

SCHEDULE 36

Value for Money Review Process

1. **Scope**

This schedule describes the procedure TfL and the Service Provider will follow in order to review the Service Charges:

- (A) firstly amongst themselves; and
- (B) (if applicable pursuant to this schedule) using an independent adviser to obtain an objective measurement,

for TfL to assess whether this Agreement on its then current terms represents good value for money.

2. **Internal Review**

- 2.1 TfL may require the Service Provider to undertake an Internal VFM Review in respect of all Services, or one or more Service Groups (a "**VFM Review Request**") pursuant to Clause 25 (*Value for Money Review*).
- 2.2 Promptly (and in any event within 30 days) following the issuing of a VFM Review Request, the Service Provider shall compare the Service Charges which are the subject of the VFM Review Request against the prevailing market for services of a substantially similar nature, quality and coverage as the Services, or part of the Services, the subject of the VFM Review Request and the Service Provider shall use reasonable endeavours to promptly provide to TfL in writing an offer of revised Service Charges in line with the prevailing market.
- 2.3 Each Party shall negotiate in good faith to reach agreement on revised Service Charges based on the written offer from the Service Provider which (if agreed between the Parties) will take effect as of the Review Effective Date or such other date as the Parties may expressly agree in writing. Any adjustment to the Service Charges shall only result in a decrease in Service Charges, not an increase, and shall take into account: (i) the standard of service required by TfL; and (ii) the nature of the Services.
- 2.4 If the Parties have not reached written agreement pursuant to paragraph 2.3 (and provided that the Parties have not reached a written agreement not to revise the Service Charges the subject of the VFM Review Request) within forty five (45) calendar days of the issuing of the VFM Review Request TfL may elect to commence a Benchmarking Exercise in relation to the VFM Review Request.

3. **Benchmarking Exercise**

- 3.1 TfL may, in the circumstances described in paragraph 2.4 and within sixty (60) calendar days of the issuing of the VFM Review Request, issue a notice (a "**Benchmarking Notice**") requiring a Benchmarking Exercise in respect of some or all of the Service Groups previously specified in the relevant VFM Review Request and following the Service Provider's receipt of such Benchmarking Notice the Parties shall conduct a Benchmarking Exercise in respect of the Benchmarked

Services.

- 3.2 If TfL elects to commence a Benchmarking Exercise, TfL shall propose a Benchmarker and shall notify the Service Provider of such proposal for its approval (such approval not to be unreasonably withheld or delayed). If the Service Provider has not approved the identity of such Benchmarker within five (5) Working Days then the identity of the Benchmarker shall be determined in accordance to the Dispute Resolution Procedure.
- 3.3 The scope of the Benchmarking Exercise shall be as determined by TfL prior to the commencement of the Benchmarking Exercise. The Benchmarking Exercise shall be conducted by the Benchmarker during Business Hours. Prior to conducting the Benchmarking Exercise, the Benchmarker must sign an appropriate confidentiality agreement with TfL and the Service Provider in a form mutually agreed to by TfL and the Service Provider (acting reasonably), or where the Parties are unable to agree within ten (10) Working Days of appointment of the Benchmarker, on the Benchmarker's standard terms of confidentiality.
- 3.4 The Service Provider shall provide the Benchmarker with all information and assistance it reasonably requires to conduct the Benchmarking Exercise (including allowing access to the Service Provider's premises and systems to TfL and the Benchmarker at the requested times).
- 3.5 The Parties shall be entitled to make written submissions to the Benchmarker in such format and containing such information as the Benchmarker may deem fit and/or request. Each Party will be permitted to see each other's submissions to the Benchmarker.
- 3.6 The Parties agree that all information provided to or obtained from the Benchmarker will be provided to both Parties, unless otherwise agreed and such information shall be deemed to be Confidential Information.
- 3.7 The Parties acknowledge and agree that confidential information of similar suppliers shall be kept confidential by the Benchmarker.

4. **Costs of Benchmarking Exercise**

- 4.1 The fees, expenses and out of pocket costs incurred by the Benchmarker in relation to the Benchmarking Exercise will be borne by TfL and the Service Provider in equal shares.
- 4.2 Each Party shall bear its own internal and out of pocket costs related to the Benchmarking Exercise.

5. **Benchmarking Methodology**

- 5.1 The Benchmarker shall perform the Benchmarking Exercise in accordance with the Benchmarker's methodology (subject to paragraph 5.2) or any other methodology agreed between the Benchmarker and the Parties. Each Party shall have an opportunity to review and comment on the Benchmarker's methodology. The Benchmarker shall publish its methodology to both Parties in advance of carrying out the Benchmarking Exercise.
- 5.2 TfL and the Service Provider agree that the benchmarking methodology will:

- (A) be based on the supplier peer group approach whereby a comparison is made with a minimum of four suppliers of comparable size, services, scope, scale and any other criteria determined by the Benchmarker following such consultation with TfL and the Service Provider as the Benchmarker deems appropriate; and
- (B) to the extent the Benchmarker considers necessary for the purposes of making a like-for-like comparison, use normalisation factors to account for material differences between the Benchmarked Services and the Comparable Services (including any material differences in service levels).

- 5.3 A like-for-like comparison will be made, based on current (and in any event not more than twenty four (24) months old as at the start of the Benchmarking Exercise) and in-depth information which has been captured by the Benchmarker for similar suppliers.
- 5.4 In carrying out the Benchmarking Exercise, the Benchmarker shall determine whether the Benchmarked Service Charges are less than or equal to the Competitive Service Charges.
- 5.5 The Parties will use all reasonable endeavours to ensure that the complete cycle from start to finish for each Benchmarking Exercise will take no longer than nine (9) weeks from the date of the Benchmarking Notice.

6. Results of Benchmarking Exercise

- 6.1 Subject to paragraph 3.7, each Party agrees that the Benchmarker will be required to provide the data, analysis and findings, including any supporting documentation, to TfL and the Service Provider, as appropriate, throughout the Benchmarking Exercise.
- 6.2 Each Party agrees that the Benchmarker will be required to provide a draft report of the results of the Benchmarking Exercise in writing to TfL and the Service Provider as soon as possible, but no later than ten (10) Working Days from the conclusion of the Benchmarking Exercise. Each Party shall have the opportunity to verify that the Benchmarker has conformed to the Benchmarker's published methodology and review any draft benchmarking results. TfL and the Service Provider shall provide any comments to the Benchmarker within five (5) Working Days of their receipt of the draft report. The Benchmarker shall consider in good faith any comments from TfL or the Service Provider and then issue as soon as possible and in any event within a further five (5) Working Days of the Benchmarker's receipt of the comments from TfL and the Service Provider (unless otherwise agreed between the Benchmarker and the Parties) the final report setting out its findings and conclusions from the Benchmarking Exercise.
- 6.3 The Parties agree to participate jointly in all discussions with the Benchmarker and to co-operate reasonably with the Benchmarker in the Benchmarking Exercise.
- 6.4 If the Benchmarking Exercise concludes that the Benchmarked Service Charges for a Benchmarked Service are higher than the Competitive Service Charges in relation to such Benchmarked Service, then the Service Provider shall, subject to paragraph 6.5, adopt the higher of: (i) the Competitive Service Charges for such Benchmarked Service; or (ii) the Benchmarked Service Charges for such Benchmarked Service less 50% (fifty per cent) of the Profit Margin specified in Schedule 23 (Gainsharing)

and this Agreement shall be updated accordingly.

6.5 There shall be no adjustment to the Benchmarked Service Charges if the Competitive Service Charges are less than 3% (three per cent) lower than the Benchmarked Service Charges.

6.6 TfL and the Service Provider will resolve any dispute related to the performance of the Benchmarking Exercise in accordance with the Dispute Resolution Procedure.

7. **Effect of Revisions**

If the Service Charges are revised pursuant to paragraphs 2.3 or 6.4 of this Schedule, then Schedule 7 (*Charging and Operational Pricing*) shall be amended in writing to reflect such adjusted Service Charges, and such adjustment shall apply at the request of TfL. Such adjustment shall be prospective only from the Review Effective Date.