



Schedule 14 - Property Documents

CHANGE HISTORY

Version	Description	Author	Document Number
5.0	Execution version	TfL	75252644.7

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Part A – Draft Concessionaire Wayleave Agreement

Wayleave Agreement

Dated

Between

- (1) [TfL group company] of [address]) ("TfL");
- (2) **Transport Trading Limited**, a company registered in England and Wales under company number 03914810 of 5 Endeavour Square, London, United Kingdom E20 1JN ("**TTL**"); and
- (3) [DN: delete if property is not subject to leases to third parties.] [[**Tenant name**] of [address] (the "**Tenant**"); and]
- (4) [**Insert name of concessionaire**] (Company Number [number]) whose registered office is at [address] (the "**Concessionaire**");

Recitals

- A TTL and the Concessionaire have entered into the Concession Agreement which requires / permits the grant of Wayleave Agreements to the Concessionaire.
- B TfL is the owner of the Wayleave Space with either a freehold or leasehold interest in them.
- C The Concessionaire has requested the right to install, use, inspect, maintain, alter, repair, dismantle and remove the Apparatus over the Wayleave Space.
- D TfL has agreed to grant the Concessionaire's Rights on the terms and conditions in this Wayleave Agreement.
- E [DN: delete if property is not subject to leases to third parties.] [The Tenant is party to this Wayleave Agreement to provide its consent to it.]

It is agreed:

1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Wayleave Agreement.

Apparatus means the Telecommunications Infrastructure described in the Low Level Design(s) identified in Schedule 3.

Code means the Electronic Communications Code set out in Schedule 3A to the Communications Act 2003.

Concession Agreement means the agreement between TTL and the Concessionaire dated [insert date] relating to the commercialisation of TfL assets for the purposes of providing telecommunications services.

Concessionaire Wayleave Agreement has the same meaning as in the Concession Agreement.

Concessionaire's Obligations means the obligations of the Concessionaire set out in the Concession Agreement.

Concessionaire's Rights means the rights set out in Schedule 1.

Law has the same meaning as in the Concession Agreement.

Low Level Design has the same meaning as in the Concession Agreement.

Property means any property within the estate of TfL which is necessary for the installation of the Apparatus pursuant to the terms of this Wayleave Agreement and the Concession Agreement, and each and every part of such property, and reference to Property shall be read and construed as being references to each such Property or the relevant Property as applicable.

[DN: delete if TfL is freeholder.] **Superior Landlord** means the landlord of the Superior Lease from time to time.]

[DN: delete if TfL is freeholder.] **Superior Lease** means the lease dated [] made between (1) [] and (2) [] under which TfL has an interest in the Property.]

Standards has the same meaning as in the Concession Agreement.

Telecommunications Infrastructure has the same meaning as in the Concession Agreement.

TfL Group has the same meaning as in the Concession Agreement.

TfL's Rights means the rights set out in Schedule 2.

Wayleave Space means the space(s) shown on the Low Level Design(s) referred to in the table at Schedule 3, and Wayleave Space shall mean any of them.

- 1.2 All of Clause 1.3 (Definitions and Interpretation) of the Concession Agreement applies to this Wayleave Agreement except Clauses 1.3(h) and (j).
- 1.3 Any obligation in this Wayleave Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.4 In the event of there being any conflict between the provisions of this Wayleave Agreement and the Concession Agreement, the provisions of the Concession Agreement shall prevail.

2 [Termination of Previous Wayleave Agreements]

[Use this clause only if this Wayleave Agreement replaces an earlier wayleave agreement.]

- 2.1 This Wayleave Agreement is granted in consideration of the termination of the wayleave agreement between (1) TfL, (2) TTL and (3) the Concessionaire [and other parties] dated [] relating to [detail of LLD] (the "**Previous Wayleave Agreement**").
- 2.2 The parties release each other from all rights, actions, proceedings, liabilities, claims and demands arising from all breaches of any of the covenants, agreements and conditions

contained in or arising under the Previous Wayleave Agreement and on their respective parts to be observed and performed.]

3 Grant

- 3.1 In consideration of the Concessionaire's Obligations TfL grants to the Concessionaire the Concessionaire's Rights.
- 3.2 The Concessionaire's Rights are granted subject to TfL's Rights and any other rights of TfL in relation to the Property whether or not referred to in this Wayleave Agreement.
- 3.3 The grant in clause 3.1 takes effect as the grant of a separate Wayleave Agreement in respect of each Wayleave Space, and references in this Wayleave Agreement to "this Wayleave Agreement" shall be read and construed respectively as being references to each separate agreement and to the terms of each such agreement.

4 Concessionaire's Obligations

The Concessionaire agrees to carry out the Concessionaire's Obligations.

5 Reservation of rights

TfL reserves to itself TfL's Rights.

6 Termination

- 6.1 This Wayleave Agreement shall end on the expiry or termination of the Concession Agreement, howsoever determined.
- 6.2 In the event that this Wayleave Agreement is subject to the provisions of the Code, this Wayleave Agreement will terminate on the expiry of the requisite notice given by TfL to the Concessionaire in accordance with the termination provisions of the Code.
- 6.3 Termination of this Wayleave Agreement shall not affect the rights of either party in connection with any breach of any obligation under this Wayleave Agreement which existed at or before the date of termination.

7 Insurance

The Concessionaire must comply with the requirements of Schedule 2.5 (Insurance Requirements) of the Concession Agreement.

8 Indemnity

The indemnity provisions of Clause 27 (General Indemnity) of the Concession Agreement apply to this Wayleave Agreement.

9 Limitation of liability

- 9.1 The provisions of Clause 26 (Limitations on Liability) of the Concessionaire Agreement apply to this Wayleave Agreement.
- 9.2 For the avoidance of doubt:

- (a) any liability of the Concessionaire arising out of or in connection with this Wayleave Agreement or any other Concessionaire Wayleave Agreement granted pursuant to the Concession Agreement shall count towards any of the Concessionaire's limitation of liability set out in Clause 26 (Limitations on Liability) of the Concession Agreement;
- (b) any liability of TfL and/or TTL arising out of or in connection with this Wayleave Agreement or any other Concessionaire Wayleave Agreement granted pursuant to the Concession Agreement shall count towards TTL's limitation of liability set out in Clause 26.9 (TTL Financial and Other Limits) of the Concession Agreement.

10 Notices

- 10.1 Clauses 49.1 to 49.4 (Notices) (inclusive) of the Concession Agreement apply to this Wayleave Agreement.
- 10.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11 Licence only

The parties acknowledge that:

- (a) no relationship of landlord and tenant is created between the parties to this Wayleave Agreement;
- (b) TfL retains control, possession and management of the Wayleave Space and the Concessionaire has no right to exclusive possession nor to exclude TfL from the Wayleave Space;
- (c) the Concessionaire's Rights granted by this Wayleave Agreement are personal to the Concessionaire and are not assignable and the Concessionaire's Rights may only be exercised by the Concessionaire, its employees, contractors and agents;
- (d) this Wayleave Agreement confers no easement; and
- (e) the Concessionaire may not hold this Wayleave Agreement on trust for another party.

12 Rights of third parties

- 12.1 Subject to clause 12.2, a person who is not a party to this Wayleave Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Wayleave Agreement.
- 12.2 TfL, or any other member of the TfL Group or successors (statutory or otherwise), may enforce any term of this Wayleave Agreement.

13 [Superior Lease

[DN: delete if TfL is freeholder.]

The Concessionaire shall, insofar as they are applicable to the Wayleave Space, comply with the covenants on the part of the tenant, and be bound by the other provisions, of the Superior Lease.]

14 [Tenant's Consent

DN: delete if property is not subject to leases to third parties.]

The Tenant consents to the grant of this Wayleave Agreement.]

15 Severance

In the event that one or more of the provisions of this Wayleave Agreement shall be invalidated for any reason by a court of competent jurisdiction, any provision so invalidated shall be deemed to be separable from the others and the remaining provisions shall continue to be valid and fully enforceable.

16 Governing law and jurisdiction

The provisions of Clauses 50 (Disputes) and 51 (Governing Law and Jurisdiction) of the Concession Agreement apply to this Wayleave Agreement.

This document has been signed by the parties.

Schedule 1 – The Concessionaire's Rights

TfL grants the following rights for the Concessionaire and those authorised by it, at times to be agreed with TfL, subject at all times to the Standards, and in common with TfL and other persons having the same or similar rights to enter the Property with plant and equipment (with vehicles only where it is suitable to do so at the Property), at the Concessionaire's expense and in a good, proper and workmanlike manner.

1 Install and use Apparatus

The right to enter any part of the Property which it is necessary to enter to install the Apparatus over the Wayleave Space and afterwards to use, inspect, maintain, alter, repair, renew, connect to, replace, dismantle the Apparatus ensuring that on each occasion that the Property is reinstated and left in a neat and tidy condition.

Schedule 2 – TfL's Rights

TfL reserves the following rights for itself, its successors in title or any other member of the TfL Group [and any Superior Landlord] and all other persons authorised by it to benefit from the same.

1 Right to repair services, etc.

The right to enter onto the Wayleave Space at any time to lay, connect into, inspect, use, repair, maintain, renew or replace any services, service media, structures or facilities on any part of the Property provided that in so doing TfL will cause as little interference as is reasonably practicable to the exercise of the Concessionaire's Rights by the Concessionaire.

2 Right to build on the Property

The right to use any part of the Property as TfL thinks fit, or to build on or develop any part of the Property, provided that any such use or works do not interfere with, or obstruct, the exercise of the Concessionaire's Rights by the Concessionaire.

Schedule 3 – Low Level Designs

Low Level Design Document Name	Low Level Design Reference	Low Level Design Version Number

Signed by)
for and on behalf of TfL)

Signed by)
for and on behalf of TTL)

Signed by)
for and on behalf of the Concessionaire)

[DN: delete if property is not subject to leases to third parties.]
Signed by)
for and on behalf of the Tenant)

Part B – Draft Operator Wayleave Agreement

Wayleave Agreement

Dated

Between

- (1) [TfL group company] of [address]) ("TfL");
- (2) **Transport Trading Limited**, a company registered in England and Wales under company number 03914810 of 5 Endeavour Square, London, United Kingdom E20 1JN ("**TTL**");
- (3) [DN: delete if property is not subject to leases to third parties.] [[**Tenant name**] of [address] (the "**Tenant**");]
- (4) [**Insert name of concessionaire**] (Company Number [number]) whose registered office is at [address] (the "**Concessionaire**"); and
- (5) [**Insert name of operator**] (Company Number [number]) whose registered office is at [address] (the "**Operator**").

Recitals

- A TTL and the Concessionaire have entered into the Concession Agreement which requires / permits the grant of Wayleave Agreements to the Operator.
- B TfL is the owner of the Wayleave Space with either a freehold or leasehold interest in them.
- C The Operator has requested the right to install, use, inspect, maintain, alter, repair, dismantle and remove the Apparatus over the Wayleave Space.
- D TfL is party to this Wayleave Agreement for the purposes of granting the Operator's Rights on the terms and conditions in this Wayleave Agreement.
- E [DN: delete if property is not subject to leases to third parties.] [The Tenant is party to this Wayleave Agreement to provide its consent to it.]

It is agreed:

1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in Wayleave Agreement.

Apparatus means the telecommunications infrastructure described in the Low Level Design(s).

Code means the Electronic Communications Code set out in Schedule 3A to the Communications Act 2003.

Concession Agreement means the agreement between TTL and the Concessionaire dated [insert date] relating to the commercialisation of TfL assets for the purposes of providing telecommunications services.

Concessionaire's Obligations means the obligations set out in Schedule 3.

Concessionaire's Rights means the rights set out in Schedule 1.

Designation Notice means a written notice in which TfL designates the new location of the Wayleave Space.

Law means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Operator is bound to comply.

Low Level Design means the low level design(s) referred to in the table at Schedule 4.

Operator's Obligations means the obligations set out in Schedule 2.

Operator's Rights means the rights set out in Schedule 1.

Property means any property within the estate of TfL which is necessary for the installation of the Apparatus pursuant to the terms of this Wayleave Agreement, and each and every part of such property, and reference to Property shall be read and construed as being references to each such Property or the relevant Property as applicable.

Relocation Works means such works as are necessary to relocate the Apparatus in accordance with a Designation Notice.

Safety Conditions means all health and safety Law applicable to the Apparatus and any rules, guidelines, standards or conditions put in place by TfL from time to time.

[DN: delete if TfL is freeholder.] **Superior Landlord** means the landlord of the Superior Lease from time to time.]

[DN: delete if TfL is freeholder.] **Superior Lease** means the lease dated [] made between (1) [] and (2) [] under which TfL has an interest in the Property.]

TfL Group means Transport for London in its own right and as holding company of all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together with such subsidiaries and reference to any "member of the TfL Group" shall refer to Transport for London or any such subsidiary.

TfL's Rights means the rights set out in Schedule 2.

Third Party Insurance means fully comprehensive public liability insurance with reputable insurers in a sum not less than £10,000,000 (ten million pounds sterling) for each and every claim in respect of legal liability arising in respect of the exercise by the Operator of the Operator's Rights granted by this Wayleave Agreement upon such terms as are first approved in writing by TfL (such approval not to be unreasonably withheld or delayed).

Wayleave Space means the space(s) shown on the Low Level Designs and Wayleave Space shall mean any of them.

1.2 In this Wayleave Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central government body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Wayleave Agreement;
- (h) references to this Wayleave Agreement are references to this Wayleave Agreement as amended from time to time;
- (i) any obligation in this Wayleave Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.

2 [Termination of Previous Wayleave Agreements

[Use this clause only if this Wayleave Agreement replaces an earlier wayleave agreement.]

- 2.1 This Wayleave Agreement is granted in consideration of the termination of the wayleave agreement between (1) TfL, (2) TTL, (3) the Concessionaire and (4) the Operator [and other parties] dated [] relating to [detail of LLD] (the "**Previous Wayleave Agreement**").
- 2.2 The parties release each other from all rights, actions, proceedings, liabilities, claims and demands arising from all breaches of any of the covenants, agreements and conditions contained in or arising under the Previous Wayleave Agreement and on their respective parts to be observed and performed.]

3 Grant

- 3.1 In consideration of the both the Concessionaire's Obligations and the Operator's Obligations TfL grants to the Concessionaire the Concessionaire Rights, and to the Operator the Operator's Rights.
- 3.2 Both the Concessionaire's Rights and the Operator's Rights are granted subject to TfL's Rights and any other rights of TfL in relation to the Property whether or not referred to in this Wayleave Agreement.

- 3.3 Each of the grants in clause 3.1 take effect as the grant of separate Wayleave Agreements in respect of each Wayleave Space, and references in this Wayleave Agreement to "this Wayleave Agreement" shall be read and construed respectively as being references to each separate agreement and to the terms of each such agreement.

4 Concessionaire's Obligations

The Concessionaire agrees to carry out the Concessionaire's Obligations.

5 Operator's Obligations

The Operator agrees to carry out the Operator's Obligations.

6 Reservation of rights

TfL reserves to itself TfL's Rights.

7 Termination

- 7.1 This Wayleave Agreement shall end on the earliest of:

- (a) the expiry of the agreement between the Concessionaire and the Operator pursuant to which the Operator is seeking to install the Apparatus;
- (b) the expiry of not less than five (5) Business Days' notice given by TfL (or the Concessionaire on TfL's behalf) to the Operator at any time on breach of any of the Operator's Obligations contained in this Wayleave Agreement; or
- (c) the expiry of not less than six months' notice given by TfL (or the Concessionaire on TfL's behalf) to the Operator or by the Operator to the Concessionaire (on TfL's behalf).

- 7.2 In the event that this Wayleave Agreement is subject to the provisions of the Code, this Wayleave Agreement will terminate on the expiry of the requisite notice given by TfL to the Operator in accordance with the termination provisions of the Code.

- 7.3 Termination of this Wayleave Agreement shall not affect the rights of any party in connection with any breach of any obligation under this Wayleave Agreement which existed at or before the date of termination.

8 Entry

TfL shall have absolute discretion to prohibit any person or persons from entering the Property if in TfL's opinion such entry is prejudicial to the safe and efficient operation of its undertaking.

9 Yield up

- 9.1 At the expiration or sooner determination of this Wayleave Agreement, the Operator shall quietly and peaceably give up the rights herein contained. Unless otherwise agreed to by TfL, the Operator shall within four (4) months of the end of the term (howsoever determined) remove the Apparatus and make good to the reasonable satisfaction of TfL all damage occasioned to the Property by or in such removal.

- 9.2 In the event that the Operator has not removed the Apparatus within four (4) months of the end of this Wayleave Agreement (howsoever determined):
- (a) the Apparatus and all associated equipment will be considered to have been abandoned by the Operator and the Operator hereby irrevocably permits TfL to store or dispose of any chattels or items which have been left by the Operator;
 - (b) TfL shall not be liable to the Operator by reason of that storage or disposal and the Operator shall indemnify TfL in respect of any claim made by a third party in relation to that storage or disposal; and
 - (c) the Operator shall pay to TfL within fourteen (14) days of written demand all reasonable costs incurred by TfL in relation to this clause 9.2.

10 Insurance

- 10.1 Until such time as the agreement is terminated in accordance with clause 6 the Operator shall maintain the Third Party Insurance and the Operator shall ensure that:
- (a) a copy of this Wayleave Agreement has been produced to and acknowledged by the insurer;
 - (b) all current premiums are paid and up to date;
 - (c) the Operator complies in all respects with the terms of such insurance and does not allow the Third Party Insurance to lapse; and
 - (d) satisfactory evidence is produced to TfL (when reasonably requested) that the Third Party Insurance is valid and subsisting and that all premiums due have been properly paid.
- 10.2 The Operator shall reimburse TfL within seven (7) days of demand the whole of any increased or additional premiums incurred by reason of the exercise by the Operator of the rights conferred by this Wayleave Agreement and payable for the insurance of buildings, contents, consequential loss, third party or public liability relating to or connected with the Property or otherwise.

11 Indemnity

- 11.1 The Operator shall keep TfL indemnified against all liabilities, expenses, costs (including but not limited to any solicitors' or other professionals' costs and expenses), claims, damages and losses (including but not limited to any diminution in the value of TfL's interest in the Property or loss of amenity of the Property) and including (without prejudice to the generality of the forgoing):
- (a) damage to or destruction of the Property or to TfL's transport undertakings and associated property and assets;
 - (b) all losses arising from any interruption in the running of any of TfL's transport undertakings; and
 - (c) any injury to or the death of any person, damage to any property or the infringement, disturbance or destruction of any rights or easements benefiting the Property or TfL's transport undertakings and associated property and assets,

suffered or incurred by TfL arising out of or in connection with the exercise of the Operator's Rights or any breach of any of the Operator's Obligations or any act, default, negligence, omission or fraud of the Operator or its respective workers, contractors, agents or invitees or any other person on the Property with the actual or implied authority of any of them.

12 Limitation of liability

12.1 The provisions of Clause 26 (Limitations on Liability) of the Concession Agreement apply to this Wayleave Agreement.

12.2 For the avoidance of doubt:

- (a) any liability of the Concessionaire arising out of or in connection with this Wayleave Agreement or any other wayleave agreement granted to an operator pursuant to the Concession Agreement shall count towards any of the Concessionaire's limitation of liability set out in Clause 26 (Limitations on Liability) of the Concession Agreement;
- (b) any liability of TfL and/or TTL arising out of or in connection with this Wayleave Agreement or any other wayleave agreement granted to an operator pursuant to the Concession Agreement shall count towards TTL's limitation of liability set out in Clause 26.9 (TTL Financial and Other Limits) of the Concession Agreement; and
- (c) the liability of the Operator shall be subject to the financial limits set out in Clause 26.9 (TTL Financial and Other Limits) of the Concession Agreement and for the purpose of this Wayleave Agreement, any reference to the Concessionaire in Clause 26 (Limitations on Liability) of the Concession Agreement shall be deemed to be a reference to the Operator.

13 Notices

13.1 Any notice given under this Wayleave Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:

- (a) to TfL and TTL at 5 Endeavour Square, London, United Kingdom E20 1JN and marked for the attention of the Head of Legal and [insert name of TfL representative];
- (b) to the Concessionaire at: [ADDRESS] and marked for the attention of [NAME OR POSITION];
- (c) to the Operator at: [ADDRESS] and marked for the attention of [NAME OR POSITION],

or as otherwise specified by the relevant party by notice in writing to each other party.

13.2 Any notice given in accordance with clause 13.1 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the second working day after posting.

13.3 A notice given under this Wayleave Agreement shall not be validly given if sent by email.

- 13.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14 Licence only

- 14.1 The parties acknowledge that:

- (a) no relationship of landlord and tenant is created between the parties to this Wayleave Agreement;
- (b) TfL retains control, possession and management of the Wayleave Space and the neither the Concessionaire nor the Operator has no right to exclusive possession nor to exclude TfL from the Wayleave Space;
- (c) the Operator's Rights granted by this Wayleave Agreement are personal to the Operator and are not assignable and the Operator's Rights may only be exercised by the Operator, its employees, contractors and agents;
- (d) this Wayleave Agreement confers no easement; and
- (e) the Operator may not hold this Wayleave Agreement on trust for another party.

- 14.2 Notwithstanding the provisions of clause 11(c), to the extent the Code applies to this Wayleave Agreement and the Operator wishes to assign the whole or part of it to another party pursuant to the Code, the Operator must enter into an authorised guarantee agreement with TfL which:

- (a) is in respect of all the Operator's covenants of this Wayleave Agreement;
- (b) is in respect of the period beginning with the date the assignee becomes bound by those covenants and ending on the date when the assignee is released from those covenants;
- (c) imposes principal debtor liability on the assignor; and
- (d) is otherwise in a form reasonably required by TfL.

15 Relocation of the Apparatus

- 15.1 From time to time TfL may serve a Designation Notice on the Operator. On receipt of a Designation Notice the Operator shall carry out the Relocation Works.
- 15.2 TfL may serve more than one Designation Notice during the term of this Wayleave Agreement.
- 15.3 A Designation Notice shall give at least one month's notice, save in case of emergency when a Designation Notice may be given forthwith.
- 15.4 The part of the Property newly designated as a Wayleave Space by TfL shall be as convenient for the purposes of the Apparatus as reasonably practicable.
- 15.5 The Operator shall carry out the Relocation Works in a proper and workmanlike manner and in accordance with the Safety Conditions.

- 15.6 The Operator shall complete any Relocation Works as soon as reasonably practicable following service of the relevant Designation Notice.
- 15.7 If the Operator at any time fails to comply with any of its obligations in this clause 15, TfL may, but without prejudice to any other rights of the Owner and without being liable for any damage caused, complete any works permitted or required by this clause and the Operator shall pay to TfL all fees, costs and expenses incurred by TfL in carrying out any such works which, if not paid, shall be recoverable by TfL as a debt.
- 15.8 The parties agree that the operation of this clause 15 shall not constitute an interruption of or interference with the Operator's Rights.
- 15.9 If required by TfL, the Operator shall enter into an agreement of release and grant to record the grant of the Operator's Rights over the newly designated Wayleave Space on the same terms as contained in this Wayleave Agreement and to extinguish the Operator's Rights in respect of the previous Wayleave Space.

16 Rights of third parties

- 16.1 Subject to clause 12.2, a person who is not a party to this Wayleave Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Wayleave Agreement.
- 16.2 TfL, or any other member of the TfL Group or their successors (statutory or otherwise), may enforce any term of this Wayleave Agreement.

17 Severance

In the event that one or more of the provisions of this Wayleave Agreement shall be invalidated for any reason by a court of competent jurisdiction, any provision so invalidated shall be deemed to be separable from the others and the remaining provisions shall continue to be valid and fully enforceable.

18 [Superior Lease

[DN: delete if TfL is freeholder.]

The Operator shall, insofar as they are applicable to the Wayleave Space, comply with the covenants on the part of the tenant, and be bound by the other provisions, of the Superior Lease.]

19 [Tenant's Consent

DN: delete if property is not subject to leases to third parties.]

The Tenant consents to the grant of this Wayleave Agreement.]

20 Governing law and jurisdiction

- 20.1 This Wayleave Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

20.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Wayleave Agreement or its subject matter or formation (including non-contractual disputes or claims).

21 Ownership of Apparatus

For the avoidance of doubt, title to the Apparatus is and remains with the Operator.

This document has been signed by the parties.

Schedule 1 – The Rights Granted

TfL grants the following rights for the Concessionaire and separately for the Operator, and those authorised by them, at times to be agreed with TfL, subject at all times to the Safety Conditions, and in common with TfL and other persons having the same or similar rights to enter the Property with plant and equipment (with vehicles only where it is suitable to do so at the Property), at the Concessionaire's or Operator's expense (as the case may be) and in a good, proper and workmanlike manner.

1 Install and Use Apparatus

The right to enter any part of the Property which it is necessary to enter for either the Concessionaire or the Operator to install the Apparatus over the Wayleave Space and afterwards for either or both of the Concessionaire or the Operator to use, inspect, maintain, alter, repair, renew, connect to, replace, dismantle the Apparatus, ensuring that on each occasion that the Property is reinstated and left in a neat and tidy condition.

Schedule 2 – Operator's Obligations

1 Exercise of Operator's Rights

- 1.1 When exercising any and all of the Operator's Rights the Operator and its contractors, employees and others authorised by it will do so in a good, proper and workmanlike manner and in accordance with the Construction (Design and Management) Regulations 2015 and will comply with all applicable Laws and will ensure that any works are completed as soon as reasonably practicable following commencement.
- 1.2 The Operator shall comply with all Laws, Safety Conditions, specifications, conditions, regulations, security and access requirements and any other requirements and obtain all necessary consents relating to and governing the Property and the Apparatus, including but not limited to the installation and use of the Apparatus and the provision of any test certificate relating to the Apparatus.

2 Damage

The Operator and its employees, contractors, agents and others authorised by it will not cause any damage to the Property or to any property of the owners or occupiers of the Property and shall immediately make good any such damage caused and reinstate the Property to TfL's absolute satisfaction or, at TfL's discretion, pay full compensation to TfL in respect of any damage caused that TfL makes good and any loss caused to TfL due to such damage.

3 Nuisance

The Operator and its employees, contractors, agents and others authorised by it will not cause any nuisance, annoyance or disturbance to TfL or occupiers of the Property or to any other person entitled to rights over the Property.

4 Interference

- 4.1 In exercising the Operator's Rights the Operator and its employees, contractors, agents and others authorised by it shall take all precautions to (1) avoid any interference with the use of

and not obstruct any road, trainline, footpath, cycle path, sewer, drain, watercourse or other accessways or services that may be affected by the Apparatus and the operation of equipment now or at any time after the date of this Wayleave Agreement installed on the Property and (2) deposit any waste, rubbish, soil or other material on any part of the Property.

- 4.2 If TfL can demonstrate to the reasonable satisfaction of the Operator that the Apparatus is causing interference with the operation of any of the ways, services and equipment as described in clause 4.1 the Operator shall immediately switch off the Apparatus and not switch it on again until such interference has been cured.

5 Information

The Operator shall promptly provide such information relating to the Apparatus (any data associated with it), the Properties, the Wayleave Space, or such other matters as TfL (or the Concessionaire) may request at reasonable intervals.

6 Not to enter

The Operator shall not enter the Property for the purposes of this Agreement except in accordance with arrangements approved by TfL and in compliance with the terms of this Wayleave Agreement.

7 To mark Apparatus

The Operator shall mark the Apparatus with such appropriate indicators or markings as TfL may from time to time specify or approve so that the same may readily be distinguished from other apparatus.

8 To maintain Apparatus

The Operator shall maintain the Apparatus at its own expense and under the reasonable supervision of TfL.

Schedule 3 – Concessionaire's Obligations

1 Obligations

The Concessionaire undertakes to TfL that it will, at its own cost:

- (a) when exercising any and all of the Concessionaire's Rights, comply with the terms of the Operator's Obligations as though the word "Concessionaire" was substituted for the word "Operator" and as though such obligations were set out here in full;
- (b) ensure the Operator complies with the terms of, and fulfils the Operator's Obligations set out in this Wayleave Agreement;
- (c) monitor the exercise of the Operator's Rights by the Operator;
- (d) indemnify TfL against any actions, costs, claims, demands or losses as a result of the Operator's failure to perform its obligations under this Wayleave Agreement however the Concessionaire shall not be liable to indemnify for such actions, costs, claims, demands or losses where an Operator is successful in procuring an order from any relevant court or tribunal for the imposition of a new agreement or retention of Apparatus pursuant to the Code;
- (e) take such action as may be necessary or required by TfL in order to:
 - (i) ensure compliance with the terms of this Wayleave Agreement, including but not limited to, applications to the court, and/or carrying out or making good the Operator's Obligations;
 - (ii) terminate this Wayleave Agreement in accordance with clause 6 or in accordance with the provisions of the Code; and
 - (iii) procure the removal of the Apparatus in accordance with this Wayleave Agreement or in accordance with the provisions of the Code;
- (f) take receipt of all notices served by the Operator on TfL and promptly notify TfL of all material notices that affect the Properties, including but not limited to any claims of the Operator made under the Code;
- (g) comply with the terms of, and fulfil its obligations set out in the Concession Agreement insofar as they apply to this Wayleave Agreement; and
- (h) exercise all the proper skill, care and diligence in performing the obligations above.

2 Duty of care

The Concessionaire acknowledges that TfL shall be deemed to have relied on the Concessionaire's proper skill and judgment in respect of those matters relating to this Wayleave Agreement and that the Concessionaire owes to TfL a professional duty of care.

3 Wayleave income

To the extent that any fees are payable by the Operator to the Concessionaire, and the Operator retains any Apparatus at the Properties after the expiry of the Concession

Agreement, the Concessionaire shall hold all sums payable to it by the Operator after the expiry of the Concession Agreement on trust for TfL, and will, within 14 days of request pay such sums to TfL as TfL shall direct.

Schedule 4 – Low Level Designs

Low Level Design Document Name	Low Level Design Reference	Low Level Design Version Number

Schedule 5 – TfL's Rights

TfL reserves the following rights for itself, its successors in title and any other member of the TfL Group [and any Superior Landlord] and all other persons authorised by it to benefit from the same.

1 Right to repair services, etc.

The right to enter onto the Wayleave Space at any time to lay, connect into, inspect, use, repair, maintain, renew or replace any services, service media, structures or facilities on any part of the Property provided that in so doing TfL will cause as little interference as is reasonably practicable to the exercise of the Operator's Rights by the Operator.

2 Right to build on the Property

The right to use any part of the Property as TfL thinks fit, or to build on or develop any part of the Property, provided that any such use or works do not interfere with, or obstruct, the exercise of the Operator's Rights by the Operator.

3 Exercise of TfL's Rights

No party exercising any of TfL's Rights, nor its workers, contractors, agents and professional advisors, shall be liable to the Operator or any other person at the Property for any loss, damage, injury, nuisance or inconvenience arising by reason of its exercising any of TfL's Rights except for:

- (a) physical damage to the Apparatus caused by deliberate or negligent acts of TfL; or
- (b) any loss, damage, injury, nuisance or inconvenience in relation to which the law prevents TfL from excluding liability.

Signed by)
for and on behalf of TfL)

Signed by)
for and on behalf of TTL)

Signed by)
for and on behalf of the Concessionaire)

[DN: delete if this varies a wayleave to only the concessionaire]

Signed by)
for and on behalf of the Operator)

[DN: delete if property is not subject to leases to third parties.]

Signed by)
for and on behalf of the Tenant)

Part C – Draft Wayleave Variation Agreement

Wayleave Variation Agreement

Dated

Between

- (1) [Transport for London group company] of 5 Endeavour Square, London, United Kingdom E20 1JN ("TfL");
- (2) **Transport Trading Limited**, a company registered in England and Wales under company number 03914810 of 5 Endeavour Square, London, United Kingdom E20 1JN ("TTL");
- (3) [DN: delete if property is not subject to leases to third parties.] [[Tenant name] of [address] (the "Tenant");]
- (4) [Concessionaire] (Company Number [number]) whose registered office is at [address] (the "Concessionaire");
- (5) [DN: delete if this varies a wayleave to only the concessionaire] [[Operator] (Company Number [number]) whose registered office is at [address] (the "Operator").]

Recitals

- A TfL and the Concessionaire [and the Operator] are party to a wayleave agreement dated [insert date] (the "**Wayleave Agreement**") which grants the [Concessionaire] [Operator] certain rights in respect of certain Properties.
- B The [Concessionaire] [Operator] now wishes to install additional apparatus and requests that it have the [Concessionaire's Rights] [and the Operator's Rights] over additional properties and TfL has agreed to the [Concessionaire's Rights] [and the Operator's Rights] over those additional properties by way of a variation to the Wayleave Agreement.

It is agreed:

1 Interpretation

In this Wayleave Variation Agreement, capitalised terms have the meaning set out in the Wayleave Agreement unless otherwise defined.

New Apparatus means the Telecommunications Infrastructure described in the Low Level Design referred to in Schedule 1.

New Wayleave Space means the properties described in Schedule 1 and New Wayleave Space means any of them.

Variation Date means the date of this Wayleave Variation Agreement.

2 Variation

- 2.1 The Parties agree to vary the Wayleave Agreement by adding the New Apparatus and the New Wayleave Space to Schedule [3][5] of the Wayleave Agreement.

- 2.2 In accordance with Clause [2.3][3.3] of the Wayleave Agreement, the grant in Clause [2.1][3.1] of the Wayleave Agreement takes effect as the grant of a separate Wayleave Agreement in respect of each New Wayleave Space as set out in Schedule 1 of this Wayleave Variation Agreement, each of which will commence on the Variation Date.
- 2.3 Except as set out in Clause 2.1 of this Wayleave Variation Agreement, the Wayleave Agreement shall continue in full force and effect.

3 Governing law and jurisdiction

- 3.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 3.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 – Amendments to Schedule [3][5] of the Wayleave Agreement

Schedule [3][5] of the Wayleave Agreement is amended to include the following New Apparatus and New Wayleave Space:

Low Level Deign Document Name	Low Level Deign Reference	Low Level Deign Version Number

Signed by)
for and on behalf of TfL)

Signed by)
for and on behalf of TTL)

Signed by)
for and on behalf of the Concessionaire)

[DN: delete if this varies a wayleave to only the concessionaire]

Signed by)
for and on behalf of the Operator)

[DN: delete if property is not subject to leases to third parties.]

Signed by)
for and on behalf of the Tenant)