



Schedule 7.5 – Financial Transparency and Audit Rights

CHANGE HISTORY

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Part A - Financial Transparency

1 Financial Transparency Objectives

1.1 The Concessionaire shall co-operate with TTL in order to achieve, the following objectives:

Understanding the Fees, Charges and Capital Investment Commitment

- (a) for TTL to understand any payment it is due from the Concessionaire;
- (b) for TTL to understand any payment sought from it by the Concessionaire including an analysis of the costs, overhead recoveries (where relevant) and time and materials spent by the Concessionaire in providing the Services;
- (c) for TTL to understand the Capital Investment in respect of each Service Line and the Services as a whole;

Understanding the Concessionaire's Financial Liquidity

- (d) for TTL to understand, at any time, the Concessionaire's financial liquidity position with reference to the Clauses 11.23 and 11.25 (Financial Liquidity);

Agreeing the Impact of Change

- (e) for both Parties to agree the quantitative impact of any Changes that affect ongoing revenues and costs and to identify how these could be mitigated;
- (f) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous Improvement

- (g) for the Parties to challenge each other with ideas for efficiency and improvements;
and
- (h) to enable TTL to demonstrate that it is achieving value for money,

(together the "**Financial Transparency Objectives**").

2 Transparency

2.1 The Concessionaire acknowledges the importance to TTL of the Financial Transparency Objectives and TTL's need for complete transparency in the way in which the Fees, Charges and Financial Liquidity Ratios are calculated and the Capital Investment is applied.

2.2 During the Term, and for a period of seven (7) years following the end of the Term, the Concessionaire shall:

- (a) maintain and retain appropriate financial Records; and
- (b) disclose and allow TTL and/or the Audit Agents access to appropriate financial Records.

3 Annual Financial Statements

3.1 In respect of each Accounting Year, the Concessionaire shall prepare financial statements, in accordance with International Financial Reporting Standards (IFRS) which shall:

- (a) be completed by the Concessionaire using reasonable skill and care;
- (b) quote all monetary values in pounds sterling and exclusive of VAT; and
- (c) present fairly, in all material respects, the financial liquidity position, the financial performance and cash flows of the Concessionaire as at the then current Accounting Year end,

(the "**Annual Financial Statements**").

3.2 The Concessionaire shall, at its cost, procure an independent statutory audit of the Annual Financial Statements.

3.3 The Concessionaire shall procure that the Concessionaire's auditor conducts procedures to reconcile the information provided in the Monthly Financial Reports (FIN1) against the Annual Financial Statements in order to:

- (a) determine whether the Gross Revenue and the Revenue Share Fees for the twelve (12) month period which corresponds to the Accounting Year has been calculated correctly; and
- (b) confirm whether the Concessionaire has complied with the Financial Liquidity Obligations,

(the "**Agreed-Upon Procedures**").

3.4 The Concessionaire shall procure that the Concessionaire's auditor shall present the outcome of the Agreed-Upon Procedures in a report which shall include:

- (a) a reconciliation between the revenue, reported in the Annual Financial Statements, and the Gross Revenue, for each of the Service Lines, reported by the Concessionaire to TTL for the corresponding twelve (12) months in the Monthly Financial Reports (FIN1);
- (b) a reconciliation between the Capital Expenditure, reported in the Annual Financial Statements and the Capital Investment incurred, for each of the Service Lines, reported by the Concessionaire to TTL for the corresponding twelve (12) months in the Monthly Financial Reports (FIN1);
- (c) a reconciliation between the Operating Expenditure, reported in the Annual Financial Statements and the Operating Expenditure for each of the Service Lines reported by the Concessionaire to TTL for the corresponding twelve (12) months in the Monthly Financial Reports (FIN1);
- (d) a reconciliation between the Current Assets, Current Liabilities and Cash And Cash Equivalents, reported in the Annual Financial Statements and the Current Assets, Current Liabilities and Cash And Cash Equivalents, reported by the Concessionaire for the corresponding twelve (12) months in the Monthly Financial Reports (FIN1); and

(e) clear identification and quantification of any Relevant Transactions.

(the "**Agreed-Upon Procedures Report**").

- 3.5 Subject to Paragraph 3.6, the Parties shall agree the full scope and methodology of the Agreed-Upon Procedures and format of the Agreed-Upon Procedures Report prior to the first annual audit. If the Parties fail to agree in accordance with this Paragraph 3.5 within five (5) Working Days prior to the commencement of the audit, TTL shall determine the full scope and methodology of the Agreed-Upon Procedures and format of the Agreed-Upon Procedures Report at its sole discretion.
- 3.6 TTL may require amendments to the scope and methodology of the Agreed-Upon Procedures and format of the Agreed-Upon Procedures Report at any time during the Term.
- 3.7 The Concessionaire shall provide the Annual Financial Statements, the auditor's report and the Agreed-Upon Procedures Report to TTL on the date which is the earlier of:
- (a) ten (10) Working Days after the audit report and Agreed-Upon Procedures Report are signed by the Concessionaire's auditors; or
 - (b) nine (9) months after the end of the Accounting Year.
- 3.8 Following the delivery by the Concessionaire to TTL of the documents referred to in Paragraph 3.7, the Concessionaire shall make available appropriate Concessionaire Personnel and advisers to discuss any elements of the documents at TTL's request.
- 3.9 Where an Agreed-Upon Procedures Report identifies that the Gross Revenue used to calculate any Revenue Share Fee paid or payable during the Accounting Year has been calculated incorrectly, the next invoice in respect of Revenue Share Fee following the date of submission of the documents set out in Paragraph 3.5 will be adjusted accordingly.
- 3.10 Where the Agreed-Upon Procedures Report identifies that:
- (a) the Concessionaire has not complied with the Financial Liquidity Obligations during the Accounting Year; and
 - (b) the Concessionaire should have enacted a Lock-up Period,
- a Lock-up Period will commence retrospectively from the date the Concessionaire's auditor finds the Financial Liquidity Obligations to have not been met and continue for a period of twelve (12) months.
- 3.11 If the Concessionaire has made any payment, distribution, disposal or any other activity specified in the Financial Liquidity Obligations without TTL's prior written permission during the Lock-up Period described in Paragraph 3.10, the Concessionaire shall reverse any such activity where possible, or where not possible the Concessionaire shall recapitalise, with cash, an amount equivalent to the activity undertaken.

4 Provision of Audited Accounts

- 4.1 Each Contract Year, the Concessionaire shall promptly provide the annual audited accounts of the Guarantor to TfL and in any event by no later than 31 December. Without prejudice to Clause 11.27(a) or Paragraph 1.4 (b) of Schedule 7.4 (Financial Distress), the Concessionaire shall calculate the Net Asset Value of the Guarantor and confirm that it is

greater than or equal to the Net Asset Threshold. If the Net Asset Value is less than the Net Asset Threshold then the provisions of Schedule 7.4 (Financial Distress) shall apply.

Part B - Audit Rights

1 Audit Rights

- 1.1 TTL, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of eighteen (18) months thereafter, to assess compliance by the Concessionaire and/or its Key Sub-contractors of the Concessionaire's obligations under this Agreement, including for the following purposes:
- (a) to verify the integrity and content of any Reports;
 - (b) to verify the accuracy of the Charges and any other amounts payable by TTL under this Agreement including the amount payable for:
 - (i) the purchase of Transferable Infrastructure or Transferring Infrastructure (as applicable) and Transferring Spares at the expiry or termination of this Agreement; and
 - (ii) any proposed or actual variations to such amounts payable during the Term of this Agreement;
 - (c) to verify the accuracy of the amounts receivable from the Concessionaire and the calculation of the Fees;
 - (d) to verify the accuracy of the Capital Investment incurred by the Concessionaire that is measured against the Capital Investment Commitment in respect of each Service Line;
 - (e) to verify the Concessionaire's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
 - (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances TTL shall have no obligation to inform the Concessionaire of the purpose or objective of its investigations;
 - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Concessionaire, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - (h) to obtain such information as is necessary to fulfil TTL's or any member of the TfL Group's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (i) to review any books of account (including contents of electronic accounting systems) kept by the Concessionaire in connection with this Agreement;
 - (j) to carry out TTL's or any member of the TfL Group's internal and statutory audits and to prepare, examine and/or certify TTL's or any member of the TfL Group's annual and interim reports and accounts;

- (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which TTL or any member of the TfL Group has used its resources;
- (l) to verify the accuracy and completeness of any management information delivered or required by this Agreement;
- (m) to review any Performance Monitoring Reports (PMR1) and/or Records relating to the Concessionaire's performance of the Services and to verify that these reflect the Concessionaire's own internal reports and Records;
- (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (o) to review the accuracy and completeness of the Registers and Exit Information set out in Paragraphs 4.1 and 4.2 respectively of Schedule 8.5 (Exit Management);
- (p) to review any Records created during the design and development of the Concessionaire IT System and pre-operational environment such as information relating to Testing or the Works Funded By Grants Services Assurance Process;
- (q) to review the Concessionaire's compliance with the Standards;
- (r) to inspect the Telecommunications Infrastructure and Concessionaire Effects, including the Concessionaire's IPRs, equipment and facilities, for the purposes of ensuring that the Telecommunications Infrastructure is secure and that the Infrastructure Register and CMDB is up to date;
- (s) to review the integrity, confidentiality and security of any TTL Data;
- (t) to determine the Revenue Share Fee payable to TTL if the Concessionaire has failed to provide the Revenue Share Information in accordance with Paragraph 12.2 of Part A of Schedule 7.1 (Fees and Charges);
- (u) to determine the actual Capital Investment if the Concessionaire fails to provide the Annual Report (ANR1) in accordance with Schedule 2.1 (Services Description);
- (v) to assess the Concessionaire's compliance with the security obligations set out within this Agreement; and
- (w) to verify the Concessionaire's compliance with Part A of Schedule 12 (Responsible Procurement).

1.2 Except where an audit is imposed on TTL or any member of the TfL Group by a regulatory body or the Secretary of State for the Home Department or where TTL has reasonable grounds for believing that the Concessionaire has not complied with its obligations under this Agreement, TTL may not conduct an audit of the Concessionaire or of the same Key Sub-contractor more than once during any period of twelve (12) months.

1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Concessionaire and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

- 1.4 TTL, in order to support the audit, shall have the right to take and remove from the Concessionaire's premises copies of all documentation applicable to the Services and/or the Performance Indicators.

2 Conduct of Audits

- 2.1 TTL shall during each audit comply with those security, sites, systems and facilities operating procedures of the Concessionaire that TTL deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Concessionaire or interrupt the provision of the Services.
- 2.2 Subject to TTL's obligations of confidentiality, the Concessionaire shall on demand provide TTL and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Key Sub-contractors) in relation to each audit, including:
- (a) all information requested by TTL within the permitted scope of the audit;
 - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Concessionaire IT Systems; and
 - (d) access to Concessionaire Personnel.
- 2.3 The Concessionaire shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Concessionaire's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 TTL shall endeavour to (but is not obliged to) provide at least ten (10) Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Concessionaire in which case the Concessionaire shall reimburse TTL for all TTL's reasonable costs incurred in connection with the audit.

3 Response to Audits

- 3.1 If an audit undertaken pursuant to Paragraph 1 of Part B of this Schedule identifies that:
- (a) the Concessionaire has committed a Default, TTL may (without prejudice to any rights and remedies TTL may have) require the Concessionaire to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - (b) there is an error in a Report, the Concessionaire shall promptly rectify the error;
 - (c) TTL has overpaid any Charges, the Concessionaire shall pay to TTL:
 - (i) the amount overpaid;

- (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by TTL up to the date of repayment by the Concessionaire; and
 - (iii) the reasonable costs incurred by TTL in undertaking the audit,
- and TTL may exercise its right to deduct such amount from the Charges if it prefers;
- (d) TTL has underpaid any Charges, the Concessionaire shall invoice TTL for the amount underpaid with no interest or other costs applied;
- (e) the Concessionaire has underpaid TTL any Fees, the Concessionaire shall pay to TTL:
 - (i) the amount underpaid;
 - (ii) interest on the amount underpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of underpayment by the Concessionaire up to the date of payment by the Concessionaire; and
 - (iii) the reasonable costs incurred by TTL in undertaking the audit; and
- (f) the Concessionaire has overpaid TTL any Fees, TTL shall issue a credit note to the Concessionaire against a previous invoice for the amount overpaid.