

SCHEDULE 21

CEDR Model Expert Determination Agreement (As Amended)

Date

Parties

Transport for London, of Windsor House, 42-50 Victoria Street, London SW1H 0TL

(“Party A”)

(“Party B”)

(“Party C”)

(jointly the “Parties”)

and

[] (the “Expert”), appointed on [date], by [].

Dispute

Any dispute arising under out of or in connection with the London Road User Charging Agreement dated [] 2007 (the “**LRUC Agreement**”) that has been referred to Expert Determination in accordance with the LRUC Agreement (referred to in this Agreement as “**the Dispute(s)**”).

1. **Appointment of Expert**

The Expert has been appointed to resolve the Disputes. The Parties agree that the Expert shall resolve the Disputes by Expert Determination. The Expert shall act as an expert and not as an arbitrator.

2. **Purpose of Expert Determination**

Unless the Parties subsequently agree otherwise, each Expert Determination (whether interim or final) shall lead to a decision (the “**Determination**”) being issued by the Expert. Subject to paragraphs 6 and 14 of this Agreement, and save in the case of fraud or manifest error, the Determination shall be final and binding on the Parties.

3. **Confidentiality**

Each Expert Determination process shall be private and confidential. The Parties, the Expert (and any expert and/or professional adviser appointed by him under paragraph 5.4 below) shall keep the existence and subject matter of each Expert Determination process and each Determination private and confidential, except to the extent that it is necessary in order to implement or enforce a Determination or is required by law.

4. **Independence**

The Expert, CEDR Solve and any expert and/or professional adviser appointed by the Expert are and shall remain independent of the Parties, neutral and impartial, and do not and shall not act as advisers to the Parties.

5. **Conduct of Expert Determination**

5.1 The Expert shall conduct each Expert Determination in accordance with procedural directions which the Expert shall seek to agree with the Parties. If they cannot be agreed, the Expert's directions will prevail. The Parties have already agreed that in respect of each Dispute either party may request the Expert to issue declaratory relief or to issue an interim determination, which if issued by the Expert shall be binding on the Parties until the Expert issues his final Determination, subject to the right to appeal to the courts in respect of any declaratory relief or interim determination which either: (i) is of a non-financial nature and made in relation to ownership or use of Intellectual Property Rights; or (ii) which expressly prevents the relevant Party from conducting business other than in relation to the Schemes, and provided that pending the final decision of such courts the Parties shall comply with such declaratory relief or interim determination (as appropriate). The Parties have also agreed that if the Expert's Determination is rejected pursuant to paragraph 14 of this Agreement, the Determination shall nevertheless be binding on the Parties until a court orders otherwise.

5.2 In respect of each Dispute (and particularly in respect of a Dispute which is in any way concerned with the exercise of Step-In Rights or termination of the LRUC Agreement, or the implementation of the Exit Plan or otherwise relating to a New Service Provider being appointed for the supply of Services), when considering whether to issue declaratory relief or to issue an interim determination the Expert shall be requested by the Parties to take into account the fact that the Schemes are each a service provided to the public and as such each should where possible continue to operate in an efficient and reliable manner.

5.3 The Parties have agreed that in respect of any Dispute arising under the LRUC Agreement:

- (A) either party may make an application to the Expert requesting that other service provider(s) relating to the Scheme (“**Third Party Service Provider(s)**”) be joined to proceedings before the Expert, provided that the party making the application has a direct contractual relationship with such Third Party Service Provider;
- (B) the Expert shall, on an application by either party, be entitled to join Third Party Service Provider(s) to proceedings between the parties in the event that he considers in his sole discretion that it is appropriate to do so and provided that such Third Party Service Provider(s) consent to be joined to such proceedings;
- (C) they shall amend this Agreement to take account of a decision by the Expert to join a Third Party Service Provider to proceedings before the Expert;
- (D) without prejudice to the foregoing provisions of this paragraph Third Party Service Provider(s) may be joined to proceedings before the Expert by mutual consent of the Parties which shall be communicated in writing to the Expert and which shall enclose a document signed for and on behalf of such Third Party Service Provider(s) confirming its/their consent to be joined to such proceedings. In the event that the Parties agree to join Third Party Service Provider(s) to proceedings before the Expert, the Parties and the Expert shall amend this Agreement accordingly; and
- (E) where a Third Party Service Provider is joined to the proceedings this shall not prejudice the assessment of the rights and obligations as between TfL and the Service Provider under the LRUC Agreement.

5.4 The Expert shall be entitled to appoint experts or other professional advisers to assist him in reaching his Determination. The fees of such experts or professional advisers shall be treated as part of the fees and expenses of the Expert Determination process.

6. **Challenge to the Procedure**

Subject to the right to appeal to the courts as set out in paragraph 5.1, the Parties agree that they are not permitted to challenge the Expert's rulings on issues arising relating to the procedure including those on the Expert's own jurisdiction.

7. **Mediation Option**

At any time before the issue of the Determination by the Expert the Parties may agree to refer the relevant Dispute to mediation, in accordance with CEDR's Model Mediation Procedure. In that case each of the Parties notifies the Expert and CEDR Solve, and the Expert Determination is suspended. If the Dispute is settled by mediation, the Expert Determination comes to an end and the Parties settle the fees and expenses of the Expert and of CEDR Solve. If the Dispute is not settled by mediation, the Expert Determination resumes, and if he has been acting as mediator the Expert may take up his previous role.

8. **Reasons in the Determination**

Each Determination of the Expert shall include reasons.

9. **Interest**

The Expert is empowered to award interest as part of each Determination.

10. **Costs, Fees and Expenses**

10.1 Unless the Parties agree, or the Expert directs upon an application by any Party, otherwise, the costs, fees and expenses of each Expert Determination shall be borne by the Parties in equal shares.

10.2 Where a party makes an application in respect of costs, fees and expenses, the Expert may make a determination in respect of what proportion of costs, fees and expenses (including those of the Expert and the legal and related expenses of each party) are to be met by each party.

10.3 The fees and expenses (see Schedule 1) shall be estimated by the Expert and paid to the Expert as a condition precedent for each Expert Determination to start. The Expert shall be paid fees and expenses. Interim bills may be raised to cover the Expert's fees at the Expert's option. A final account of the fees and expenses shall be sent to the Parties by the Expert when the relevant Determination is ready for issue to the Parties and the Determination shall be released on payment by the Parties of any further amounts due. If the Parties agree not to proceed with Expert Determination, the Expert will refund a proportionate amount of the fees and expenses advanced, depending on the amount of work done by the Expert.

10.4 If any Third Party Service Providers are joined to the dispute, the costs and expenses referred to in paragraph 10.1 above shall, if directed by the Expert upon an application by any Party, be allocated equitably by the Expert between the separate disputes that are being determined through the same process and then apportioned for each dispute between each party thereto as the Expert deems appropriate.

11. **Implementation of the Determination**

The Parties agree to implement each Determination within seven (7) days of its being published to them. The Determination shall be enforceable as a matter of contract between the Parties, not an arbitral award.

12. **No Liability**

The Expert (and any expert and/or professional adviser appointed by him) 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 Expert (or any expert and/or professional adviser appointed by him) of their duty to provide their Determination as soon as reasonably possible.

13. **Role of CEDR Solve**

Subject to the provisions of clause 91.1 of the LRUC Agreement CEDR Solve shall appoint the Expert. The Expert is responsible for the procedure from the time when he has been appointed. CEDR Solve may be consulted by any of the Parties to this Agreement in case of difficulty. Should the Expert refuse to complete, or be or become incapable of completing the task, CEDR Solve will appoint a substitute Expert within a reasonable time.

14. **After the Determination**

14.1 Where the Expert’s Determination relates to:

- (A) a dispute with a value in excess of £5,000,000 (five million pounds) (as certified by the Expert in his Determination); or
- (B) a dispute arising out of or in connection with or in relation to the termination, actual or threatened repudiation or abandonment of the LRUC Agreement by either of the Parties;
- (C) where the Determination relates principally to the grant of relief of a non-financial nature made in relation to ownership or use of Intellectual Property Rights; or
- (D) where the Determination expressly prevents one of the Parties from conducting business other than in relation to the Schemes,

the Parties reserve their rights to reject the Determination pursuant to clause 91.10 of the LRUC Agreement and to apply instead to the courts of England and Wales in order to resolve the dispute.

14.2 None of the Parties shall call the Expert, or any expert and/or professional adviser appointed by him, or CEDR Solve (or any employee, consultant, officer or representative of CEDR Solve) as a witness, consultant, arbitrator or expert in any litigation or arbitration in relation to any Dispute the subject of a Determination under this Agreement and the Expert and any expert and/or professional adviser appointed by him, and CEDR Solve will not act voluntarily in any such capacity without the written agreement of the Parties.

15. **Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English courts.

Signed

On behalf of Party A _____

On behalf of Party B _____

Signed by the Expert _____

Signed on behalf of CEDR Solve _____

Schedule 1

To be completed by the Expert and CEDR Solve in respect of each Dispute

CEDR Solve appointment fee	£	
CEDR Solve professional support fee	£	
Expert's fees	£	per hour
Payment to be made on account by each Party	£	by [date]