

Schedule 21.1 – Form of Confidentiality Undertaking

TfL RESTRICTED

Restricted to: TfL Group, Contractor Group and Consultants with NDA

Copyright Transport for London 2014

Contents

Contents 2

1 Definitions 3

2 Confidentiality 4

3 Return or Destruction of Confidential Information 6

4 Remedies 6

5 Indemnity 6

6 No Representations or Warranties 6

7 Assignment 7

8 No Waiver 7

9 Announcements 7

10 Counterparts 7

11 Entire Agreement and Severance 7

12 Contracts (Rights of Third Parties) Act 7

13 Governing Law and Jurisdiction 8

Confidentiality Undertaking

This confidentiality undertaking is entered into on 20[•] between:

- (1) [Transport Trading Limited (company registration number 03914810) whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL (a subsidiary of Transport for London, a body corporate established under S154 of the Greater London Authority Act 1999)] / **[[insert Contractor name]** (company registration [•]) whose registered office is at [•]] (the "Disclosing Party"); and **[Drafting Note: Delete as applicable depending on whether TTL is disclosing information or whether the Contractor is disclosing information.]**
- (2) **[insert details of recipient party]** (the "Recipient").

1 Definitions

In this confidentiality undertaking, the following terms shall have the meaning set out below:

"**Confidential Information**" means:

- (a) all information, data and any materials of whatever nature in any form, including documentary, electronic and oral form (the "**Materials**") and all notes, memos, analyses, evaluations, studies and other records which are derived from or incorporate any of the Materials and which:
 - (i) is/are marked as proprietary and confidential;
 - (ii) is/are by its/their very nature confidential; or
 - (iii) may otherwise reasonably be regarded as confidential;
- (b) [all Materials contained or embodied in any documentation relating to the Disclosing Party's transportation, ticket issue, validation, fare and revenue collection and enforcement system including, without limitation, IPR registers, asset registers, contract registers, handback items registers and proprietary tools registers] **[Drafting Note: Delete if not applicable.]**; and
- (c) any other information about the business, undertaking or affairs of the Disclosing Party[, Transport for London] **[Drafting Note: Delete if not applicable.]** or any subsidiary undertaking thereof that is not in the public domain,

and in all instances including, without limitation, Intellectual Property Rights of the Disclosing Party or its third party licensors, in each case, disclosed, made known, or made available directly or indirectly, to the Recipient or to any Permitted Recipient by the Disclosing Party[, Transport for London] **[Drafting Note: Delete if not applicable.]** or any subsidiary undertaking thereof or any of its third party licensors whether before or after the date of this confidentiality undertaking, in connection with or relating to the Project or the business or affairs of the Disclosing Party and its employees and/or contractors;

"Intellectual Property Rights" means any registered or unregistered letters patent, patented articles, designs, trade marks, service marks, trade names, copyright in all specifications, drawings and technical descriptions, computer software and databases, moral rights, inventions whether or not capable of protection by patent or registration, rights in commercial information and technical information, including know-how, research and development data, manufacturing methods and data, specifications and drawings, formulae, algorithms, prototypes and research materials, and other intellectual property rights, whether registered or unregistered and including applications for the grant of any such assets or rights of the foregoing descriptions and all rights or forms of protection having equivalent or similar effect anywhere in the world;

"Permitted Purpose" means [●] *[Drafting Note: Specify permitted purpose(s) as applicable.];*

"Permitted Recipient" means [directors,] [officers,] [employees,] [auditors,] [advisers,] [contractors,] [sub-contractors,] [agents] [and] [consultants] of the Recipient who reasonably require access to the Confidential Information for the Permitted Purpose *[Drafting Note: Delete as applicable, but no further recipients should be added to the list.];* and

"Project" means [●] *[Drafting Note: Specify applicable project.].*

2 Confidentiality

2.1.1 In consideration of the receipt of the Confidential Information, the Recipient acknowledges that such information is of a proprietary and confidential nature and undertakes to the Disclosing Party that:

- (a) it will comply or, as appropriate, procure compliance with the obligations and undertakings set out in this confidentiality undertaking;
- (b) it shall receive and maintain the Confidential Information at all times secret and in strictest confidence and ensure that the Confidential Information is protected with the degree of care and security measures that the Recipient would apply to its own confidential information;
- (c) it will not make or permit any use of the Confidential Information or any part of it except for the Permitted Purpose;
- (d) it shall not disclose the Confidential Information to any third party without the prior written consent of the Disclosing Party, except that it is entitled to disclose the Confidential Information to Permitted Recipients, provided that the Recipient ensures that any Permitted Recipient to whom access to the Confidential Information is to be given is fully aware of the Recipient's obligations and undertakings under this confidentiality undertaking and the Recipient shall procure that each Permitted Recipient complies with such obligations and undertakings as though the Permitted Recipient were a party to this confidentiality undertaking;
- (e) it will not remove or tamper with any disclaimer or proprietary notice or other marking on the Confidential Information;

Schedule 21.1 – Form of Confidentiality Undertaking

- (f) it shall not disclose to any third party the nature or content of any discussions or negotiations between the parties relating to the Confidential Information, unless with the prior written consent of the Disclosing Party or where provided under clause 2.1.1(c) above [; and]
 - (g) [it shall not disclose to any third party any information about the tendering procedure adopted by the Disclosing Party in connection with the Project or any details relating to the status of any negotiations between the Disclosing Party and the Recipient other than the fact that the Recipient is investigating the possibility of submitting, or has submitted, a tender proposal in connection with the Project]. **[Drafting Note: Delete if not applicable.]**
- 2.1.2 The obligations set out in clause 2.1.1 do not apply to any Confidential Information that:
- (A) the Recipient can show was in its lawful possession and at its free disposal independent of the disclosure to the Recipient by the Disclosing Party;
 - (B) is lawfully disclosed to the Recipient, without any obligations of confidence, by a third party who has not derived it directly or indirectly from the Disclosing Party;
 - (C) the Recipient can show has been independently developed by the Recipient without reference to the Confidential Information; or
 - (D) is required by law or by order of a court of competent jurisdiction to be disclosed, in which case before it discloses any Confidential Information the Recipient shall (to the extent permitted by law) inform the Disclosing Party of the full circumstances and the information required to be disclosed and consult with the Disclosing Party as to possible steps to avoid or limit disclosure and take such of those steps as the Disclosing Party may reasonably require.
- 2.1.3 The Recipient shall keep a record of the Confidential Information provided to it and of the location of that Confidential Information and of any persons to whom the Recipient has passed any Confidential Information. The Recipient shall, if requested by the Disclosing Party, deliver to the Disclosing Party a copy of such record and agrees that the Disclosing Party may disclose the identity of the Recipient and the record maintained under this clause 2.1.3 to any third party that has directly or indirectly provided the applicable Confidential Information to the Disclosing Party or to which the applicable Confidential Information relates, at the request of such third party.
- 2.1.4 If the Recipient becomes aware that Confidential Information has been disclosed in breach of this confidentiality undertaking, it shall immediately inform the Disclosing Party of the full circumstances of any disclosure and fully cooperate with and assist the Disclosing Party, at the Recipient's cost, in connection with any investigation, claim, demand, action or proceeding relating to a breach of this confidentiality undertaking.
- 2.1.5 The Confidential Information shall be and shall remain the property of the Disclosing Party or its third party licensors.
- 2.1.6 The obligations and undertakings set out in this confidentiality undertaking shall remain in effect for a period of five (5) years from the date of disclosure of the Confidential Information.

3 Return or Destruction of Confidential Information

3.1.1 The Recipient shall, at the Disclosing Party's request:

- (A) deliver to the Disclosing Party, or destroy all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the Confidential Information; and
- (B) remove all computer records (and destroy copies, reproductions and recordings of them) derived or produced partly or wholly from any of the Confidential Information, including (without limitation) the purging of all disk-based Confidential Information and the permanent reformatting of all disks,

and shall provide to the Disclosing Party upon request a certificate signed by a duly authorised representative of the Recipient confirming compliance with this clause 3.

4 Remedies

The Recipient acknowledges that damages would not be an adequate remedy for any breach of the provisions of this confidentiality undertaking and that (without prejudice to any other remedies to which the Disclosing Party may be entitled as a matter of law) the Disclosing Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this confidentiality undertaking and no proof of special damages shall be necessary for the enforcement of the provisions of this confidentiality undertaking.

5 Indemnity

The Recipient shall indemnify and keep indemnified the Disclosing Party, and any third party that has directly or indirectly provided Confidential Information to the Disclosing Party or to which the Confidential Information relates, from and against any loss, damage, claims, demands, actions, costs, charges, expenses, liabilities and proceedings (including legal fees and expenses and on an after tax basis) whatsoever arising out of or in connection with any breach by the Recipient of the terms of this confidentiality undertaking.

6 No Representations or Warranties

6.1.1 No representation or warranty is made or given as to the accuracy or the completeness of the Confidential Information or any other information supplied or as to the reasonableness of any assumptions on which any of the same is based, and the Recipient agrees with the Disclosing Party that (without prejudice to any liability for fraud) the Disclosing Party shall not have any liability to the Recipient resulting from the use of Confidential Information or any other information supplied, or for any opinions expressed by any of them, or for any errors, omissions or misstatements made by any of them in connection with the Project.

6.1.2 This confidentiality undertaking shall not be effective to transfer any interest in any Intellectual Property Rights to the Recipient.

7 Assignment

The rights and obligations of the Recipient under this confidentiality undertaking are personal and shall not be assigned, charged or otherwise dealt with.

8 No Waiver

No failure by the Disclosing Party in exercising any right, power or privilege hereunder shall constitute a waiver by the Disclosing Party of any such right, power or privilege, nor shall any single or partial exercise thereof preclude any further exercise of any such right, power or privilege.

9 Announcements

Subject to clause 2.1.2, the Recipient shall not make or permit or procure to be made any public announcement or disclosure (whether for publication in the press, trade periodicals or on radio, television, internet or any other medium or otherwise) of any Confidential Information without the prior written consent of the Disclosing Party.

10 Counterparts

This confidentiality undertaking may be executed in one or more counterparts. Any single counterpart or set of counterparts executed, in either case, by all the parties thereto shall constitute a full and original instrument for all purposes.

11 Entire Agreement and Severance

11.1.1 Each of the parties to this confidentiality undertaking confirms that this confidentiality undertaking represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

11.1.2 In the event that any part (including any sub-clause or part thereof) of this confidentiality undertaking shall be void or unenforceable by reason of any applicable law, it shall be deleted and the remaining parts of this confidentiality undertaking shall continue in full force and effect and if necessary, both parties shall use their best endeavours to agree any amendments to the confidentiality undertaking necessary to give effect to the spirit of this confidentiality undertaking.

11.1.3 No variation of this confidentiality undertaking shall be effective unless it is in writing and signed by the parties.

12 Contracts (Rights of Third Parties) Act

12.1.1 Subject to clause 12.1.2, no term of this confidentiality undertaking is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this confidentiality undertaking.

Schedule 21.1 – Form of Confidentiality Undertaking

12.1.2 The obligations and undertakings of the Recipient, the indemnity given by the Recipient and the remedies to which the Disclosing Party is entitled under this confidentiality undertaking shall be enforceable against the Recipient by any third party that has directly or indirectly provided Confidential Information to the Disclosing Party or to which the Confidential Information relates as a third party beneficiary under the Contracts (Rights of Third Parties) Act 1999.

13 Governing Law and Jurisdiction

This confidentiality undertaking shall be governed by, and construed in accordance with, the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

IN WITNESS of which, each of the parties has caused this confidentiality undertaking to be signed by their duly authorised representative on the date first above written.

FOR AND ON BEHALF OF [TRANSPORT TRADING LIMITED] / [THE CONTRACTOR]
[Drafting Note: Insert details and/or delete as appropriate.]

.....

Director/Authorised Representative

FOR AND ON BEHALF OF [THE RECIPIENT] *[Drafting Note: Insert details.]*

.....

Director/Authorised Representative