proceed if one party does not participate or cooperate.

- 4.27 Without prejudice to the generality of paragraph 4.26, the Adjudicator may if he thinks fit:
- (A) require the delivery of written statements of case;
  - (B) require any Party to produce a bundle of key documents (other than documents that would be privileged from production to a court), whether helpful or otherwise to that Party's case, and to draw such inference as may seem proper from any imbalance in such bundle that may become apparent;
  - (C) require the delivery to him and/or the other Parties of copies of any documents (other than documents that would be privileged from production to a court);
  - (D) limit the length of any written or oral submission;
  - (E) require the attendance before him for questioning of any Party or employee or agent of any Party;
  - (F) make site visits;
  - (G) subject to paragraph 4.29(B), make use of his own specialist knowledge;
  - (H) make directions for the conduct of the Adjudication orally or in writing, if made orally the directions shall be confirmed by the Adjudicator in writing;
  - (I) review and revise any of his own previous directions;
  - (J) conduct the Adjudication inquisitorially, and take the initiative in ascertaining the facts and the law;
  - (K) proceed with the Adjudication and reach a decision even if a Party fails to comply with a request or direction with which he has been given the opportunity to comply; and
  - (L) reach his decision(s) with or without holding an oral hearing.
- 4.28 The Adjudicator may, at any time, obtain legal or technical advice on any matter provided that the Parties are informed with reasons beforehand. Prior to making the decision, the Adjudicator shall provide the Parties with copies of any written advice so obtained.
- 4.29 The Adjudicator shall:
- (A) decide on the Dispute referred to in the Notice of Adjudication, and any other matters as identified under paragraph 4.16, on the basis of the Parties' legal entitlements;
  - (B) act fairly and impartially, giving each Party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponents;
  - (C) in reaching his decision take into account the fact that each of the Schemes is a service provided to the public and should continue to operate in a timely, economic, efficient and reliable manner;
  - (D) avoid incurring unnecessary expense.
- 4.30 The Adjudicator shall not:
- (A) request and or require any advance payment of or security for his fees;

- (B) receive any submissions from one Party that are not also made available to the others;
- (C) except in the event of misconduct by that representative refuse any Party the right at any hearing or meeting to be represented by any representative of that Party's choosing who is present;
- (D) act or continue to act if he has a conflict of interest,
- (E) require any Party to pay or make contribution to the legal costs of another Party arising in the Adjudication.

4.31 The Adjudicator may in any decision, direct the payment of such interest from such dates and at such rates as permitted by the Agreement or if no such rate is set out in the Agreement, the Adjudicator may apply a commercially reasonable rate.

4.32 All information of whatever nature provided to the Adjudicator by any Party shall be copied to the other Parties or (where copying is not practicable) the other Party shall be entitled to inspect it.

4.33 The Parties shall continue to observe and perform all obligations contained in the Agreement, notwithstanding any reference to the Adjudicator.

#### **The Adjudicator's decision**

4.34 The Adjudicator shall reach a decision on the Dispute set out in the Notice of Adjudication, and any other matters as identified under paragraph 4.16, within twenty eight (28) days of the Date of Referral, as confirmed to the Parties in accordance with paragraph 4.24.

4.35 The twenty eight (28) day period may be extended:

- (A) to such longer period as may be agreed by the Parties after the Dispute has been referred to the Adjudicator;
- (B) by the Adjudicator by up to fourteen (14) days with the consent of the Referring Party.

4.36 Any decision of the Adjudicator shall be in writing. The Adjudicator shall provide written reasons for his decision.

4.37 Any decision of the Adjudicator shall be binding unless and until the Dispute is finally determined by the Court pursuant to paragraph 4.46 of this Schedule or by agreement.

4.38 Any party to the Dispute may apply to the appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge shall be regarded and treated as a Dispute for the purposes of paragraphs 1, 2, 3 and 4 of this Schedule.

#### **Joinder of Disputes**

- 4.39 Where a dispute arises out of, under or in connection with each of the Agreement and any subcontract relating to the Agreement and both the Agreement and the subcontract allows for, or the Parties and subcontractor agree to provide written consent to a joint adjudication, at the same time as the dispute under the Agreement is referred to the Adjudicator, a Party may request that the subcontract dispute is joined into the adjudication for a decision in relation to both the Agreement and its subcontract.
- 4.40 In the event of a joinder, the Adjudicator shall decide the dispute under both contracts in accordance with the provisions of this Schedule 21, and references in this Schedule to "Parties" shall in such circumstances include the subcontractor.

### **Costs**

- 4.41 Each Party shall bear its own costs. The Adjudicator may not decide the Parties' legal and other costs arising out of or in connection with the adjudication unless the Parties otherwise agree.
- 4.42 Unless the Adjudicator resigns before sending the Parties his decision, he shall be entitled to charge the Parties his fees and expenses for the Adjudication.
- 4.43 Subject to any decision of the Adjudicator in accordance with Paragraph 4.44, the Adjudicator's fees and expenses including the fees and expenses of any legal or technical adviser instructed by him under paragraph 4.28 will be borne equally by the Parties.
- 4.44 In the decision, the Adjudicator shall have discretion to apportion liability for the Adjudicator's fees and expenses referred to in paragraph 4.43. The Parties agree to be bound by the Adjudicator's costs direction unless and until the costs direction of the Adjudicator is set aside or revised in accordance with paragraph 4.46.
- 4.45 Notwithstanding anything to the contrary in any contract between the Parties, the Adjudicator shall have no jurisdiction to require the Party which referred the Dispute to adjudication to pay the costs of any other Party solely by reason of having referred the Dispute to adjudication.

### **Court proceedings**

- 4.46 If any Party to the Dispute is dissatisfied with the Adjudicator's decision, then during the Appropriate Period, as set out in paragraph 4.47 below, it may give written notice to all other Parties that it intends to issue court proceedings for the determination of the Dispute. Any Party which gives such notice must then issue court proceedings on or before twenty eight (28) days from the expiry of the Appropriate Period.
- 4.47 The Appropriate Period for notification is:
- (A) For decisions delivered before the Operational Commencement Date, on or before twenty eight (28) days from the Implementation Date.
  - (B) For decisions delivered on or after the Operational Commencement Date, on or before twenty eight (28) days from the date of the decision.



- 4.48 In relation to court proceedings commenced pursuant to paragraph 4.46:
- (A) No party shall be limited in the proceedings before the Court to the evidence or arguments put before the Adjudicator;
  - (B) The Adjudicator shall not be called as a witness nor required to give evidence before the Court on any matter whatsoever; and
  - (C) Any party can request the Court to set aside or revise a direction by the Adjudicator in respect of payment to the parties of the costs or fees of the adjudication (including payment of the remuneration and expenses of the Adjudicator).

### **Enforcement**

- 4.49 Every decision of the Adjudicator shall be implemented without delay subject to final determination by the court in accordance with paragraph 4.46. The parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement thereof, even if the decision is or becomes the subject of any court proceedings. No issue decided by one Adjudicator may be referred to another Adjudicator for a decision, unless agreed by the Parties.

### **Independence**

- 4.50 The Adjudicator, and any legal or technical adviser instructed by him under paragraph 4.28 are and shall remain independent of the Parties, neutral and impartial, and do not and shall not act as advisers to the Parties.

### **Confidentiality**

- 4.51 Each adjudication shall be private and confidential. The Parties, the Adjudicator (and any expert and/or professional adviser appointed by him under paragraph 4.28 above) shall keep the existence of and subject matter of each adjudication and each decision private and confidential, except to the extent that it is necessary in order to implement or enforce a decision or is required by law.

### **No Liability**

- 4.52 The Adjudicator (and any legal or technical adviser instructed by him under paragraph 4.28) shall not be liable for anything done or omitted to be done in the discharge or purported discharge of their appointment, unless the act or omission is shown to be fraudulent or in bad faith. However, nothing in this forgoing exclusion shall relieve the Adjudicator (and any legal or technical adviser instructed by him under paragraph 4.28) of their duty to provide their decision in accordance with the agreed timetable.

### **Law and jurisdiction**

- 4.53 This Dispute Resolution Procedure shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English courts.
- 4.54 No Party shall, save in case of bad faith on the part of the Adjudicator, make any application to the courts whatsoever in relation to the conduct of the Adjudication or the decision of the Adjudicator until such time as the Adjudicator has made his decision, or refused to make a decision.

## **ANNEX 1**

### **LIST OF ADJUDICATORS**

1. Jeremy Storey QC
2. Alex Charlton QC
3. Anthony Speaight QC
4. John Blackburn QC
5. Michael Douglas QC
6. Nigel Tozzi QC
7. Mark Vanhegan QC
8. Richard Meade QC
9. Andrew Goddard QC
10. Mark Raeside QC
11. Nicholas Baatz QC
12. Lawrence Akka QC