DATED 2021

TRANSPORT FOR LONDON

and

MARSTON (HOLDINGS) LIMITED
and

KEY IVR LIMITED

SUB-CONTRACTOR'S COLLATERAL DEED

THIS DEED is dated the day of 2021 and made

BETWEEN:-

(1) **TRANSPORT FOR LONDON**, of 5 Endeavour Square, Stratford, London E20 1JN (**"TfL"**);

(2) **KEY IVR LIMITED**, a company incorporated under the laws of England and Wales with registered number 06512297, whose registered office is at West Moor Park Armthorpe, Doncaster, South Yorkshire, DN3 3FE (the **"Sub-Contractor"**); and

(3) **MARSTON (HOLDINGS) LIMITED**, a company incorporated under the laws of England and Wales with registered number 04305487, whose registered office is at Rutland House 8th Floor, 148 Edmund Street, Birmingham, B3 2JR (the **"Supplier"**)

BACKGROUND:

(A) TfL and the Supplier have agreed the terms on which the Supplier will provide the Services (as defined below) to TfL and, accordingly, have entered into the Contract (as defined below).

(B) The Sub-Contractor has entered into the Sub-Contract (as defined below) with the Supplier to support certain elements of the Supplier's obligations under the Contract.

(C) It is all the parties' intention to enter into this Deed as a collateral deed as contemplated by the Contract.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Deed the following terms shall, unless the context otherwise requires, have the following meanings:

"Contract" means the agreement relating to the provision of vehicle licensing and inspection services for Transport for London dated on or around the date of this Deed between TfL and the Supplier for the provision of the Services as updated from time to time;

"New Service Provider" means any person nominated by TfL (which could be any person including TfL or any member of the TfL Group) to provide part or all of the Services or substantially similar services as successor or partial successor to the Supplier under the Contract;

"Novation Agreement" means an agreement in the form set out in Annex 1 (*Deed of Novation*) hereto or in such other form as TfL in its sole discretion may agree;

"Novation Effective Date" means the date upon which any novation of the Sub-Contract from the Supplier to the New Service Provider or TfL will become effective;

"Novation Notice" means a notice from TfL to the Sub-Contractor specifying TfL's intention to have the Sub-Contract novated to a New Service Provider or to itself in

circumstances of the termination of the Contract and stating the identity of the New Service Provider (where applicable) and the Proposed Novation Date;

"Proposed Novation Date" means the date (being no later than thirty (30) Working Days following the date of issue of the Novation Notice) on which the Sub-Contract is to be novated to the New Service Provider or to TfL;

"Services" means the services to be provided by the Supplier under the Contract;

"Step-in Action" means such action as may be taken by TfL from time to time whereby TfL steps-in in relation to the Services in accordance with Clause 29 of the Contract;

"Sub-Contract" is the contract between the Supplier and the Sub-Contractor entered into in September 2016 in relation to any activity arising out of or related to any activity arising out of or related to the provision of the Services;

"TfL Group" means:

(a) TfL in its own right and all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time and reference to any "**member of the TfL Group"** shall refer to TfL or any such subsidiary; and

(b) the Greater London Authority (**"GLA"**), TfL, the Mayor's Office for Policing and Crime and the London Fire and Emergency Planning Authority and London Legacy Development Corporation (**"Functional Bodies"**) each in their own right and all of their subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time and reference to any "member of TfL Group" shall refer to the GLA, any Functional Body or any such subsidiary; and

"Third Parties Act" means the Contracts (Rights of Third Parties) Act 1999;

"Working Day" means any day other than a Saturday, Sunday, or public holiday in England and Wales.

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;

(J) references to the word **"includes"** or **"including"** are to be construed without limitation; and

(K) the obligations of any party under this Deed are to be performed at that party's own cost and expense.

2. **Comply with Sub-Contract**

2.1 The Sub-Contractor warrants to TfL that it has complied, and shall continue to comply with its obligations under the Sub-Contract.

2.2 The Sub-Contractor extends to TfL the benefit of all warranties on the part of the Sub-Contractor under the Sub-Contract.

3. **Not used**

4. **Step-in Action**

4.1 In the event that TfL exercises its right to take Step-in Action in respect of the Contract, the Sub-Contractor shall, for the period during which such rights are exercised:

(A) to the extent that the particular Step-in Action relates to the Services that are the subject to the Sub-Contract:

(1) observe and perform its obligations under the Sub-Contract and observe any restrictions therein; and

(2) treat TfL for all purposes as though it was the Supplier and able to enforce each and every term of the Sub-Contract against the Sub-Contractor; and

(B) in all other instances, co-operate with all reasonable requirements of TfL to assist in relation to such Step-in Action.

4.2 TfL shall have no liability for any acts or omissions of the Supplier arising from or in connection with the Sub-Contract prior to TfL taking Step-in Action.

4.3 The Sub-Contractor shall not exercise any right of termination of the Sub-Contract whilst TfL takes Step-in Action.

4.4 Subject to clause 4.3 above, nothing in this clause 4 shall impose any obligations on TfL or affect the Sub-Contractor's rights and obligations vis-à-vis the Supplier.

4.5 TfL shall have no liability to the Sub-Contractor for any cost, loss, liability, claim or damage arising from, in relation to, or by virtue of TfL taking Step-in Action.

5. Novation

5.1 Following service of a Novation Notice by TfL, the Sub-Contractor, the Supplier and the New Service Provider (or TfL) shall enter into the Novation Agreement and any other requisite agreements, pursuant to which the New Service Provider (or TfL) shall be granted all of the rights and assume all of the obligations and liabilities of the Supplier under the Sub-Contract from the Novation Date.

5.2 The New Service Provider (or TfL) and the Sub-Contractor shall use all reasonable endeavours to agree any amendments to the terms of the novated Sub-Contract necessary to reflect the fact that the Agreement or relevant part(s) thereof will have terminated at the time of the Novation Effective Date.

5.3 TfL shall procure that the New Service Provider (or TfL) shall enter into the Novation Agreement as specified in clause 5.1 above and shall agree amendments to the Sub-Contract as specified in clause 5.2 above.

6. Entire Agreement

6.1 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.

6.2 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.

7. Assignment

7.1 Subject to clause 7.2 below, no party shall assign or transfer any part of its respective rights or obligations under this Deed without the prior consent of the other.

7.2 TfL shall be entitled to assign any part or all of its rights and obligations under this Deed to such third party or parties as it deems appropriate but only in connection with a corresponding assignment of its rights and obligations under the Agreement to the same third party or parties.

8. Notices

8.1 Any notice (which term shall in this clause 8 include any other communication) required to be given under this Agreement or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing in the English language.

8.2 Any such notice shall be addressed as provided in clause 8.3 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.

8.3 The addresses and other details of the parties referred to in clause 8.2 above are, subject to clause 8.4 below:

(A) Name: Transport for London

For the attention of: Commercial Manager

Address: 5 Endeavour Square, Stratford, London, E20 1JN

E-mail address: jessdenton@tfl.gov.uk

With a copy to: General Counsel at the address set out above by personal or recorded delivery

(B) Name: Marston (Holdings) Limited

For the attention of: Legal Department

Address: Marston Holdings, PO Box 12019, Epping, CM16 9EB

E-mail address: legal@marstonholdings.co.uk

(C) Name: Key IVR Limited

For the attention of: Sophie Kelly

Address: Unit 8 Durham Lane, Armthorpe, Doncaster, DN3 3FE

E-mail address: sophie.kelly@keyivr.co.uk

8.4 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 8.3 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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **Amendments**

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

14. **Third Party Rights**

14.1 Any member of the TfL Group has the right to enforce the terms of this Deed in accordance with the Contracts (Rights of Third Parties) Act 1999.

14.2 Except as set out in clause 14.1 above, the parties do not intend that any of the terms of this Deed will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

14.3 Notwithstanding clause 14.1 above, the parties are entitled to vary the Deed without the consent of any or all members of the TfL Group.

15. **Law and Jurisdiction**

15.1 **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.

15.2 **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 have executed and delivered this Deed as a Deed on the date first before written.

EXECUTED AS A DEED (but not delivered until the date hereof) by Margaret Deegan (Head of Property and Planning Law) as attorney for **TRANSPORT FOR LONDON**, under a power of attorney dated 29 September 2020

……
Attorney

In the presence of:

GAVIN LAY (WITNESS)
Chalmers, Wildernesse Avenue
Sevenoaks
TN15 0EA

……
Witness

EXECUTED AS A DEED (but not delivered until the date hereof) by **MARSTON (HOLDINGS) LIMITED** acting by

……

Mike Watson, Chief Financial Director

Director

……

Richard Anderson, Chief Risk Officer

Director

EXECUTED AS A DEED (but not delivered until the date hereof) by **KEY IVR LIMITED** acting by)

……

Darren Wooding, Managing Director

Director

……

Barbara Wooding, Company Secretary

Secretary

ANNEX 1

Deed of Novation

DATED [ ]

(1) **MARSTON (HOLDINGS) LIMITED ("Supplier")**

and

(2) **[INSERT] ("New Service Provider")**

and

(3) **KEY IVR LIMITED ("Sub-Contractor")**

DEED OF NOVATION

THIS DEED OF NOVATION is made on [ ]

BETWEEN

(1) **MARSTON (HOLDINGS) LIMITED**, a company incorporated under the laws of England and Wales with registered number 04305487, whose registered office is at Rutland House 8th Floor, 148 Edmund Street, Birmingham, B3 2JR (the **"Supplier"**)

(2) [_____] (the **"New Service Provider"**)

(3) **KEY IVR LIMITED**, a company incorporated under the laws of England and Wales with registered number 06512297, whose registered office is at West Moor Park Armthorpe, Doncaster, South Yorkshire, DN3 3FE (the **"Sub-Contractor"**)

BACKGROUND

(1) This deed of novation (**"Deed of Novation"**) is supplemental to the Sub-Contract dated September 2016 between the Supplier and the Sub-Contractor.

(2) Pursuant to clause 3.1 of a Collateral Deed between Transport for London (**"TfL"**), the Supplier and the Sub-Contractor dated [ ] the Supplier, New Service Provider and Sub-Contractor are required to enter into this Deed of Novation.

(3) The Supplier wishes to be released and discharged from the Sub-Contract as from [ ] (the **"Effective Date"**) and the Sub-Contractor has agreed to release and discharge the Supplier from the Sub-Contract from the Effective Date upon the New Service Provider undertaking to be bound by the terms of the Sub-Contract in place of the Supplier.

THE PARTIES AGREE AS FOLLOWS:

1. **Purpose**

Save as provided in clauses 3, 4 and 5, the Supplier and the Sub-Contractor hereby mutually release each other from their obligations to each other under the Sub-Contract as from the Effective Date.

2. **Novation**

As from the Effective Date:

2.1 the New Service Provider undertakes to be bound by the terms of the Sub-Contract in every way as if the New Service Provider had been a party to it in place of the Supplier; and

2.2 the Sub-Contractor undertakes to be bound by its obligations to the New Service Provider under the Sub-Contract.

3. **Release and discharge**

Subject to clause 4 below, the Sub-Contractor releases and discharges the Supplier from any further performance of the Sub-Contract and from all liabilities, claims and demands whatsoever in respect of the Sub-Contract arising after the Effective Date

and accepts the liability of the New Service Provider to perform under the Sub-Contract from the Effective Date.

4. **Claims**

Nothing in this Deed of Novation shall affect or prejudice any claim or demand whatsoever which either the Sub-Contractor or the Supplier may have against the other relating to matters arising prior to the Effective Date.

5. **Indemnity**

5.1 The Supplier shall fully indemnify the New Service Provider and keep the New Service Provider fully indemnified at all times against any loss, liability, damage, expenses or costs suffered or incurred by the New Service Provider as a result of any breach, claim or demand in respect of the subject matter of the Sub-Contract, where such breach, claim or demand occurred or first occurred prior to the Effective Date.

5.2 The New Service Provider shall fully indemnify the Supplier and keep the Supplier fully indemnified at all times against any loss, liability, damage, expenses or costs suffered or incurred by the Supplier as a result of any breach, claim or demand in respect of the subject matter of the Sub-Contract, where such breach, claim or demand occurred or first occurred on or after the Effective Date.

5.3 In each case the party providing the indemnity shall be given prompt notice and permitted full conduct of any claim made by a third party which, if successful, would give rise to liability under the relevant indemnity.

6. **Assignment**

No party shall assign or transfer any part of its respective rights or obligations under the 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 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.

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:** **MARSTON (HOLDINGS) LIMITED**

For the attention of: [X]

Address: [X]

(B) **Name:** **KEY IVR LIMITED**

For the attention of: [X]

Address: [X]

(C) **Name:** **[X]**

For the attention of: [X]

Address: [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 No person who is not a party to this Deed shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

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 before written.

EXECUTED AS A DEED (but not delivered until the date hereof) by **MARSTON (HOLDINGS) LIMITED** acting by)

Director

Secretary

EXECUTED AS A DEED (but not delivered until the date hereof) by **KEY IVR LIMITED** acting by:

Director

Secretary

EXECUTED AS A DEED (but not delivered until the date hereof) by **[X]** acting by:

Director

Secretary