

**SCHEDULE 28**

**Collateral Deed**

**DATED** \_\_\_\_\_ [ ]

**TRANSPORT TRADING LIMITED**

**and**

**[SERVICE PROVIDER]**

**and**

**[SUB-CONTRACTOR]**

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**SUB-CONTRACTOR'S COLLATERAL DEED**

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[Form B.]

***Note. This form of collateral deed should be used if intellectual property is material to the services being carried out by the sub-contractor***

**THIS DEED** is dated the [ ] day of [ ] 20[●] and made

**BETWEEN:-**

- (1) **TRANSPORT TRADING LIMITED**, a company registered in the United Kingdom with company number 03914810 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL TTL ("**TTL**");
- (2) [ ], a company incorporated under the laws of England and Wales with registered number [ ], whose registered office is at [ ] (the "**Sub-Contractor**"); and
- (3) [ ], a company incorporated under the laws of England and Wales with registered number [ ], whose registered office is at [ ] (the "**Service Provider**")

**BACKGROUND:**

- (A) TTL and the Service Provider have agreed the terms on which the Service Provider will provide the Services (as defined below) to TTL 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 Service Provider to support certain elements of the Service Provider'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:

**"Bicycle"** means a Current Bicycle and/or a New Bicycle;

**"Bicycle Components"** means any part or component of the Bicycles including the Triangle;

**"Contract"** means the agreement relating to the provision of services for the London Cycle Hire Scheme dated [ ] between TTL and the Service Provider for the provision of the Services as updated from time to time;

**"COTS IPR"** Intellectual Property Rights in software which forms part of the Service System IPR and which is readily available off the shelf to TTL or a member of the TfL Group or a Replacement Service Provider on commercially reasonable contractual terms;

**"Current Bicycle"** means a bicycle used or otherwise forming part of the London Cycle Hire Scheme at 23.59 hours on the day before the Operational Commencement Date (as defined in the Contract);

**"Current Bicycle IPR"** the Intellectual Property Rights described in Part 2 of Schedule 29 (Intellectual Property) of the Contract which relates to the Current Bicycles or Spare Parts for the Current Bicycles;

**"Firmware"** means the combination of a hardware device holding embedded code and data that reside as read-only software on that device that cannot be modified during normal operation of the device. Firmware provides the control program for the device;

**"Hardware"** means all physical materials associated with electronic processing and the transmission of information and Data (as defined in the Contract), including computer equipment, telecommunications equipment (including wide area and local area network equipment), chips, chipsets, firmware, fixtures, fittings and peripherals;

**"Improvement"** any improvement, enhancement or modification;

**"Intellectual Property Rights"** means any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information (including any algorithm), any other rights in any invention, discovery or process and any other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

**"London Cycle Hire Scheme" or "LCHS"** means the cycle hire scheme comprising a fleet of bicycles, docking stations and supporting infrastructure, business processes and services operating in Greater London;

**"New Bicycle"** means a bicycle designed and manufactured in accordance with, and pursuant to, the Final New Bicycle Design (as defined in the Contract) and the provisions of the Contract;

**"New Bicycle IPR"** means any Intellectual Property Rights in (or in connection with the creation, design, manufacture, supply, use, operation, repair, maintenance, or otherwise):

- (a) the New Bicycles;
- (b) A New Bicycle LCHS Improvement;
- (c) New Bicycle Spare Parts; and
- (d) Tooling,

but in the case of (a), (b) and (c) excluding any Intellectual Property Rights in or in connection with the creation, design, manufacture, supply, use, operation, repair, maintenance or otherwise of the Safety Light, and including in all related documentation, drawing, Hardware, Software, and any other work, any Improvement to such Intellectual Property Rights;

**"New Bicycle LCHS Improvement"** means an Improvement to the New Bicycle which is either:

- (a) developed exclusively for TTL or the LCHS; or

(b) is applied to a New Bicycle deployed in the LCHS or otherwise in order to fulfil the Contract or the Services;

**"New Service Provider"** means any person nominated by TTL (which could be any person including TTL 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 Service Provider 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 TTL in its sole discretion may agree;

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

**"Novation Notice"** means a notice from TTL to the Sub-Contractor specifying TTL'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 TTL;

**"Replacement Service Provider"** means any replacement supplier or provider who provides the Services (or any part of the Services) and any sub-contractor;

**"Safety Light"** means the light which has been approved by TTL in writing to be attached to the front of the Bicycle and which is designed to increase user visibility to other road users when in use;

**"Safety Light Supplier"** means the supplier of the Safety Light which is Smidsy Limited (company number 07831245);

**"Services"** means the services to be provided by the Service Provider under the Contract;

**"Service System"** means all or any part of any Hardware, Software, software, IT systems, algorithm, interfaces and management tools to be designed, developed, implemented, maintained and used, as applicable, by or on behalf of the Service Provider (including by the Sub-Contractor) in connection with the Scheme Assets and the provision of Bicycles (but excluding the actual Bicycles and the Safety Light) and the Services, including as set out in the Statement of Requirements;

**"Service System IPR"** means Intellectual Property Rights in the Service Systems which are owned by or licensed to the Sub- Contractor but excluding Current Bicycle IPR in the Service Systems;

**"Software"** means system software, operating systems, applications, programs and procedures, and all updates and upgrades to any of the foregoing, that enable the Hardware or Systems (including the Service Systems) to perform tasks and/or operations and/or process Data (as defined in the Contract), in each case in object code form unless expressly provided otherwise in this Contract and excluding any other Data or input or output. The term "Software" shall include the term "Specially

Written Software" (as defined in the Contract) and any software articulating or implementing or otherwise expressing an algorithm;

**"Spare Parts"** means Bicycle Components which are retained so as to assist in maintenance, overhaul or replacement of the relevant Bicycle Component that they relate to and includes the Current Bicycle Spare Parts and the New Bicycle Spare Parts;

**"Standard Component"** means a third party component purchased by the Service Provider, the Sub-Contractor or a Sub-Contractor (as defined in the Contract) for incorporation into the New Bicycle or the Safety Light (including light and laser emitting diodes, battery cells and other Hardware, Firmware, Software or other electrical components products) and which are either:

- (a) ready-made; or
- (b) available for purchase from a third party (other than the Service Provider, any member of the Service Provider Group, the Sub-Contractor or any Subcontractor, any member of the Subcontractor Group (as defined in the Contract) or any employee, agent or contract worker of each of the foregoing) by persons generally on standard terms that are not normally negotiated (save in respect of the cost of such component or for supplying a particular configuration).

**"Standard Components IPR"** means all Intellectual Property Rights subsisting in or related to the use of a Standard Component;

**"Step-in Action"** means such action as may be taken by TTL from time to time whereby TTL steps-in in relation to the Services in accordance with Clause 51 of the Contract;

**"Sub-Contract"** is the contract between the Service Provider and the Sub-Contractor entered into on [ ] 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"** means Transport for London, a statutory corporation established under the Greater London Authority Act 1999;

**"TfL Group"** means:

- (a) TfL in its own right and all its subsidiaries, including TTL, (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;

**"Tooling"** means the tooling used by the Sub-Contractor to manufacture New Bicycles which incorporates, applies or makes components that incorporate the New Bicycle IPR or has been identified in Part E of Schedule 2 (Bicycles, Bicycle Spare Parts and Tooling Purchase);

**"Triangle"** means the functional Bicycle Component located or otherwise attached on the front of a Bicycle which forms part of the Locking Mechanism (as defined in the Contract) and as more fully described in Appendix 03 to Schedule 4 (Statement of Requirements) of the Contract;

## 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;
- (k) the obligations of any party under this Deed are to be performed at that party's own cost and expense ;and
- (l) words and expressions defined in the Contract shall have the same meaning in this Deed.

## 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 TTL the benefit of all warranties on the part of the Sub-Contractor under the Sub-Contract.

## 3. **Intellectual Property Rights**

### New Bicycles

- 3.1 The Sub-Contractor hereby grants to TTL (with right to sub-licence) a royalty-free, non-exclusive, perpetual, irrevocable, transferable, world-wide licence to use or apply (including, except in relation to Standard Components IPR, a right to modify, adapt, enhance, integrate with, manufacture, disclose, copy or reproduce) the New Bicycle IPR for the purpose of or in relation to:
- (a) the London Cycle Hire Scheme; and
  - (b) any extension of or successor to or replacement of the London Cycle Hire Scheme within Greater London; and
  - (c) any bicycle (including electrically or otherwise assisted bicycles) hire scheme (or other scheme for the provision of bicycles) within Greater London.
- 3.2 If the Sub-Contractor makes, devises, discloses or otherwise acquires rights in New Bicycle LCHS Improvements then:
- (a) The Sub-Contractor shall promptly notify TTL in writing giving details of the New Bicycle LCHS Improvement and shall, if TTL so requests, provide such further information as is reasonably required to be able to evaluate that New Bicycle LCHS Improvement effectively;
  - (b) the Intellectual Property Rights in the New Bicycle LCHS Improvement shall become part of the New Bicycle IPR.
- 3.3 The Sub-Contractor warrants that the grant of the licence at Paragraph 3.1 and the exercise by TTL (or a sublicensee) of its rights under that licence shall not infringe any person's Intellectual Property Rights.

### Service Systems IPR and COTS

- 3.4 The Sub-Contractor hereby grants to TTL (with right to sub-licence) a royalty-free, non-exclusive, licence during the Term to use or apply (including, except in relation to COTS IPR, a right to modify, adapt, enhance, integrate with, manufacture, disclose, copy or reproduce) the Service System IPR and all other Intellectual Property Rights used by or on behalf of the Sub-Contractor in connection with the Services for the purpose of or in relation to:
- (1) receiving from the Service Provider or the Sub-Contractor on behalf of the Service Provider the Services, and other services in connection with the London Cycle Hire Scheme anticipated by this Contract;
  - (2) exercising any rights or performing any obligations of TTL under this Contract;

- (3) promoting the London Cycle Hire Scheme, including in relation to any sponsorship, advertising, branding or marketing materials.

3.5 The Sub-Contractor hereby grants to TTL (with right to sub-licence) a royalty-free, non-exclusive, perpetual, irrevocable, transferable worldwide licence to use or apply (including a right to modify, adapt, enhance, integrate with, manufacture, disclose, copy or reproduce) the Service System IPR, but excluding COTS IPR (whether before or after a termination or expiry of this Contract), for the purpose of or in relation to:

- (a) the London Cycle Hire Scheme;
- (b) any extension of or successor to the London Cycle Hire Scheme within Greater London; or
- (c) any bicycle (including electrically or otherwise assisted bicycles) hire scheme (or other scheme for the provision of bicycles) within Greater London.

#### Claims

3.6 The Sub-Contractor warrants that:

- (a) the design, maintenance, supply and use of the New Bicycles; and
- (b) performance by the Sub-Contractor of the Services, and receipt of and use of the output of the Services by TTL and TFL Group Companies and all members of the Sponsor Group (each as defined in the Contract); and
- (c) the grant by the Sub-Contractor of the licences set out in this Schedule, and receipt of and use of the benefit of the licences in accordance with this Contract by TTL, TFL Group Companies and the Replacement Service Provider,

shall not infringe any third party's Intellectual Property Rights save that the Sub-Contractor gives no such warranty in relation to the TTL IPR, Sponsor IPR (each as defined in the Contract) and the Current Bicycle IPR or any modifications, adaptation or enhancements made to the New Bicycle IPR by anyone other than the Sub-Contractor, any of its Subcontractors or a Third Party (as defined in the Contract) acting on their behalf.

3.7 The Sub-Contractor shall indemnify, defend and hold harmless TTL, TFL Group Companies, all members of the Sponsor Group, a Replacement Service Provider and their respective directors, officers and employees in full and on demand, from and against any and all liabilities, claims, demands, damages, Losses (as defined in the Contract) or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by them arising out of or in connection with any breach of the warranty set out at paragraph 3.6 (above).

3.8 The Sub-Contractor shall comply with its obligations set out in Schedule 1.

#### 4. **Step-in Action**

4.1 In the event that TTL 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 TTL for all purposes as though it was the Service Provider 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 TTL to assist in relation to such Step-in Action.

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

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

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

4.5 TTL 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 TTL taking Step-in Action.

## 5. **Novation**

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

5.2 The New Service Provider (or TTL) 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 TTL shall procure that the New Service Provider (or TTL) 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 TTL 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; 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.

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 Trading Limited

For the attention of: [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) Name:  [X]

For the attention of:  [X]

Address:  [X]

Facsimile number:  [X]

E-mail address:  [X]

(c) Name:  [X]

For the attention of:  [X]

Address:  [X]

Facsimile number:  [X]

E-mail address:  [X]

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 Third Parties Act.

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 Third Parties Act 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.

## SCHEDULE 1

### CONFIDENTIALITY UNDERTAKING

#### THE PARTIES AGREE THAT:

##### Definitions

1. In this Schedule, unless the context indicates otherwise:
  - 1.1 “**Business Day**” means any day excluding Saturdays, Sundays or public or bank holidays in England;
  - 1.2 “**Business Purpose**” means the purpose that is described in the attached Appendix;
  - 1.3 “**Confidential Information**” means all information (whether commercial, financial, technical or otherwise and however recorded, or preserved) that by its nature may reasonably be regarded as confidential or which is marked or designated, either expressly or by necessary implication as confidential relating to any member of the TfL Group and that is disclosed to the Sub-Contractor in connection with the Business Purpose;
  - 1.4 “**Information Supplier**” means that member of the TfL Group who has disclosed the Confidential Information; and
  - 1.5 “**TfL Group**” means Transport for London 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 Transport for London or any such subsidiary.

##### Confidentiality Obligations

2. In connection with the Business Purpose, the Information Supplier intends to disclose Confidential Information to the Sub-Contractor and in consideration of the Information Supplier disclosing the Confidential Information to the Sub-Contractor, the Sub-Contractor agrees to be bound by the terms and conditions set out in this Schedule.
3. The Sub-Contractor acknowledges that the Confidential Information is of a proprietary and confidential nature and the Sub-Contractor undertakes:
  - 3.1 to treat all the Confidential Information as confidential;
  - 3.2 not to use or exploit the Confidential Information in any way except for the Business Purpose;
  - 3.3 not without the Information Supplier’s prior written consent in each case to communicate or disclose any part of the Confidential Information to any person except:

- 3.3.1 to directors, officers and employees of the Sub-Contractor on a need to know basis who are directly connected with the Business Purpose;
- 3.3.2 to third parties engaged by the Sub-Contractor who are directly connected with the Business Purpose and who have been authorised in writing by the Information Supplier to receive the Confidential Information prior to disclosure;
- 3.3.3 the Sub-Contractor's auditors and any other persons or bodies having a legal right or duty to know the Confidential Information in connection with the business of the Sub-Contractor;
- 3.4 to notify the Information Supplier as soon as practicable if it is required to disclose the Confidential Information under Paragraph 3.3.3 and to take account of the Information Supplier's reasonable requirements in relation to such disclosure;
- 3.5 to ensure that all persons and bodies mentioned in Paragraphs 3.3.1 to 3.3.3 are made aware, prior to the disclosure of the Confidential Information, of the confidential nature of that information, that they owe a duty of confidence to the Information Supplier, and they agree to hold that information in confidence in accordance with the terms of this Schedule. The Sub-Contractor must use its best endeavours to ensure that such persons and bodies comply with such obligations;
- 3.6 not to use, copy, transform, reduce to writing or circulate the Confidential Information within its own organisation except solely to the extent necessary in connection with the Business Purpose or any other purpose authorised in writing by the Information Supplier;
- 3.7 not to use the Confidential Information in any way which would be harmful to any member of the TfL Group;
- 3.8 to apply and maintain the same security measures and degree of care to the Confidential Information as the Sub-Contractor applies to its own Confidential Information, which the Sub-Contractor warrants as providing adequate protection from unauthorised access, use and misappropriation; and
- 3.9 to notify the Information Supplier promptly of any unauthorised use, copying or disclosure of the Confidential Information of which the Sub-Contractor becomes aware and to provide all reasonable assistance to the Information Supplier to terminate such unauthorised use and/or disclosure.

## **Exceptions**

- 4. The obligations of confidentiality in Paragraph 3 shall not apply where the Confidential Information:
  - 4.1 is or has come into the public domain through no fault of the Sub-Contractor, its employees, agents or sub-contractors;

- 4.2 is lawfully received from an independent third party without any restriction and without any obligation of confidentiality;
- 4.3 is independently developed by the Sub-Contractor without access to, or knowledge of, or use of, the Confidential Information; or
- 4.4 is required by law or by order of a court of competent jurisdiction to be disclosed.

## **Materials**

- 5. All Confidential Information shall remain the property of the Information Supplier and must not be copied or reproduced in whole or in part without the Information Supplier's prior written consent. The Information Supplier reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of the Information Supplier's Confidential Information are granted to the Sub-Contractor and no obligations are imposed on the Information Supplier other than those expressly stated in this Schedule.
- 6. At the Information Supplier's request, and in any event upon the completion of the Business Purpose, the Sub-Contractor must:
  - (a) promptly destroy or return to the Information Supplier all materials containing, incorporating or based on the Confidential Information supplied by the Information Supplier;
  - (b) erase all Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and
  - (c) certify, in writing, within 14 days of such request or completion of the Business Purpose, that it has fully complied with its obligations under this Paragraph.
- 7. The Sub-Contractor shall comply with all the requirements of any Act of Parliament, statutory instrument or order or any other regulation having the force of law or bye-law and all regulatory requirements relevant to its business from time to time in force, which are or may become applicable to the obligations of the Parties under this Schedule.

## **Reservation of Rights**

- 8. Except as expressly stated in this Schedule, the Information Supplier makes no express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.
- 9. The Sub-Contractor acknowledges that damages would not be an adequate remedy for any breach of this Agreement and that (without prejudice to any other rights or remedies that the Information Supplier may be entitled to as a matter of law), the Information Supplier will be entitled to the remedies of injunction, specific performance, and other equitable relief to enforce the provisions of this Schedule and no proof of special damages shall be necessary for the enforcement of the provisions of this Schedule.

## Termination

10. If either Party decides no longer to be involved with the Business Purpose, it shall notify the other Party in writing giving 30 days' notice. The obligations of each Party shall, notwithstanding any earlier termination of negotiations or discussions between the Parties in relation to the Business Purpose, continue for a period of 6 years from the termination of the Sub-Contract.
11. Neither the termination of the Sub-Contract for any reason, nor the completion of the Business Purpose shall affect the Sub-Contractor's obligations or the Information Supplier's rights under this Schedule.

## Records and audit

- 12.1 The Sub-Contractor shall until 6 years after the termination of the Sub-Contract maintain a complete and correct set of records pertaining to all activities relating to the performance of the Sub-Contractor's obligations under this Schedule (the "**Records**"). The Information Supplier has the right to audit the Records on giving reasonable notice to the Sub-Contractor to ascertain the Sub-Contractor's conformance with its obligations under this Schedule and to notify the Sub-Contractor of any non-conformance. Upon receipt of such notification, the Sub-Contractor will take all steps necessary to ensure conformance.
- 12.2 Any audit or inspection pursuant to Paragraph 12.1 shall not relieve the Sub-Contractor from any obligation under this Schedule or prejudice any of the Information Supplier's rights, powers or remedies against the Sub-Contractor.

## General

13. The Sub-Contractor must not make or permit others to make any reference to this Deed, the Confidential Information, or use the name of any member of the TfL Group in any public announcements, promotional, marketing or sales materials or efforts without the prior written consent of the Information Supplier, except as required by law or any governmental or regulatory authority or competent jurisdiction.
14. The Sub-Contractor shall indemnify the Information Supplier in respect of all losses, damages, claims and expenses of whatsoever nature arising out of or in connection with any wrongful disclosure or misuse of the Confidential Information.
15. If and to the extent that the Confidential Information includes any personal data (as defined in the Data Protection Act 1998 ("**DPA**")), the Sub-Contractor undertakes to comply with all of its obligations under the DPA and to process such data only in accordance with instructions from the Information Supplier. The Sub-Contractor shall take appropriate technical and organisational security measures that are satisfactory to the Information Supplier against any unauthorised or unlawful processing of such data and against accidental loss, destruction of, or damage to such data.
17. This Deed does not constitute a licence to use the Confidential Information except to the extent that such use is necessary in connection with the Business Purpose or any other purpose authorised in writing by the Information Supplier.

**Appendix  
Business Purpose**

**[insert business purpose]**

**IN WITNESS** whereof the parties have executed and delivered this Deed as a Deed on the date first before written.

**THE COMMON SEAL** of **TRANSPORT TRADING LIMITED** was hereunto affixed.

)  
)

Authenticated by [Secretary/Assistant Secretary/Commissioner/Chief Officer (delete as appropriate)]

**EXECUTED** as a **DEED** [(but not delivered until )  
the date hereof)] by **[X]** )  
acting by )

.....

Director

.....

Secretary

**EXECUTED** as a **DEED** [(but not delivered until )  
the date hereof)] by **[Service Provider]** )  
acting by )

.....

Director

.....

Secretary

**EXECUTED** as a **DEED** [(but not delivered until )  
the date hereof)] by **[Sub-Contractor]** )  
acting by )

.....

Director

.....

Secretary

**ANNEX 1**  
**Deed of Novation**

DATED

[ ]

(1) ("**Service Provider** ")

and

(2) ("**New Service Provider**")

and

(3) ("**Sub-Contractor**")

---

**DEED OF NOVATION**

---

**THIS DEED OF NOVATION** is made on [ ]

**BETWEEN**

- (1) [ ]  (the "**Service Provider**")
- (2) [ ] (the "**New Service Provider**")
- (3) [ ]  (the "**Sub-Contractor**")

**BACKGROUND**

- (1) This deed of novation ("**Deed of Novation**") is supplemental to the Sub-Contract dated [ ] between the Service Provider and the Sub-Contractor.
- (2) Pursuant to clause 3.1 of a Collateral Deed between Transport Trading Limited ("**TTL**"), the Service Provider and the Sub-Contractor dated [ ]  the Serv Provider, New Service Provider and Sub-Contractor are required to enter into this Deed of Novation.
- (3) The Service Provider 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 Service Provider 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 Service Provider.

**THE PARTIES AGREE AS FOLLOWS:**

1. **Purpose**

Save as provided in clauses 3, 4 and 5, the Service Provider 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 Service Provider; 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 Service Provider 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 Service Provider may have against the other relating to matters arising prior to the Effective Date.

#### 5. **Indemnity**

- 5.1 The Service Provider 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 Service Provider and keep the Service Provider fully indemnified at all times against any loss, liability, damage, expenses or costs suffered or incurred by the 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 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; 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 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 )  
**[X]** acting by )

Director

Secretary

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

Director

Secretary

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

Director

Secretary