

SCHEDULE 11

Employees and Key Personnel

1. **Relevant Transfer**

- 1.1 It is acknowledged by TfL and the Service Provider that the commencement of the provision of the Services by the Service Provider may constitute a Relevant Transfer for the purposes of the TUPE Regulations. In accordance with, and pursuant to the provisions of the TUPE Regulations (subject always to the provisions of this Schedule), the transferring employees shall become employees of the Service Provider with effect from the Relevant Transfer date.

2. **Obligations and Indemnities on Commencement**

- 2.1 The Service Provider shall comply with its obligations to inform and/or consult in relation to the transferring employees in connection with the commencement of the provision of the Services, including for the avoidance of doubt providing such information to the Incumbent Service Provider as is necessary for the Incumbent Service Provider to comply with its information and/or consultation duties as set out in the TUPE Regulations. The Service Provider shall indemnify TfL and the Incumbent Service Provider against any losses, costs, expenses (including taxes, management time and legal fees/expenses), liabilities and damages incurred by TfL or the Incumbent Service Provider arising from, as a result of, or otherwise in connection with the Service Provider's failure to comply with this paragraph 2.1.

Service Provider indemnity on Commencement

- 2.2 The Service Provider shall indemnify TfL, the TfL Group and the Incumbent Service Provider and hold TfL, the TfL Group and the Incumbent Service Provider harmless against all and any costs, expenses (including any taxes, management time and legal fees/expenses), liabilities, damages and losses arising from, as a result of or otherwise in connection with any demand, claim, action or proceeding by or from or on behalf of a transferring employee which arises or is alleged to arise or is made against or otherwise incurred or suffered by TfL, the TfL Group or the Incumbent Service Provider:
- (A) by virtue of any actual or alleged act, omission, obligation or liability of the Service Provider or any Sub-Contractor (or any employer to whom the Service Provider or a Sub-Contractor transfers such employee) or any other matter in relation to a transferring employee which arises or occurs on or after the Relevant Transfer date (including for the avoidance of doubt, the termination of that employment (howsoever arising));
 - (B) by virtue of any changes made or proposed by the Service Provider or any Sub-Contractor (or any employer to whom the Service Provider or a Sub-Contractor transfers such employee) in the working conditions or terms of employment of all or any of the transferring employees that taken individually or collectively are to the detriment of all or any of the transferring employees; or
 - (C) by virtue of any rights, obligations or entitlements arising from, out of or in relation to a breach by the Service Provider of the TUPE Regulations.

TfL indemnity on Commencement

2.3 TfL shall indemnify the Service Provider and hold the Service Provider harmless against all and any costs, expenses (including taxes, management time and legal fees/expenses), liabilities, damages and losses arising from, as a result of, or otherwise in connection with any demand, claim, action or proceeding which arises or is alleged to arise or is made against the Service Provider by virtue of any actual or alleged act, omission, obligation or liability of TfL or the Incumbent Service Provider in relation to a transferring employee which arises or occurs prior to the Relevant Transfer date, excluding:

- (A) any claim relating to an obligation to make any payment in respect of the transferring Employee's period of continuous employment prior to the Relevant Transfer date arising from, as a result of, or otherwise in connection with the termination of any transferring employee's employment on or after the Relevant Transfer date;
- (B) any claim relating to the continuation after the Relevant Transfer date of any employment practice, policy, terms or conditions applicable to any transferring employee prior to the Relevant Transfer date,

provided that, in respect of any actual or alleged act, omission, obligation or liability of the Incumbent Service Provider, TfL is only obliged to indemnify the Service Provider pursuant to this paragraph 2.3 to the extent:

- (C) such costs, expenses (including taxes, management time and legal fees/expenses), liabilities, damages and losses described in this paragraph 2.3 are within the scope of any indemnity granted to TfL by the Incumbent Service Provider; and
- (D) having used reasonable endeavours to achieve the same, TfL recovers from the Incumbent Service Provider such costs, expenses (including taxes, management time and legal fees/expenses), liabilities, damages and losses under such indemnity; and
- (E) such costs, expenses (including taxes, management time and legal fees/expenses), liabilities, damages and losses described in this paragraph 2.3 have not and cannot be recovered by the Service Provider pursuant to the provisions of paragraph 6 (*TUPE True-Up*) of Schedule 7 (*Charging and Operational Pricing*).

Assistance with Employment Claims

2.4 If any of the transferring employees or any other person who is or has been, or purports to be or have been, employed in connection with all or any of the services provided by the Incumbent Service Provider, makes a claim against the Service Provider in relation to a matter which arises or occurs prior to the Relevant Transfer date, the Service Provider shall:

- (A) as soon as practicable notify TfL that such claim has been made;
- (B) not seek to compromise the claim or take any action which could reasonably be expected to prejudice the ability to defend the claim without TfL's consent (such consent not to be unreasonably withheld).

- 2.5 The indemnities in paragraph 2.4 are given on the condition that the provisions of paragraph 2.4 shall apply *mutatis mutandis*.

3. **Obligations During The Provision of the Services**

Service Provider's Personnel

- 3.1 The Service Provider will use sufficient, suitable, appropriately qualified and competent individuals in the provision of the Services and will use all reasonable efforts to ensure continuity of the Service Provider's Personnel.
- 3.2 The Service Provider shall ensure that all Service Provider's Personnel having access to Personal Data in respect of which TfL or any company within the TfL Group is the Data Controller, are fully aware of the measures to be taken in accordance with this Agreement when processing Personal Data on behalf of TfL or the TfL Group, including in particular Clause 37 (*Data Protection*).
- 3.3 If TfL, acting reasonably, considers any member of the Service Provider's Personnel (including any Key Personnel) unsatisfactory in any material respect, then TfL may, by written notice to the Service Provider, request the Service Provider to take remedial action in relation to such individual. If within twenty (20) Business Days of such notice TfL reasonably considers that the matter is still unresolved then TfL will have the right, by written notice to the Service Provider, to require the removal of such individual with immediate effect and where the individual concerned is Key Personnel the terms of paragraph 3.10 shall apply. The exercise of this right by TfL will not relieve the Service Provider of its obligations under this Agreement.
- 3.4 If the Service Provider replaces any member of the Service Provider's Personnel (including any Key Personnel) for whatever reason (including for the avoidance of doubt, pursuant to paragraph 3.3 above), the cost of effecting such replacement shall be borne solely by the Service Provider (including, for the avoidance of doubt, any costs of training, induction or other efforts involved in bringing the replacement up to the requisite level of knowledge and skill).
- 3.5 Notwithstanding the foregoing, the Service Provider shall ensure that there are sufficient Service Provider's Personnel available with an appropriate level of knowledge (and who have been involved in providing the Services during the Implementation phase in the case of Service Provider's Personnel who are also transferring employees) during the four (4) week period following the Relevant Transfer date, to resolve any problems arising from the provision of the Services and the operability of the Service in relation thereto.

Key Personnel

- 3.6 Key Personnel shall include personnel of any of the Service Provider's Sub-Contractors where such personnel are identified as critical to the performance of the Services in accordance with the Agreement.
- 3.7 The Service Provider shall make available for the provision of the Services the services of the Key Personnel and shall ensure that each member of Key Personnel devotes their time and effort to the performance of the Services, as set out and to the extent described in Annex 1 to this Schedule. The Service Provider acknowledges that the Key Personnel are essential to the provision of the Services and shall ensure that all Key Personnel have appropriate relevant work experience.

- 3.8 The Service Provider shall take all reasonable steps to ensure it retains the Key Personnel and shall not remove or change Key Personnel without TfL's prior written consent (except that such consent is not required where the removal or change is due to the dismissal for good cause, resignation or long-term illness of any member of Key Personnel).
- 3.9 The Service Provider shall promptly notify TfL if a member of Key Personnel leaves the employment of the Service Provider (including, for the avoidance of doubt, where such member is a secondee to the Service Provider whose secondment ends) or any Sub-Contractor and, unless prevented by law or a pre-existing binding obligation of confidentiality, shall include in such notice the reason for their leaving.
- 3.10 The Service Provider will ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Business Days and shall ensure that, within ten (10) Business Days of his/her commencing work on the Services, any replacement will be fully competent to carry out the tasks assigned to the role. For the avoidance of doubt, nothing in this paragraph 3.10 shall prevent the Service Provider from using temporary staff in the role of Key Personnel while it is recruiting a permanent replacement, provided that the Service Provider complies with all relevant obligations within this Schedule 11 including the provisions of this paragraph 3.10 in respect of such temporary staff.
- 3.11 Before assigning any replacement Key Personnel, the Service Provider will provide TfL with a curriculum vitae and any other information about the individual as requested by TfL.
- 3.12 The Service Provider must obtain approval from TfL prior to permanently replacing any member of its Key Personnel.
- 3.13 The Service Provider shall ensure that the replacement Key Personnel are on a one (1) month probation period from the date of their appointment.
- 3.14 In the event that any person named as one of the Key Personnel is replaced for any reason, then the Service Provider shall allow TfL to reject the new appointee if, during the handover period, TfL determines that the new appointee's performance is not sufficient for the success of the Agreement, in which event, the Service Provider shall appoint a new replacement person within ten (10) Business Days, in respect of whom a handover shall be completed to TfL's satisfaction.
- 3.15 TfL shall from time to time notify the Service Provider of the key points of contact within TfL for the Services.

Service Provider's Personnel – Information and Accrued Liabilities True-Up

- 3.16 The Service Provider shall update and provide to TfL, no later than two (2) weeks following the Effective Date and thereafter within two (2) Business Days of any changes, a manual in such form as is appropriate which shall set out:
- (A) the organisational structure of the Service Provider in relation to the Services; and
 - (B) details of the roles and responsibilities (including reporting lines) and curriculum vitae for all Key Personnel.

- 3.17 During the period after the Relevant Transfer date until the date eighteen (18) months prior to the scheduled expiry of the Term, the Service Provider shall (subject to any relevant Data Protection laws) within twenty (20) Business Days following a request by TfL deliver up, or procure the delivery up, to TfL of certain information regarding the Service Provider's Personnel, as set out in Annex 2 to this Schedule. TfL shall have the right to request such information once per calendar quarter during this period and there shall be no obligation on the Service Provider to update such information or notify TfL of any material changes (except when responding to a further request for information by TfL in the next quarter or any time thereafter).
- 3.18 At any time in the period after the date 18 (eighteen) months prior to the scheduled expiry of the Term, the Service Provider shall (subject to any relevant Data Protection laws) within twenty (20) Business Days following a request by TfL deliver up, or procure the delivery up, to TfL of the information regarding the Service Provider's Personnel, as set out in Annex 3 to this Schedule. If any of the information provided pursuant to this paragraph 3.18 changes in any material respect, the Service Provider shall notify TfL promptly and provide to TfL an update set of information to reflect such change(s).
- 3.19 In supplying information to TfL pursuant to paragraph 3.17 and/or 3.18 the Service Provider warrants to TfL the accuracy of the information and consents to the disclosure of such information to any actual or prospective new Service Provider and to TfL's professional advisers.
- 3.20 No later than ten (10) Business Days following the expiry or termination of this Agreement, the Service Provider shall provide or procure the provision to TfL or any new Service Provider (as appropriate) updated payroll information following the final payroll run and P45 details in respect of the re-transferring employees (if any) and:
- (A) agrees to pay or to provide to the re-transferring employees (if any) all emoluments due or accrued in the period up to but excluding the termination date or expiry date (as applicable) and shall pay to the new Service Provider or TfL (as applicable) an apportioned sum in respect of accrued but untaken holiday pay (less any holiday pay for holiday taken but not yet accrued) and accrued but unpaid bonuses, benefits and any and all other accrued, but unpaid liabilities or costs in respect of the re-transferring employees as at the termination date or expiry date (as applicable); and
 - (B) shall provide personnel records relevant to any re-transferring employees (if any) requested by TfL.

4. **Obligations and Indemnities on and Leading up to Expiry or Termination**

Service Provider Obligations

- 4.1 Eighteen (18) months prior to the expiry or termination of the Agreement, the Service Provider shall not, and shall procure that none of its Sub-Contractors shall, without the written permission of TfL:
- (A) amend the rate of remuneration (including, without limitation, eligibility to receive payment pursuant to the expiry or termination of this Agreement) or any other terms of employment or engagement of the Service Provider's Personnel, including without limitation the terms of any pension entitlement. TfL's consent shall not be unreasonably withheld or delayed where such

- amendments do not exceed the mean amendments made to the relevant grades across the whole of the Service Provider's or Sub-Contractor's business for that year, as certified by the Human Resources Director of the Service Provider or Sub-Contractor (as appropriate) acting in good faith;
- (B) redeploy or terminate without good cause the employment or engagement of any of the Service Provider's Personnel;
 - (C) recruit any person for employment or engagement in connection with, or assign any additional member of current staff to, all or any of the Services provided under this Agreement. Subject to the provisions of paragraphs 3.1 and 3.8, TfL's consent shall not be unreasonably withheld or delayed where the Service Provider is replacing Service Provider's Personnel on a one-for-one basis with appropriately skilled employees on substantially similar remuneration to the member(s) of Service Provider's Personnel being replaced; or
 - (D) amend any existing, compulsory or voluntary collective obligation or enter into any new collective obligations.

Service Provider Obligations (Co-Operation and Satisfaction of Liabilities)

4.2 The Service Provider shall:

- (A) co-operate and procure co-operation from any other employer (save for TfL or any actual or prospective new Service Provider) in the orderly management of issues relating to the Service Provider's Personnel in connection with the expiry or of this Agreement;
- (B) comply promptly and procure prompt compliance from any other employer (save for TfL or any actual or prospective new Service Provider) with all reasonable instructions from TfL with regard to the Service Provider's Personnel in connection with the expiry or termination of this Agreement;
- (C) comply with its obligations, if any, to inform and/or consult with the Service Provider's Personnel pursuant to the TUPE Regulations in connection with the expiry or termination of this Agreement and shall indemnify TfL and/or any new Service Provider against any losses, costs, expenses (including taxes, management time and legal fees/expenses), liabilities and damages incurred or suffered by TfL and/or any new Service Provider arising from, as a result of, or otherwise in connection with the Service Provider's failure to comply with such obligations;
- (D) enable and assist TfL and/or any new Service Provider (as appropriate), if requested, to inform and consult or communicate with and meet any relevant Service Provider's Personnel or their trade union or other representatives;
- (E) insofar as it is within the Service Provider's control and without prejudice to the Service Provider's obligations to comply with its obligations under this Agreement (including but not limited to compliance with law and the Exit Plan), take all commercially reasonable steps to reduce the circumstances under which TfL or any new Service Provider may incur cost in connection with the Service Provider's Personnel as a result of the expiry or termination of this Agreement; and

(F) procure that whenever TfL so requires on reasonable notice at any time during the Implementation phase and for three (3) months following the Operational Commencement Date of this Agreement, TfL and any new Service Provider(s) will be given access to and be allowed to consult with any person, consultant or employee who, at that time:

- (1) is one of the Service Provider's Personnel; and
- (2) was at any time employed or engaged by the Service Provider or its Sub-Contractors in order to provide the Services to TfL under this Agreement;

and such access and consultation will be provided free of charge (subject to TfL's requirements being reasonable) for the time spent by the Service Provider and/or the Service Provider's Personnel on such consultation. The Service Provider will further procure that all such persons co-operate with TfL's requests.

4.3 The Service Provider agrees to satisfy, and will procure that any Sub-Contractor will satisfy, all of its obligations up to expiry or of this Agreement (as applicable) with respect to all outgoings and accrued liabilities in respect of the Service Provider's Personnel (including for the avoidance of doubt any and all accrued but untaken holiday, and any accrued but unpaid bonus amounts, benefits and/or other employment related costs, which accrued prior to the further transfer date) and in accordance with paragraph 3.20(A) above, shall pay to the new Service Provider or TfL or any company within the TfL Group (as applicable) an apportioned sum in respect of any outstanding accrued sums.

Service Provider Indemnities on Exit

4.4 The Service Provider shall indemnify TfL, the TfL Group and any new Service Provider and hold TfL, the TfL Group and any new Service Provider harmless against all and any costs, expenses (including taxes, management time and legal fees/expenses), liabilities, damages and losses arising from, as a result of or otherwise in connection with any demand, claim, action or proceeding which arises or is alleged to arise or is made against or incurred or suffered by TfL or any new Service Provider by virtue of the operation of the TUPE Regulations or otherwise in connection with the performance of the Services and/or expiry or termination of this Agreement or the termination of such employment or engagement (including without limitation, any dismissal or alleged dismissal of such person by the Service Provider, a Sub-Contractor or otherwise) and that is made or brought by or on behalf of:

- (A) one or more of the Service Provider's Personnel or former Service Provider's Personnel (other than a transferring employee or re-transferring employee) and relates to facts or events occurring at any time whether before, on or after the further transfer date;
- (B) a transferring employee (who is not a re-transferring employee) and relates to facts or events occurring at any time after the Relevant Transfer date;
- (C) a re-transferring employee and relates to facts or events occurring at any time prior to the further transfer date (except that in respect of any re-transferring employee who was originally a transferring employee, the indemnity shall be limited to any time after the Relevant Transfer date); and

- (D) a trade union and/or appropriate representatives in connection with all or any of the Service Provider's Personnel or former Service Provider's Personnel and which relates to facts or events occurring at any time prior to the further transfer date (including without limitation in relation to obligations to inform and consult or any rights, entitlements or liabilities under any collective obligations) save to the extent any such demand, claim, action or proceeding arises as a result of any act or omission of TfL or any new Service Provider.
- 4.5 If on the expiry or termination of this Agreement, the TUPE Regulations do not apply, the Service Provider shall indemnify TfL, the TfL Group and any new Service Provider and hold TfL, the TfL Group and any new Service Provider harmless against all and any costs, expenses (including taxes, management time and legal fees/expenses), liabilities, damages and losses arising from, as a result of or otherwise in connection with any demand, claim, action or proceeding which arises or is alleged to arise or is made against or incurred or suffered by TfL, the TfL Group or any new Service Provider and is made or brought by:
- (A) one or more of the Service Provider's Personnel or former Service Provider's Personnel and relates to facts or events occurring at any time (except that in respect of any Service Provider's Personnel or former Service Provider's Personnel who was originally a transferring employee, the indemnity shall be limited to any time after the Relevant Transfer date), in connection with such person's employment or engagement in respect of the provision of the Services or the termination of such employment or engagement (including without limitation any dismissal or alleged dismissal of such person by the Service Provider or a Sub-Contractor) or otherwise; or
- (B) a trade union and/or appropriate representatives in connection with all or any of the Service Provider's Personnel or former Service Provider's Personnel and relates to facts or events occurring at any time (except that in respect of any Service Provider's Personnel or former Service Provider's Personnel who was originally a transferring employee, the indemnity shall be limited to any time after the Relevant Transfer date), including without limitation in relation to obligations to inform and consult on any rights, entitlements or liabilities under any collective obligations.

Annex 1

Employees and Key Personnel

Service Provider’s Key Personnel:

Role	Description	Name of Key Personnel	Contact details (email address and direct telephone number)
TfL Account Manager	Responsibilities include ensuring that TfL are satisfied with the service they receive from SEA. Escalation point of contact for TfL.	[REDACTED]	[REDACTED]
DTES/PES Development Project Manager	The DTES/PES Development Project Manager will manage the DTES/PES development team and will have responsibility for the ensuring that the DTES/PES system is delivered on time. They will be the point of contact for the TfL project team and will work with TfL and other parties such as the supplier of the PES Mobile Application.	[REDACTED]	[REDACTED]
DTES/PES Support Project Manager	The DTES/PES Support Project Manager will have overall responsibility for maintaining the DTES/PES system and will report to the TfL Business As Usual (BAU) team.	[REDACTED]	[REDACTED]
DTES/PES Design Authority	The DTES/PES Design Authority will have overall responsibility for the DTES/PES solution and will take the lead design role for all DTES enhancements and for the PES solution.	[REDACTED]	[REDACTED]
DTES/PES Security Manager	The DTES/PES Security Manager will have overall responsibility for assuring and auditing the security of the DTES/PES system.	[REDACTED]	[REDACTED]
DTES/PES Test Manager	The DTES/PES Test Manager will manage all DTES/PES test activities including developing and executing test plans for DTES and extending test plans to incorporate PES.	[REDACTED]	[REDACTED]
Commercial Executive	Authorised to accept contracts and contract change on behalf of SEA.	[REDACTED]	[REDACTED]

Annex 2

Service Provider's Personnel – Partial Information

Number	Visa	Place of Work	Job title / Function	Grade	Reports to	Hours of Work	Salary	Proportion of Time Spent working on the Services (last 12 months)
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Annex 3

Service Provider's Personnel – Full Information

Number	Employer	Name	Gender	Date of Birth	Visa	Place of Work	Job title / Function	Grade	Reports to	Hours of Work	Date of commencement of continuous employment
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											

Annex 3 (continued)

Number	Date joined SP (if TUPE transferred)	Salary	Bonuses / Commissions	Other Benefits (Pension / Insurance)	Holiday Entitlement (Days)	Notice Period (weeks / months)	Restrictive Covenants (type/duration)	Termination Date (if known / if fixed term)	Miscellaneous - any employee specific terms / comments*	Proportion of Time Spent working on the Services (last 12 months)
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										

* This should include any information regarding any current or recent (within the last two years) disciplinary, grievance, tribunal or court action taken by/against the employee, any unexpired written disciplinary warnings, any long-term leave which the employee is currently on or likely to be on in the foreseeable future (sick, maternity, parental or adoption) details of any collective agreements which directly affect the employee and any intention indicated by the employee that he/she will object to a future TUPE transfer to the new Service Provider.