

LONDON CYCLE HIRE SCHEME AGREEMENT

Schedule 27 – Deed of Novation

SCHEDULE 27

Deed of Novation

DATED _____ []

[INSERT NAME OF RELEVANT TFL GROUP MEMBER]

and

[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 [] 2009 and made

BETWEEN:-

- (1) **[ORIGINAL CONTRACTING PARTY]**, company incorporated under the laws of England and Wales with registered number [], whose registered office is at [] (the “**Original Contracting Party**”);
- (2) **[INSERT NAME OF RELEVANT TFL GROUP MEMBER]** (“**TfL**”); and
- (3) **[SERVICE PROVIDER]**, company incorporated under the laws of England and Wales with registered number [], whose registered office is at [] (the “**Service Provider**”).

BACKGROUND:

- (A) The Original Contracting Party and TfL entered into an agreement for the provision of [] on [] (the “**Original Contract**”).
- (B) The Original Contracting Party has agreed to release and discharge TfL from, and the Service Provider has agreed to assume, the obligations of TfL to Original Contracting Party under the Original Contract, and TfL has agreed to release and discharge Original Contracting Party from its obligations to TfL under the Original Contract in accordance with the terms of this Deed.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Deed:

“**TfL Group**” means TfL and all its subsidiaries (as defined in section 736 of the Companies Act 2006) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any “**member of the TfL Group**” shall refer to TfL or any such subsidiary; and

“**Third Parties Act**” means the Contracts (Rights of Third Parties) Act 1999.

1.2 **Construction**

Save to the extent that the context or the express provisions of this Deed otherwise require:

- (A) headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Deed;
- (B) all references to clauses are references to clauses of this Deed;
- (C) all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or

instrument as amended, supplemented, substituted, novated or assigned from time to time;

- (D) all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- (E) any reference to time of day shall be a reference to London time;
- (F) words importing the singular include the plural and vice versa;
- (G) words importing a particular gender include all genders;
- (H) "**person**" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;
- (I) references to "**party**" means a party to this Deed and references to "**parties**" shall be construed accordingly; and
- (J) references to the word "**includes**" or "**including**" are to be construed without limitation.

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 all of the obligations of TfL under the Original Contract and observe all the provisions of the Original Contract to the extent they arise on or after the Effective Date; 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 from the Effective Date,

in each case as if the Service Provider is a party to the Original Contract in lieu of TfL from the Effective Date.

2.2 **Release of TfL's obligations**

In consideration of the undertaking by the Service Provider under clause 2.1 above, with effect from the Effective Date, subject to clause 3 (*Claims*) below, 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 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 all of 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 from 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 Effective Date.

2.4 **Cessation of TfL's rights**

Without prejudice to clauses 2.1 and 2.3 above, and subject to clause 2.5 below, 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 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:

- (A) the Original Contracting Party acknowledges that, in entering into this Deed, the Service Provider has relied on the works and/or services performed by him prior to the Effective Date under the Original Contract; and
- (B) without prejudice to clause 2.3(A) above, and subject to any limitation of liability in the Original Contract, the Original Contracting Party shall be liable to the Service Provider for the 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.

3. **Claims**

- 3.1 In this Deed, "**Existing Claims**" means 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 Appendix 1 (*Existing Claims*) to this Deed.
- 3.2 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.

4. **Warranties**

- 4.1 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.

5. **Entire Agreement**

- 5.1 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.
- 5.2 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.

6. **Assignment**

No party shall assign or transfer any part of its respective rights or obligations under this Deed without the prior consent of the other.

7. **Notices**

- 7.1 Any notice (which term shall in this clause 7 include any other communication) required to be given under this Deed or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing in the English language.
- 7.2 Any such notice shall be addressed as provided in clause 7.3 below and may be:
- (A) personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address if it is delivered not later than 17:00 hours on a Working Day, or, if it is delivered later than 17:00 hours on a Working Day or at any time on a day which is not a Working Day, at 08:00 hours on the next Working Day; or
 - (B) if within the United Kingdom, sent by first class pre-paid post, in which case it shall be deemed to have been given two (2) Working Days after the date of posting; or

- (C) if from or to any place outside the United Kingdom, sent by pre-paid airmail, or by air courier, in which case it shall be deemed to have been given seven (7) Working Days after the date of posting in the case of pre-paid airmail or two (2) Working Days after delivery to the courier, in the case of air courier; or
- (D) sent by facsimile, in which case it shall be deemed to have been given when despatched, subject to confirmation of uninterrupted transmission by a transmission report provided that any notice despatched by facsimile after 17:00 hours on any Working Day or at any time on a day which is not a Working Day shall be deemed to have been given at 08:00 hours on the next Working Day.

7.3 The addresses and other details of the parties referred to in clause 7.2 above are, subject to clause 7.4 below:

- (A) Name: [X]
For the attention of: [X]
Address: [X]
Facsimile number: [X]
- (B) Name: [X]
For the attention of: [X]
Address: [X]
Facsimile number: [X]
- (C) Name: [X]
For the attention of: [X]
Address: [X]
Facsimile number: [X]

7.4 Any party to this Deed may notify the other parties of any change to the address or any of the other details specified in clause 7.3 above, provided that such notification shall only be effective on the date specified in such notice or five (5) Working Days after the notice is given, whichever is later and provided also that any new address shall be in the United Kingdom.

8. **Waiver**

Failure by any party at any time to enforce any provision of this Deed or to require performance by the other parties of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

9. **Counterparts**

This Deed may be executed in one or more counterparts. Any single counterpart of a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

10. **Severability**

If any condition, clause or provision of this Deed, is held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Deed in that jurisdiction shall not be affected thereby, and the legality, validity and enforceability of the whole of this Deed in any other jurisdiction shall not be affected thereby.

11. **Costs and Expenses**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Deed.

12. **Amendments**

No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representatives of the parties.

13. **Third Party Rights**

13.1 Any member of the TfL Group has the right to enforce the terms of this Deed in accordance with the Third Parties Act.

13.2 Except as set out in clause 13.1 above, the parties do not intend that any of the terms of this Deed will be enforceable by virtue of the Third Parties Act by any person not a party to it.

13.3 Notwithstanding clause 13.1 above, the parties are entitled to vary the Deed without the consent of any or all members of the TfL Group.

14. **Law and Jurisdiction**

14.1 **Law**

This Deed and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by and construed in all respects in accordance with English and Welsh law.

14.2 **Jurisdiction**

The parties each submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to this Deed. The Parties agree irrevocably to submit to that jurisdiction.

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 Original Contracting Party] 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)

Appendix 1: Existing Claims

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