



Schedule 9.1 – Staff Transfer

CHANGE HISTORY

Version	Description	Author	Document Number
5.0	Execution version	TfL	75252372.6

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1 Interpretation

- 1.1 Where a provision in this Schedule imposes an obligation on the Concessionaire to provide an indemnity, undertaking or warranty, the Concessionaire shall procure that each of its Sub-contractors and Notified Affiliates shall comply with such obligation and provide such indemnity, undertaking or warranty to TTL and any Replacement Concessionaire or any Replacement Sub-contractor, as the case may be.

2 Pre-Service Transfer Obligations

- 2.1 The Concessionaire agrees that within twenty (20) Working Days of the earliest of:

- (a) receipt of a notification from TTL of a Service Transfer or intended or expected Service Transfer;
- (b) receipt by it of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is twelve (12) months before the end of the Term; or
- (d) receipt by it of a written request by TTL at any time (provided that TTL shall only be entitled to make one (1) such request in any six (6) month period),

it shall provide to TTL, in a suitably anonymised format so as to comply with the Data Protection Legislation, the Concessionaire's Provisional Concessionaire Personnel List, together with the Staffing Information in relation to the Concessionaire's Provisional Concessionaire Personnel List, and it shall provide an updated Concessionaire's Provisional Concessionaire Personnel List at such intervals as are reasonably requested by TTL.

- 2.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Concessionaire shall provide to TTL and, if so requested in writing by TTL, to any Replacement Concessionaire or any Replacement Sub-contractor:

- (a) the Concessionaire's Final Concessionaire Personnel List, which shall identify which of the Concessionaire Personnel are Transferring Concessionaire Employees; and
- (b) the Staffing Information in relation to the Concessionaire's Final Concessionaire Personnel List (insofar as such information has not previously been provided).

- 2.3 TTL shall be permitted to use and disclose information provided by the Concessionaire under Paragraphs 2.1 and 2.2 for the purpose of informing any prospective Replacement Concessionaire or any Replacement Sub-contractor about the content of that information.

- 2.4 The Concessionaire warrants, for the benefit of TTL, any Replacement Concessionaire and any Replacement Sub-contractor that all information provided by it pursuant to Paragraphs 2.1 and 2.2 shall be true and accurate in all material respects at the time of providing the information.

- 2.5 From the date of the earliest event referred to in Paragraphs 2.1(a), 2.1(b), 2.1(c) and 2.1(d), the Concessionaire agrees that it shall not, and agrees to procure that each Sub-contractor and Notified Affiliate shall not, assign any person to the provision of the Services who is not listed on the Concessionaire's Provisional Concessionaire Personnel List and shall not without the prior approval in writing of TTL (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Concessionaire Personnel listed on the Concessionaire's Provisional Concessionaire Personnel List other than where any replacement is of equivalent grade, skills, reliability, experience and expertise and is employed on the same terms and conditions of employment as the person he or she replaces;
- (b) make, promise, propose, permit or implement any increase in the remuneration or other benefits of the Concessionaire Personnel (other than in the normal course of any routine salary review or similar practice) or any material changes to the terms and conditions of employment of the Concessionaire Personnel (including in relation to any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Concessionaire Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Concessionaire's Provisional Concessionaire Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services) save where permitted under Paragraph 2.5(a) above; or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Concessionaire's Provisional Concessionaire Personnel List, save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor and Notified Affiliate shall promptly notify, TTL and, if so requested in writing by TTL, any Replacement Concessionaire or any Replacement Sub-contractor (as the case may be) of any notice to terminate employment given by the Concessionaire or relevant Sub-contractor or Notified Affiliate to, or received from, any persons listed on the Concessionaire's Provisional Concessionaire Personnel List, regardless of when such notice takes effect.

2.6 During the Term, the Concessionaire shall provide, and shall procure that each Sub-contractor and Notified Affiliate shall provide, to TTL any information TTL may from time to time reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of Concessionaire Personnel engaged in providing the Services and any part of the Services and their job titles and location;
- (b) the percentage of time spent on the Services and any part of the Services by each individual engaged in providing the Services;
- (c) the extent to which Concessionaire Personnel qualify for membership of any of the Schemes or any broadly comparable scheme; and
- (d) a description of the nature of the work undertaken by each individual engaged in providing the Services.

2.7 The Concessionaire shall provide, and shall procure that each Sub-contractor and Notified Affiliate shall provide, all reasonable cooperation and assistance to TTL and any Replacement Concessionaire and any Replacement Sub-contractor (as the case may be) to

ensure the smooth transfer of the Transferring Concessionaire Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Concessionaire Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Concessionaire shall provide, and shall procure that each Sub-contractor and Notified Affiliate shall provide, to TTL and, at the direction of TTL, to any Replacement Concessionaire and any Replacement Sub-contractor, in respect of each person (subject to compliance with Data Protection Legislation) on the Concessionaire's Final Concessionaire Personnel List who is a Transferring Concessionaire Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

3 Employment Regulations Exit Provisions

- 3.1 TTL and the Concessionaire acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services (or any part of the Services) being undertaken by a Replacement Concessionaire or a Replacement Sub-contractor. Such change in the identity of the provider of such Services may constitute a Relevant Transfer. TTL and the Concessionaire further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Concessionaire and the Transferring Concessionaire Employees (except in relation to any contract terms disapplied through the operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the relevant Replacement Concessionaire or Replacement Sub-contractor (as the case may be) and each such Transferring Concessionaire Employee.
- 3.2 The Concessionaire shall, and shall procure that each Sub-contractor and Notified Affiliate shall, comply with all its obligations in respect of the Transferring Concessionaire Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor and Notified Affiliate shall perform and discharge, all their respective obligations in respect of all the Transferring Concessionaire Employees arising in respect of the period up to (but not including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period up to (but not including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (i) the Concessionaire or the relevant Sub-contractor and Notified Affiliate (as appropriate); and
- (ii) the Replacement Concessionaire or the relevant Replacement Sub-contractor (as appropriate).

3.3 Subject to Paragraph 3.4, the Concessionaire shall indemnify TTL and any Replacement Concessionaire and any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Concessionaire or any Sub-contractor or any Notified Affiliate in respect of any Transferring Concessionaire Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Concessionaire Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Concessionaire or any Sub-contractor or any Notified Affiliate occurring before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Concessionaire Employees; or
 - (ii) any custom or practice in respect of any Transferring Concessionaire Employees which the Concessionaire or any Sub-contractor or any Notified Affiliate is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Concessionaire Employees arising from any failure by the Concessionaire or a relevant Sub-contractor or Notified Affiliate to comply with any legal obligation to such trade union, body or person arising before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or any other statutory authority in respect of any financial obligation including, but not limited to, obligations in respect of PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Concessionaire Employee, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising on or before the Service Transfer Date; and
 - (ii) in relation to any employee who is not identified in the Concessionaire's Final Concessionaire Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his or her employment from the Concessionaire or any Sub-contractor or Notified Affiliate to TTL or any Replacement Concessionaire or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other such statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Concessionaire or any Sub-contractor or Notified Affiliate to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE deductions in respect of income tax and national insurance contributions relating to

the Transferring Concessionaire Employees and arising before the Service Transfer Date;

- (f) any claim made by or in respect of any person employed or formerly employed by the Concessionaire or any Sub-contractor or Notified Affiliate other than a Transferring Concessionaire Employee identified in the Concessionaire's Final Concessionaire Personnel List for which it is alleged TTL or any other Replacement Concessionaire or any Replacement Sub-contractor may be liable by virtue of this Agreement or the Employment Regulations or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Concessionaire Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Concessionaire Employee relating to any act or omission of the Concessionaire or any Sub-contractor or Notified Affiliate in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by TTL or any other Replacement Concessionaire or any Replacement Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

3.4 The indemnities in Paragraph 3.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to any act or omission of the relevant Replacement Concessionaire, or Replacement Sub-contractor (as the case may be), whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Concessionaire Employee before the Service Transfer Date on account of substantial detrimental changes to his or her working conditions proposed by the relevant Replacement Concessionaire or Replacement Sub-contractor to occur in the period on or after the Service Transfer Date; or
- (b) arising from any failure by the Replacement Concessionaire or any Replacement Sub-contractor to comply with its obligations under the Employment Regulations.

3.5 If any person who is not identified in the Concessionaire's Final Concessionaire Personnel List claims, or it is determined in relation to any person not identified in the Concessionaire's Final Concessionaire Personnel List, that his or her contract of employment has been transferred from the Concessionaire or any Sub-contractor or Notified Affiliate to any Replacement Concessionaire or any Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) TTL shall procure that the relevant Replacement Concessionaire or Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice of it in writing to the Concessionaire; and
- (b) the Concessionaire may offer (or may procure that a Sub-contractor, Notified Affiliate or any other third party may offer) employment to such person within fifteen (15) Working Days of the notification by the relevant Replacement Concessionaire or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

3.6 If such offer is accepted, or if the situation has otherwise been resolved by the Concessionaire, TTL shall procure that the relevant Replacement Concessionaire or

Replacement Sub-contractor shall immediately release or procure the release of the person from his or her employment or alleged employment.

3.7 If after the fifteen (15) Working Day period specified in Paragraph 3.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

TTL shall advise the relevant Replacement Concessionaire or Replacement Sub-contractor that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

3.8 Subject to the relevant Replacement Concessionaire or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 3.5 to 3.7, and in accordance with all applicable employment procedures required under any applicable Law, the Concessionaire shall indemnify the Replacement Concessionaire or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 3.7 provided that the Replacement Concessionaire or Replacement Sub-contractor takes all reasonable steps to minimise any such Employee Liabilities.

3.9 The indemnity in Paragraph 3.8:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy, maternity, sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in relation to any alleged act or omission of the relevant Replacement Concessionaire or Replacement Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the relevant Replacement Concessionaire or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 3.5(a) is made by the relevant Replacement Concessionaire or Replacement Sub-contractor to the Concessionaire within six (6) months of the Service Transfer Date.

3.10 If any such person as is described in Paragraph 3.5 is neither re-employed by the Concessionaire or any Sub-contractor or Notified Affiliate nor dismissed by the relevant Replacement Concessionaire or Replacement Sub-contractor within the time scales set out in Paragraphs 3.5 to 3.7, such person shall be treated as a Transferring Concessionaire Employee.

- 3.11 The Concessionaire shall comply, and shall procure that each Sub-contractor and Notified Affiliate shall comply, with all their respective obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor and Notified Affiliate shall perform and discharge, all their respective obligations in respect of any person identified in the Concessionaire's Final Concessionaire Personnel List up to the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (but not including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Concessionaire or relevant Sub-contractor or Notified Affiliate; and
 - (b) the relevant Replacement Concessionaire or Replacement Sub-contractor.
- 3.12 TTL shall (where it is a relevant Replacement Concessionaire), and shall procure that any relevant Replacement Concessionaire or Replacement Sub-contractor shall, promptly provide to the Concessionaire and each relevant Sub-contractor and Notified Affiliate in writing such information as is necessary to enable the Concessionaire and each relevant Sub-contractor and Notified Affiliate to carry out their respective duties under regulation 13 of the Employment Regulations.
- 3.13 Subject to Paragraph 3.14, TTL shall procure that any Replacement Concessionaire indemnifies the Concessionaire on its own behalf and on behalf of any Sub-contractor and Notified Affiliate against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Replacement Concessionaire or any Replacement Sub-contractor in respect of any Transferring Concessionaire Employee identified in the Concessionaire's Final Concessionaire Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Concessionaire Employee;
 - (b) the breach or non-observance by the Replacement Concessionaire or any Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Concessionaire Employees identified in the Concessionaire's Final Concessionaire Personnel List; or
 - (ii) any custom or practice in respect of any Transferring Concessionaire Employees identified in the Concessionaire's Final Concessionaire Personnel List which the Replacement Concessionaire or any Replacement Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Concessionaire Employees identified in the Concessionaire's Final Concessionaire Personnel List arising from any failure by the Replacement Concessionaire or any Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

- (d) any proposal by the Replacement Concessionaire or any Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Concessionaire Employees identified in the Concessionaire's Final Concessionaire Personnel List on or after their transfer to the Replacement Concessionaire or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Concessionaire's Final Concessionaire Personnel List who would have been a Transferring Concessionaire Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated by the Replacement Concessionaire or any Replacement Sub-contractor to, or action undertaken by the Replacement Concessionaire or any Replacement Sub-contractor in respect of, any Transferring Concessionaire Employee identified in the Concessionaire's Final Concessionaire Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Concessionaire in writing;
- (f) any proceeding, claim or demand by HMRC or any other statutory authority in respect of any financial obligation including, but not limited to, obligations in respect of PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Concessionaire Employee identified in the Concessionaire's Final Concessionaire Personnel List, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising on or after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Concessionaire Employee identified in the Concessionaire's Final Concessionaire Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his or her employment from the Concessionaire or any Sub-contractor or Notified Affiliate to the Replacement Concessionaire or any Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising on or after the Service Transfer Date;
- (g) a failure of the Replacement Concessionaire or any Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE deductions in respect of income tax and national insurance contributions relating to the Transferring Concessionaire Employees identified in the Concessionaire's Final Concessionaire Personnel List in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Concessionaire Employee identified in the Concessionaire's Final Concessionaire Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Concessionaire Employee relating to any act or omission of the Replacement Concessionaire or any Replacement Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations.

- 3.14 The indemnities in Paragraph 3.13 shall not apply to the extent that the relevant Employee Liabilities arise or are attributable to any act or omission of the Concessionaire or any Sub-contractor or Notified Affiliate whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from any failure by the Concessionaire or any Sub-contractor or Notified Affiliate to comply with their obligations under the Employment Regulations.