

# **COLLABORATION AGREEMENT**

INCORPORATING

**PRINCIPLES AND PROTOCOLS FOR PARTNERSHIP  
WORKING**

AND

**SHARED SERVICES AGREEMENT**

AND

**DATA SHARING AGREEMENT**

**PURSUANT TO THE DATA PROTECTION ACT 2018 AND THE DATA  
PROTECTION, PRIVACY AND ELECTRONIC COMMUNICATIONS  
(EU EXIT) REGULATIONS 2019**

UPDATED: 18 May 2021

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#### Document history

Version	Date	Author	Description
1	31/10/19	JC	Original draft
2	14/11/19	JC	Incorporates joint working and protocols from JS
3	18/11/19	JC	Incorporates corporate services proposals from NH
	18/11/19		Shared with JS
	20/11/19		Discussed at Change Team Meeting
	27/11/19		Discussed at Task Force Meeting
4	02/12/19	JC	Incorporates feedback from Task Force
5	10/01/19	JC	Reflects discussion / agreement on non-financial recharging by ARARC
6	10/01/20	JS	JS substantive comments incorporated
6.1	11/01/20	JC	Tidy-up and reformatting
7	14/01/20	JC	Inserted principles for partnership working as schedule G; inserted hourly and financial pricing data in schedule A; issued to AS, JS and NH for final comments before wider circulation
7.1	18/01/20	JC	Updated with further amends from JS, and JS/AL on new schedule G
7.2	19/01/20	JC	Updated with further amends from NH re strategic value; added safety costs
8	20/01/20	JC	Reformatted and issued for ARARC (21/01) and Task Force (23/01)
9	01/02/20	JC	Reflects further Task Force comments and BWB legal advice. Schedule G moved to schedule A and remaining schedules reordered. All substantive comments in <b>blue</b> . Sections / pages renumbered as necessary.
10	04/02/20	JC	Final comments from AL, JS, EG and RFC. Issued to both boards w/c 04/02/20
11	11/02/20	JC	Final formatting comments from NH and TdeP
12	30/04/21	NH	Updated services and costs for 2021-22, Replaced GDPR with UK GDPR
13	10/05/21	JC	Final amends to reflect agreement reached on board paper to May 21 ME

# 1. COLLABORATION AGREEMENT

## 1.1 Preliminary

1.1.1 This Collaboration Agreement is made between

(a) Transport Focus<sup>1</sup>, a non-departmental public body and body corporate of Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland created by sections 19 to 21 of the Railways Act 2005 (as amended); and

(b) London TravelWatch<sup>2</sup>, a body corporate created by sections 247 to 252 of the Greater London Authority Act 1999 (as amended).

1.1.2 Nothing in this Collaboration and associated Agreements affects or should be construed to affect the independent performance of the statutory functions of either party.

## 1.2 Recitals

1.2.1 Both parties to this Collaboration Agreement recognise their own and each other's rights and powers to enter into this and associated agreements.

1.2.2 This Collaboration Agreement recognises the discussions and agreements reached (including but not limited to written correspondence and minutes of appropriate meetings) with the sponsor organisations (the Department for Transport in respect of Transport Focus, and the London Assembly in respect of London TravelWatch) in addition to the formal agreements concluded between these organisations as set out at Schedules D and E.

1.2.3 The shared service agreement and data sharing agreement shall form part of this Collaboration Agreement and shall have effect concurrently and for a similar duration.

1.2.4 This Collaboration Agreement and associated agreements shall be governed by the law of England and Wales and to any extent necessary the parties shall submit themselves to the exclusive jurisdiction of the Courts of England and Wales.

## 1.3 Purpose and objectives as agreed by both Boards

### *Goal*

1.3.1 Transport Focus and London TravelWatch will work more closely together to ensure that, both jointly and individually, they are making more of difference for transport users and deliver better value for money for sponsors and funders.

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<sup>1</sup> Transport Focus is the operating name of The Passengers' Council

<sup>2</sup> London TravelWatch is the operating name of the London Transport Users Committee

### *Shared context and criteria for working together*

- 1.3.2 Both organisations share a common heritage in their origins as Regional Transport User Committees, and while geographic and modal remits differ, the common objective of both organisations is to act as independent representatives for transport users. Both are committed to consumer principles, independent research and public sector values. Together, this will ensure that advocacy is strongly grounded in evidenced based policy.
- 1.3.3 Both Boards have agreed to take a pragmatic approach to the negotiations and to focus on outcomes. All wish to work together in a spirit of mutual co-operation and trust and believe that “the whole is greater than the sum of the parts”. As such, there will be give and take as far as possible should there be any minor differences of approach, and negotiations will be conducted in a spirit of friendliness and goodwill.

### *Benefit to transport users across Great Britain*

- 1.3.2 Both organisations will become more effective, able to make more of a difference as knowledge, information, skills and resources are pooled – the ‘marriage value’ of the new relationship is considerable
- 1.3.3 More joined up representation on issues affecting transport users across London and South East will benefit all users.
- 1.3.4 Passengers from all over Great Britain need good, reliable links to and from London and the South East. Focusing and making user representation more effective will benefit all users. This also serves a template for arrangements in other places. In this regard, Transport Focus has already set up two subsidiary companies, Transport Focus Scotland Limited and Transport Focus Wales Limited.
- 1.3.5 Joined up representation will look, feel and sound more sensible and effective.

### *Benefit to sponsors, funders, Boards and staff*

- 1.3.6 Clearly visible evidence of making more of a difference for users
- 1.3.7 More resource released for front line activities
- 1.3.8 No major changes to underlying sponsorship, financial, legal or other arrangements
- 1.3.9 Increased opportunities, range of activities and organisations for staff to work and engage with
- 1.3.10 More joined up support for Boards, less duplication of activities and ability to take a more user focused view on issues across Great Britain

#### 1.4 Scope and accountability

- 1.4.1 Both London TravelWatch and Transport Focus will retain their own current corporate entities and identities: logos, websites, nameplates and contact details.
- 1.4.2 Both parties retain the right to publish or comment on issues in a way that reflects the respective statutory and other duties of the organisations – however, it is hoped that joint work and communications will be possible on many issues of joint interest
- 1.4.3 There will be no change to current staff terms and conditions of employment except as may be required by law, or considered necessary and provided for in 2.1.2 (h)

#### 1.5 Protocols

- 1.5.1 There are certain areas which all board members believe to be core to the agreement to collaborate and both organisations will honour an undertaking to incorporate these into the new working arrangements. Schedule C at section 5 sets out a series of protocols governing day to day management issues as they affect the two organisations working together during the transition and substantive term of this Collaboration Agreement and associated agreements.
- 1.5.2 The protocols may be amended, extended or rescinded at the proposal of the Joint Chief Executive **and** by and with the agreement of both Chairs.

#### 1.6 Commencement, duration and termination

- 1.6.1 This Collaboration Agreement and its associated agreements shall come into force on 18 May 2021 for an indefinite term subject to formal annual reviews, but may be terminated earlier (a) by the written service of six months notice by one party on the other, or (b) summarily in accordance with the provisions of schedule F.
- 1.6.2 For the avoidance of doubt nothing in this section affects the obligations of either party in respect of financial or strategic value liabilities incurred by the parties undertaken as set out in this Collaboration Agreement and its associated agreements.

Signed by:

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**Jeff Halliwell**

Chair, Transport Focus

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**Arthur Leathley**

Chair, London TravelWatch

## 2. SHARED SERVICES AGREEMENT

### 2.1 SERVICES

Subject to the provisions of this Agreement it is agreed that the following services are to be provided in consideration of the Price or Strategic Value.

#### 2.1.1 Finance and accounting

- |                       |  |
|-----------------------|--|
| (a) Service type      | This is a service provided <b>to</b> London TravelWatch <b>by</b> Transport Focus  |
| (b) Provider contact  | Nigel Holden   |
| (c) Client contact    | Emma Gibson  |
| (d) Service objective | To provide London TravelWatch with high quality professional advice and management accounting to ensure that resources are maximised   |
| <br>                  |  |
| (e) Service scope     | <ul style="list-style-type: none"><li>• Monthly finance reporting of expenditure against budget and forecast outturn for the management team and board in line with the agreed schedule including production of management accounts</li><li>• Periodic finance reporting of expenditure against budget and forecast outturn for the London Assembly in line with the agreed schedule</li><li>• Advice and support to managers in the monthly and annual budgeting and reporting cycle, and procurement processes, to help them achieve best value from available resources</li><li>• To assist in the preparation of annual budgets and ensuring their timely submission to the Board and London Assembly by the agreed dates</li><li>• Processing of invoices and payments on behalf of London TravelWatch</li><li>• Management of payables and receivables</li><li>• Treasury management</li><li>• To produce the annual accounts in line with generally accepted accounting principles and applicable financial reporting requirements and standards</li><li>• To act as first point of contact for the annual audit</li><li>• To provide professional financial advice to the joint chief executive as Accounting Officer, director,</li></ul> |

	managers and board including attendance at relevant meetings with the board and chief executive
	<ul style="list-style-type: none"> <li>• Maintenance and updating of financial policies, procedures and scheme of delegation</li> </ul>
(f) Client inputs required	<ul style="list-style-type: none"> <li>• Authorisation of expenditure by London TravelWatch prior to payment</li> <li>• London TravelWatch will be responsible for instructing Transport Focus to issue sales invoices as required</li> </ul>
(g) Reporting	As above
(h) Key performance indicators or other issues / principles in respect of the Service	Payment of undisputed invoices within 30 days. Budgets and management accounts to be prepared to the agreed available agreed schedule
(i) Consideration	Strategic Value

#### 2.1.2 Human resource management and payroll

(a) Service type	This is a service provided <b>to</b> London TravelWatch <b>by</b> Transport Focus with effect from 1 March 2021.
(b) Provider contact	Nigel Holden
(c) Client contact	Emma Gibson
(d) Service objective	<ul style="list-style-type: none"> <li>• To provide high quality professional HR advice to ensure that staff resources are used as effectively as possible and talent is developed</li> <li>• That where feasible, opportunities are taken to carry out joint training and development to minimise costs and promote effective joint working</li> </ul>
(e) Service scope	<ul style="list-style-type: none"> <li>• Ensure monthly payment of salaries and smooth running of payroll, including payment of statutory deductions on time, and submission of monthly pensions information</li> <li>• HR record maintenance including annual leave, sickness, and other absences using common systems and processes</li> <li>• Provide regular reports to the management team and board on staffing matters, including staff absences and to attend board meetings as required</li> <li>• Providing effective HR support to managers and staff to ensure any personnel issues are dealt with effectively and efficiently</li> </ul>

- To monitor all HR policies and procedures and identify any updates required.
  - To oversee programmes of training and development for staff and board members in line with identified training needs and to maintain a process of training evaluation to ensure that training provision meets learning needs
  - To maintain an overview of relevant legislation
- (f) Client inputs required      Direction from the Director, London TravelWatch or Joint Chief Executive as required
- (g) Reporting      As above
- (h) Key performance indicators or other issues / principles in respect of the Service
- London TravelWatch staff will remain on their existing terms and conditions of employment; any future proposals for changes to align terms and conditions will be subject to staff consultation and approval by the respective board(s)
  - Cross organisation or similar training and development organised by Transport Focus shall be offered to London TravelWatch and vice versa as appropriate. Any costs for such training shall be recovered either through strategic value or separately invoiced.
  - Any selection or recruitment activity will be subject to separate agreement
  - Any redundancy or restructuring activities (including changes to terms and conditions of employment requiring formal consultation) will be subject to separate scoping and agreement regarding direct costs
  - Data sharing agreements are in place which allow Transport Focus staff to access London TravelWatch employee records for the purposes of delivering an efficient and effective payroll and human resources support function for London TravelWatch
- (i) Consideration      • Strategic Value

### 2.1.3 ICT and Facilities advice and management

- |   |   |
|---|---|
| (a) Service type  | This is a service provided <b>to</b> London TravelWatch <b>by</b> Transport Focus following migration to Transport Focus compatible system / co-location  |
| (b) Provider contact  | Nigel Holden  |
| (c) Client contact  | Emma Gibson   |
| (d) Service objective   | To ensure the effective management of the support for the ICT systems for London TravelWatch together with providing advice on offices and facilities management to London TravelWatch  |
| (e) Service scope   | <ul style="list-style-type: none"><li>• Provide access to Transport Focus ICT support services for LTW, including management of the suppliers (IT helpdesk, CRM support, SharePoint support, IT advisor)</li><li>• Ensure joint ICT systems and infrastructure are kept up to date and secure</li><li>• Provide advice on ICT services</li><li>• Provide advice on offices and facilities management</li><li>• Both parties to make their offices available for Transport Focus and LTW staff to use as appropriate</li></ul> |
| (f) Client inputs required  | <ul style="list-style-type: none"><li>• London TravelWatch and Transport Focus share the cloud based IT services</li><li>• ICT equipment, systems and software licences for use by London TravelWatch staff will be purchased by London TravelWatch</li><li>• London TravelWatch and Transport Focus maintain their own local area networks</li></ul>   |
| (g) Reporting   | By agreement  |
| (h) Key performance indicators or other issues / principles in respect of the Service | <ul style="list-style-type: none"><li>• Transport Focus and London TravelWatch will work together to ensure efficient use of their office space</li><li>• The telephone systems for London TravelWatch and Transport Focus are capable of accommodating the needs of London TravelWatch and Transport Focus consumers and stakeholders</li><li>• Any office relocation or ICT systems changes will be subject to separate scoping and agreement regarding direct costs – see section 2.15.</li></ul>                          |
| (i) Consideration   | <ul style="list-style-type: none"><li>• Strategic Value</li></ul>   |

#### 2.1.4 Casework

- |                            |   |
|----------------------------|---|
| (a) Service type           | This is a service provided <b>to</b> Transport Focus <b>by</b> London TravelWatch   |
| (b) Provider contact       | Susan James   |
| (c) Client contact         | David Sidebottom  |
| (d) Service objective      | Provide Transport Focus with complaint and issue handling services such as they relate to passenger contact within the meaning of parts 1, 2 and 7A of section 76 of the Railways Act 1993 (as amended); requests for information made under the Freedom of Information Act 2000; or requests by individuals exercising their rights under the General Data Protection Regulations 2018.  |
| (e) Service scope          | <ul style="list-style-type: none"><li>• Ensure that the passenger contact duties as set out in the statutes referred to above are satisfactorily discharged, to whatever extent representations are passed to the third-party Rail Ombudsman (because they are 'in-scope' of that Scheme) for effective dispute resolution;</li><li>• Ensure that passenger issues not passed to the Rail Ombudsman (because they are 'out-of-scope' of that Scheme) are addressed promptly and effectively through liaison with the appropriate Transport Focus staff member(s);</li><li>• Manage FOIA and UK GDPR requests as set out in the Transport Focus <i>Information Risk Handbook</i></li><li>• Manage the contract with the customer contact centre under the director level supervision of the Transport Focus Directors</li><li>• External representation and representation to at relevant industry meetings and forums</li><li>• Identifying relevant policy issues and trends arising from casework and ensuring that these are considered by colleagues.</li></ul> |
| (f) Client inputs required | <ul style="list-style-type: none"><li>• Supporting cloud-based IT platform</li><li>• Compliant privacy policy</li><li>• Accurately routed web form</li><li>• Continuing contract with Ventrice (or any contact centre or contact management service / programme contracted by Transport Focus)</li></ul>  |

(g) Reporting Provide reports to the Transport Focus Management Team and Passenger Contact Group quarterly in an agreed format

(h) Key performance indicators or other issues / principles in respect of the Service The key performance indicators for this service are as follows:

PAS1	Calls to Ventrica are answered within 20 seconds	>85%
PAS2	Appeals acknowledged within five working days	100%
PAS3	Appeals closed within 20 working days	>80%
PAS4	Appeals closed within 35 working days	>95%
PAS5	Enquiries closed within 20 working days	>95%
PAS6	Complaints about Transport Focus	<01%

**Quality monitoring**

Transport Focus will develop a set of quality measures in the first half of 2021/22 to be introduced from Q3 2021/22 for the remainder of the business year. The measures, covering an agreed set of both qualitative and quantitative case handling outcomes between TF and LTW, will be assessed against feedback from passengers gathered by a case handling satisfaction survey.

(i) Consideration

- Strategic Value

### 2.1.5 Joint Chief Executive and staff management

- |     |   |  |
|-----|---|--|
| (a) | Service type  | This is a service provided <b>to</b> London TravelWatch <b>by</b> Transport Focus  |
| (b) | Provider contacts   | Jeff Halliwell / Anthony Smith   |
| (c) | Client contact  | Arthur Leathley / Emma Gibson  |
| (d) | Service objective   | To make more of a difference for transport users and deliver better value for money and outcomes for sponsors and funders through the strategic partnership between Transport Focus and London TravelWatch   |
| (e) | Service scope   | The Chief executive will: <ul style="list-style-type: none"><li>• Collaborate with LTW director and chair to ensure aims and principles of the Collaboration Agreement are met and regularly reviewed</li><li>• Act as the Accounting Officer for the LTW budget (however, the day-to-day management of the budget will be sub-delegated to the LTW director)</li><li>• Work to ensure individual and joint reputations of both organisations are boosted by the partnership</li><li>• Support, advise and coach, as requested and required on external relations, policy or insight issues</li><li>• Support, advise and direct, as appropriate, on management or financial issues.</li></ul> |
| (f) | Client inputs   | As required  |
| (g) | Reporting   | <ul style="list-style-type: none"><li>• To deliver reports from time to time as appropriate or required</li></ul>  |
| (h) | Key performance indicators or other issues / principles in respect of the Service | <ul style="list-style-type: none"><li>• It is estimated that the core time contribution is 18 working days per annum, amounting to ten per cent of the Chief Executive's available time.</li></ul>   |
| (i) | Consideration   | <ul style="list-style-type: none"><li>• Price to be invoiced monthly</li></ul>   |

## **2.2 DURATION**

The Services shall be provided during the period, and be subject to the earlier termination provisions, as set out in section 1.6.

## **2.3 DUTY OF CARE**

Transport Focus and London TravelWatch shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with this Agreement.

## **2.4 VARIATION**

Transport Focus and London TravelWatch reserve the right to vary this Agreement as a direct result of any new legislation, statutory instrument, government regulation or licences provided that such variation shall be limited to the extent necessary for this purpose; this Agreement may not be otherwise be varied or amended unless the variation or amendment is in writing and agreed by both Transport Focus and London TravelWatch. The price or strategic value of any variation (if applicable) shall be fair and reasonable in all the circumstances.

## **2.5 LONDON TRAVELWATCH'S OBLIGATIONS**

- 2.5.1 London TravelWatch will supply all relevant information required by Transport Focus to carry out the Services within the timescale required by Transport Focus; obtain (as soon as reasonably practicable) all necessary consents or permissions to enable Transport Focus to provide the Services and give any instructions to Transport Focus with regard to the Services in writing or if given orally, confirm instructions in writing within 24 hours.
- 2.5.2 All personnel deployed on the Services must have appropriate qualifications or experience and competence.

## **2.6 TRANSPORT FOCUS'S OBLIGATIONS`**

- 2.6.1 Transport Focus will supply all relevant information required by London TravelWatch to carry out the Services within the timescale required by London TravelWatch; obtain (as soon as reasonably practicable) all necessary consents or permissions to enable London TravelWatch to provide the Services and give any instructions to London TravelWatch with regard to the Services in writing or if given orally, confirm instructions in writing within 24 hours.
- 2.6.2 All personnel deployed on the Services must have appropriate qualifications or experience and competence.

## **2.7 'PRICE' CONSIDERATION**

The Price for the relevant services set out in Section 2.1 to be effective from 1 April each year shall be agreed in advance between the two parties on the basis of the principles for partnership working as set out at schedule A, as may be amended from time to time. A first-year estimate is provided at schedule B. In addition, either party shall be entitled to be reimbursed its reasonable disbursements actually and properly incurred in connection with the Services subject to production of receipts and documentation relating to them. If any law or regulatory requirements are brought into force after the date of this Agreement which increases the cost of the provision of the Services, the additional cost shall be borne by the other party.

## **2.8 'STRATEGIC VALUE' CONSIDERATION**

The Strategic Value for the relevant services set out in Section 2.1 to be effective from 1 April each year shall be agreed in advance between the two parties. A first-year estimate is provided at schedule A. The Strategic Value shall be subject to six monthly comparison between the forecast levels agreed and the actual levels and where the variation is more than 15% shall be subject to appropriate adjustment, including identifying additional activities to be included in the services subject to the Strategic Value.

## **2.9 PAYMENT AND RECONCILIATION**

Unless otherwise stated the Price (together with any disbursements incurred) shall be reconciled or payable (as appropriate) within 28 days of the end of the month in which the Services were provided and invoiced or itemised (as appropriate).

## **2.10 VALUE ADDED TAX**

London TravelWatch shall pay to Transport Focus, and vice versa, in addition to the Price (only) a sum equal to the Value Added Tax at the prevailing rate thereon. Value Added Tax shall be shown as a separate item on each invoice.

## **2.11 TERMINATION**

Termination of this Agreement shall be governed by the provisions of section 1.6 of the Collaboration Agreement and schedule F.

## **2.12 INTELLECTUAL PROPERTY RIGHTS**

Subject to the rights of third parties and to the rights of Transport Focus and London TravelWatch arising otherwise than by virtue of this Agreement, all rights in the results of work undertaken by or on behalf of the parties for the purposes of this Agreement, including any data, reports, servicing schedules, drawings, specifications, designs, inventions or other material produced or acquired in the course of such work and copyright therein shall vest in and be the property of the originating party unless otherwise agreed in writing. Furthermore, each party grants to the other a general licence to use its intellectual property for the term of this Agreement (a) where necessary in pursuit of the delivery of the services as outlined in section 2.1 or (b) as otherwise agreed from time to time in writing.

## **2.13 PATENTS**

All royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan or information in connection with the Agreement shall be deemed to have been included in the Price or Strategic Value only where the requirement for the same is known prior to the start of the Agreement.

## **2.14 PROVISION OF EQUIPMENT**

Any equipment provided by either party for the purpose of this Agreement shall remain the property of that party and shall only be used for the purpose of carrying out this Agreement. The parties will reimburse each other for any loss or damage to the equipment (other than deterioration resulting from normal and proper use or wear and tear) caused by the actions of the other.

## **2.15 OCCUPATION OF PREMISES**

Any land or premises (including temporary buildings, utilities and related services) made available to one party by the other in connection with or pursuant to the purpose and objectives set out in section 1.3 or the services as set out in section 2.1 is however out of scope of this Agreement **upon signature** and shall form the basis of either (a) a separate agreement between the parties or (b) a formally agreed amendment to this Agreement and / or the various schedules by way of concluding a licence to occupy such premises.

## **2.16 SUBCONTRACTING**

Unless arrangements are in place at the beginning of this Agreement, the parties may only sub-contract the provision of the Services (in whole or in part) during the lifetime of this Agreement with the specific consent of the other party.

## **2.17 ASSIGNMENT**

Neither party shall be entitled to assign its rights and obligations under this Agreement to any person during the lifetime of this Agreement without the specific consent of the other party.

## **2.18 NOVATION**

Neither party shall be entitled to novate its rights and obligations under this Agreement to any person during the lifetime of this Agreement without the specific consent of the other party.

## **2.19 USE OF MATERIALS**

The parties shall give due regard to environmental considerations throughout the carrying out of this Agreement, including the use of materials that are or can be recycled and materials that are proven to be environmentally safe.

## **2.20 DISPUTE RESOLUTION AND ARBITRATION**

All disputes differences or questions between the parties with respect to any matter or thing arising out of or relating to this Agreement (except to the extent to which special provision for arbitration may be made elsewhere) shall prior to any reference to arbitration being made be referred to the Chairs of the parties who shall meet with a view to resolving the disagreement as soon as reasonably practicable. In the event of the disagreement not being resolved by the Chairs of the parties within one week of the matter being referred to them, the matter shall be referred to a joint Task Force of members of the Transport Focus and London TravelWatch Boards with a view to it being resolved by them as soon as reasonably practicable but in any event within one month of its first being referred to such persons for resolution.

All unresolved disputes differences or questions between the parties to this Agreement with respect to any matter or thing arising out of or relating to the Agreement (except to the extent to which special provision for arbitration may be made elsewhere), shall then be referred to arbitration in accordance with the provisions of the Arbitration Act 1996, or any statutory modification or re-enactment thereof for the time being in force.

## **2.21 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Agreement shall have no rights under this Agreement. This does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **2.22 PROPERTY**

The parties will reimburse each other for any loss or damage to property (other than deterioration resulting from normal and proper use or wear and tear) caused by the actions of the other.

## **2.23 LIMITATION ON LIABILITY**

The total liability of the parties to each other in respect of any liability, loss or claim whatsoever which may arise as a result of their performance of the obligations under this Agreement shall, save for death and injury of any person resulting from the negligence of either party (for which no limit applies), shall not exceed the total price or strategic value (as appropriate) as specified in schedule B, and the parties hereby indemnify each other in this respect and to this extent. Appropriate insurance provision shall be maintained by the parties as agreed between them.

Neither party shall be liable to the other for any loss of profits, loss of revenue, loss of contract or for any indirect or consequential loss suffered by them or for any damages assessed against or paid by them to any third party arising out of its use, inability to use, quality or performance of the Services provided by either party, even if the party concerned has been advised of the possibility of such loss or damages.

## **2.24 MEDIA RELATIONS**

2.24.1 Neither party shall communicate with representatives of the general or technical press, radio, television or other communications media about the other unless specifically agreed with the other party or otherwise set out in the Protocols at schedule C.

## **2.25 USE AND DISCLOSURE OF DOCUMENTS, INFORMATION ETC**

2.25.1 With the exception of any sensitive commercial data (which may be redacted or otherwise expunged) this agreement should be made publicly available by both parties in its entirety.

2.25.2 Any specifications, plans, drawings, or any other documents issued by or on behalf of either party for the purposes of this Agreement remain the property of that party unless mutually agreed otherwise.

## **2.26 FREEDOM OF INFORMATION**

The parties acknowledge that both organisations are subject to the requirements of the Freedom of Information Act (FOIA) and the Environmental Information Regulations and shall assist and cooperate with each other to enable them to comply with these information disclosure requirements.

## **2.27 DATA PROTECTION AND GENERAL DATA PROTECTION REGULATIONS**

The parties shall ensure personal data managed and processed as part of this agreement is managed and processed in accordance with the Data Protection Act 2018 and the General Data Protection Regulations 2018. The responsibilities under the General data Protection Regulations 2018 are set out in Part 3.

## **2.28 FRAUD AND BRIBERY**

As provider of services as specified in sections 2.1.1 and 2.1.2, Transport Focus shall take all reasonable steps to safeguard London TravelWatch's funding of this Agreement against fraud and bribery. Transport Focus shall notify the London TravelWatch Board immediately if it has reason to suspect that any fraud or bribery has occurred or is occurring or is likely to occur.

## **2.29 AGREEMENT MANAGEMENT AND PERFORMANCE REVIEW**

2.29.1 Both parties shall address any enquiries about procedural, contractual or other matters in connection with the provision of the Services as may be made by the board of each party.

2.29.2 The performance of both parties under this agreement based on the service objective of each part, shall be reviewed in September and May of each year by an executive team of both organisations and its conclusions reported to both Boards.

## **2.30 EFFECT OF EXPIRY OR TERMINATION**

The parties undertake that they shall not knowingly do or omit to do anything which may adversely affect the ability of either of them to ensure an orderly transfer of responsibility of the Services.

### **2.31 AGREEMENT CAPACITY**

The parties warrant that it has full power and authority to execute, deliver and perform its obligations under the Contract and there are no existing agreements or arrangements with third parties the terms of which prevent them from entering into this Agreement or would impede the performance of its obligations under it.

### **2.32 FORCE MAJEURE**

If either party is prevented from performing any of its obligations under this Agreement by a Force Majeure Event then:

That party's obligations under the Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent that the party is so prevented and any time limit for the performance of any obligation under the Agreement shall be extended for that period;

As soon as reasonably possible after commencement of the Force Majeure Event the affected party shall notify the other in writing of the occurrence of the Force Majeure Event, the date of commencement and an estimated duration of the Force Majeure Event and the effects of the Force Majeure Event on its ability to perform its obligations under the Agreement;

The affected party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under the Agreement and as soon as reasonably possible after the cessation of the Force Majeure Event it shall resume performance of its obligations under the Agreement and shall notify the other party in writing of the cessation of the Force Majeure Event.

For the avoidance of doubt, a Force Majeure Event is an event outside the control of the party which, notwithstanding the exercise of reasonable diligence and foresight, it was unable to prevent or overcome.

### **2.33 NO PARTNERSHIP**

Nothing in this Agreement shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the parties.

### **2.34 NOTICES**

Any notice, which expression includes any other communication whatsoever which falls to be given under these terms, shall be in writing and shall be sufficiently served if it is sent by ordinary first class pre-paid post or by electronic mail.



## 3. DATA SHARING AGREEMENT

### 3.1 BACKGROUND

- 3.1.1 The data discloser agrees to share the personal data with the data receiver in the European Economic Area (EEA) on terms set out in this Agreement.
- 3.1.2 The data receiver agrees to use the personal data within the EEA on the terms set out in this Agreement.
- 3.2.3 This Agreement sets out the circumstances where one controller discloses shared personal data to another controller or data processor. Either party can operate as a data discloser or as a data receiver and each party is both a data controller and data processor as appropriate to the type of personal data subject to transfer or sharing.
- 3.1.4 The Agreement operates so far as in the arrangements of processing Personal data and other commercially sensitive data to the extent of the relationship between the parties as set out in the Collaboration Agreement dated 18 May 2021.

### 3.2 PURPOSE AND SCOPE

- 3.2.1 The parties consider this data sharing initiative necessary for various purposes within the scope of the Collaboration Agreement and the Services as set out in Section 2.1. Data may be shared between both parties for the reasons set out below.

#### *Consumer and related casework*

- 3.2.2 Administration of cases raised by consumers in respect of a complaint or enquiry relating to the provision of transport services as defined by the appropriate statutes
- 3.2.3 Administration of cases raised by consumers under The Rail Ombudsman's dispute resolution process and effecting the Rail Ombudsman's function of a single-front door for Consumer disputes in the Rail Sector, always **noting**:
- The Rail Ombudsman operates a single front door for disputes which a Consumer raises and will transfer any out of scope disputes to Transport Focus and / or London TravelWatch
  - Transport Focus and / or London TravelWatch will refer any in-scope dispute which is raised directly with them by a consumer to the Rail Ombudsman.

- Reporting outcomes of cases and the use of complaint data to raise standards and improve customer service whereby such data will be in an anonymised format where applicable before being used for this purpose.

3.2.4 A disclosure under the Freedom of Information Act 2000

3.2.5 A disclosure under the rights established in the Data Protection Act 2018

3.2.6 For the avoidance of doubt, where consumer and related casework is managed by London TravelWatch on behalf of Transport Focus, Transport Focus and London TravelWatch are both joint data controllers and joint data processors.

*Human resource management and payroll*

3.2.6 Details relating to a persons employment, including but not limited to applications, leave, terms of employment, performance management, and termination, including any disciplinary action

3.2.7 Information required under money laundering statutes or regulations or necessary to verify nationality, residency status, other employment, or home address

3.2.8 Information required for the purposes of paying remuneration or compensation by whatever means necessary; such information may be divulged to a third party payroll or pension provider as necessary.

3.2.9 For the avoidance of doubt, where human resource management and payroll functions are managed by Transport Focus on behalf of London TravelWatch, Transport Focus and London TravelWatch are both joint data controllers and joint data processors.

*Other*

3.2.10 Information required by either board (or subsidiary board) in pursuit of any statutory or legal duties

3.2.11 Information required by an insurance provider

3.2.12 Information required by the police or other authority, an auditor appointed via statute, or accredited provider of internal audit services under the provisions of and within the meaning of the Bribery and Corruption Act 2010

3.2.13 Information needing to be disclosed in confidence in connection with legal proceedings (including prospective legal proceedings), for the obtaining of legal advice or as is otherwise necessary for the purpose of establishing, exercising or defending legal rights.

3.2.14 Information required in pursuit of essential stakeholder, public affairs, media and communications activities.

3.2.15 For the avoidance of doubt, where information is shared as described in section 3.2.10 – 3.2.14 above Transport Focus or London TravelWatch may be either the data controller or data processor, and shall ensure that, on a case by case basis, both parties understand their proper role.

### **3.3 PROCESSING OF PERSONAL DATA**

The parties shall not process personal data covered by this Agreement in any way that is incompatible with the purposes described above unless required to do so by law.

### **3.4 AGREEMENT MANAGEMENT**

Each party shall appoint a single point of contact who will work together to reach an agreement with regards any issues arising from the data sharing and to improve its effectiveness. The points of contact for each party are, for the time being:

- London TravelWatch: Richard Freeston-Clough
- Transport Focus: Jon Carter

### **3.5 COMPLIANCE WITH RELEVANT LEGISLATION**

3.5.1 Both parties will ensure continued compliance with all relevant legislation for the purposes of this Agreement.

3.5.2 In the event that the data protection laws or approach to compliance within the United Kingdom conflicts with the requirements of data protection laws outside of the EEA then the law with the stricter requirements to the protection of data protection will apply. Within the EEA, the laws of England and Wales shall apply to the terms of this agreement.

3.5.3 Each party named within this agreement must hold a valid registration with the national Data Protection Authority. Within England and Wales this is the Information Commissioners Office (ICO). This registration shall be in place by the time that the data sharing is stated to commence and covers the intended data sharing pursuant to this Agreement, unless an exemption applies. The details are as follows:

- London TravelWatch: ZA359444
- Transport Focus: Z9171370

### **3.6 OBLIGATIONS OF THE PARTIES**

- 3.6.1 The parties agree that they shall each give full and proper instructions to each other as necessary to enable then each to comply with their obligations set out in this Agreement.
- 3.6.2 Each party will provide sufficient guarantees in respect of the data protection principles under the relevant legislation and that they have put in place appropriate technical and organisational security measures and that such measures:
- (a) protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing; and
  - (b) offer a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation; and
  - (c) meet the requirements of the relevant legislation and ensure the protection of the rights and freedoms of the data subjects
- 3.6.3 The parties will treat the personal data, and any other information provided by the other party as confidential, and will ensure that access to the personal data is limited to only those employees who need to access it for the purpose of complying with this Agreement. Further that each party shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 3.6.4 Save as set out in clause 3.7, neither party will disclose the personal data to a third party in any circumstances without the permission of the other party, unless the disclosure is required by law, or is required for the purposes of this Agreement or in connection with legal proceedings (including prospective legal proceedings), for obtaining legal advice or as is otherwise necessary for the purposes of exercising or defending a legal right.
- 3.6.5 Neither party will knowingly or wilfully do or omit to do anything that would cause the other party to be in breach of the relevant legislation.
- 3.6.6 Neither Party will further sub-contract any of the processing other than that which is recognised at the commencement of this agreement without the explicit written consent of the other party and where such written consent is provided, each party will ensure that any sub-contractor it uses to process the personal data will comply with

the terms of this Agreement and the provisions of the relevant legislation. At the commencement of this agreement sub-contracted processing is recognised as being:

**Transport Focus:** Processing of incoming calls, emails and written correspondence by Ventrica Ltd, 4th & 5th Floor, Tylers House, Southend-on-Sea, Essex SS1 2BB

**London TravelWatch:** None

### **3.7 SHARED PERSONAL DATA**

- 3.7.1 Description of data includes the data which from time to time may be required to fulfil the purpose including, personal data and special categories of personal data.
- 3.7.2 The personal data being shared under this agreement must be relevant for the purposes of sharing as outlined in this Agreement and not excessive.
- 3.7.3 In pursuit of the purpose and terms of this agreement, both parties shall collaborate in the Joint Information Strategy Group which shall ensure, through its quarterly meetings and work programme, personal and other information assets are accurately identified and mapped, assessed for risk, the lawful basis of processing is properly established, data incidents (and breaches, where they occur) are properly managed in line with the response plan at schedule G, and good practice in data management shared and exploited.

### **3.8 FAIR AND LAWFUL PROCESSING**

- 3.8.1 Each party shall ensure that the personal data to be shared as outlined by this Agreement will be processed fairly and lawfully.
- 3.8.2 Each party shall ensure that the personal data subject of this Agreement will only be processed in accordance with one or more of the following legal grounds:
- The data subject has unambiguously given his or her consent for one or more specified purposes;
  - processing is necessary for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject prior to entering into a contract;
  - processing is necessary for compliance with a legal obligation to which the parties are subject, other than an obligation imposed by contract;
  - processing is necessary in order to protect the vital interests of the data subject;

- processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the parties;
- processing is necessary for the purposes of the legitimate interests pursued by the parties except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

3.8.3 In respect of any special categories of personal data being shared the following lawful basis for processing have been identified:

- the data subject has given his explicit consent to the processing of the special categories of personal data;
- processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment;
- processing is necessary to protect the vital interest of the data subject OR of another person where the data subject is physically or legally incapable of giving his or her consent or the data discloser cannot reasonably be expected to obtain the data subject's consent;
- processing relates to data which have been made public as a result of steps taken by the data subject
- processing is for the purpose of or in connection with legal proceedings (including prospective legal proceedings), for the obtaining legal advice or is otherwise necessary for the purpose of establishing, exercising or defending legal rights;
- processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the parties;
- processing is necessary for the purposes of preventing fraud;
- processing is necessary for the purposes of preventing fraud and disclosed by an unincorporated organisation, body corporate or another person which enables or facilitates any sharing of information to prevent fraud or a particular kind of fraud or which has any of these functions as its purpose or one of its purposes;

- processing is for medical purposes and is undertaken by a health professional or a person who owes a duty of confidentiality equivalent to that of a health professional;
- processing relates to racial or ethnic origin and is necessary to review the existence or absence of equality of opportunity or treatment with a view to enabling such equality to be promoted or maintained.

3.8.4 The data disclosers shall ensure that their privacy notices are clear and provide sufficient information to all data subjects in accordance with the relevant legislation so they can understand what of the personal data being supplied to The data discloser will be shared with the data receiver and why. This will include the purposes for which it will process their personal data, the legal basis for such purposes and such other information as is required by Article 13 of UK GDPR.

3.8.5 The data receiver shall undertake to ensure its respective privacy notices are maintained to include reference to the Data Controllers and Data Processors in respect of the personal data obtained by the data receiver and to inform the data subjects, in accordance with the Relevant legislation, of the purposes for which it will process their personal data, the legal basis for such purposes and such other information as is required by Article 14 of the UK GDPR.

### **3.9 DATA QUALITY**

3.9.1 The parties shall share data on the basis that it is accurate and up to date, unless data is being shared in pursuit of this purpose.

3.9.2 The Parties confirm they have in place secure means of disposing of and storing retained data in conformity with the provisions and spirit of the relevant legislation..

3.9.3 Both parties will work together to find and resolve any errors or issues which arise relating to compatibility of processing, reporting or quality.

3.9.4 The data discloser shall ensure that the information to be shared is accurate to the best of their knowledge and undertake to ensure any inaccuracies are reported to the data receiver upon notification of this from the data Subject and, where reasonably possible, corrected.

### **3.10 DATA SUBJECTS' RIGHTS**

3.10.1 The rights of data subjects are not affected by this agreement.

3.10.2 Data subjects have the right to obtain information held about themselves and the processing of their personal data in accordance with the rights under the relevant legislation. Data subjects may also request erasure, rectification or any other right afforded to them under the applicable relevant legislation.

3.10.3 When a data subject access request or other request exercising the data subject's rights under the Relevant legislation (right to erasure, rectification, restriction or objection) is received for personal data processed under the terms of this agreement or where the parties are required to respond to any investigation conducted by the Information Commissioner as a result, then the parties will co-operate with each other and provide such assistance as is reasonably required to ensure the other party comply with requests from data subjects to exercise their rights under the relevant legislation within the time limits it imposes.

3.10.4 Both parties will respond to these requests in accordance with the relevant laws and understand that such disclosures may include data shared under this Agreement.

### **3.11 DATA RETENTION AND DELETION**

3.11.1 Neither party shall retain personal data shared under this Agreement for longer than is necessary for the purposes outlined in this Agreement.

3.11.2 Notwithstanding this, personal data shared under this Agreement shall be retained for any statutory or professional retention periods applicable.

3.11.3 The data receiver shall ensure that any Personal data is destroyed in the following circumstances:

- On termination of the Agreement
- Once processing is no longer necessary for the purposes it was shared for

### **3.12 TRANSFERS**

No personal data shall be transferred outwith the EEA without the specific agreement of both parties. In the event of such as agreement, the parties agree that the transfer of

any shared personal data to any third party outside of the EEA shall be in accordance with the relevant legislation and will ensure that:

- the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the UK GDPR;
- there are appropriate safeguards in place pursuant to Article 46 of the UK GDPR; or
- one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer.

### **3.13 SECURITY AND TRAINING**

3.13.1 Each party will ensure they have the policies and procedures in place to ensure compliance with the relevant legislation and emerging good practice.

3.13.2 Each party will ensure a level of security that is appropriate to the harm that could result from a security breach and the nature of the personal data to be protected.

### **3.14 SECURITY BREACHES AND REPORTING**

3.14.1 Both parties will adhere to the Joint Data Incident and Breach Reporting Guidelines as set out in Schedule G.

3.14.2 The parties shall each comply with its obligation to report a data breach to the Data Protection Authority and (where applicable) to the data subject (s) under Article 33 of the UK GDPR.

3.14.3 The parties agree to provide reasonable assistance to each other in the handling of any personal data incident or breach, where applicable.

3.14.4 In the event of an action brought by the data subject (s) in response to a data incident or breach, the Parties agree to co-operate and acknowledge that a claim may be brought against either party in their capacity of data controller and/or data processor and liability will be determined on a case by case basis dependent upon the cause of the data incident or breach.

### **3.15 DURATION AND TERMINATION OF AGREEMENT**

Termination of this Agreement shall be governed by the provisions of section 1.6 of the Collaboration Agreement and schedule F.

### **3.16 RESOLUTION OF DISPUTES**

- 3.16.1 Neither party will knowingly or wilfully do or omit to do anything that would cause the other party to be in breach of the relevant legislation.
- 3.16.2 In the event of a dispute or claim brought by a data subject or the Data Protection Authority concerning the processing of shared personal data against either or both parties, the parties will inform each other about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.
- 3.16.3 The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the Data Protection Authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- 3.16.4 Each party shall abide by a decision of a competent court of the data discloser's country of establishment or of the Data Protection Authority which is final and against which any further appeal may not be possible.

### **3.17 WARRANTIES**

Each party warrants and undertakes that it will:

- process the shared personal data in compliance with all relevant legislation, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations.
- Respond within a reasonable time and as far as reasonably possible to enquiries from the relevant Data Protection Authority in relation to the shared personal data.
- Respond to requests by data subjects in accordance with the relevant legislation.
- Where applicable, maintain registration with all relevant Data Protection Authorities to process all shared personal data for the purposes outlined within this Agreement.
- Take all appropriate steps to ensure compliance with the security measures set out in this Agreement.

- The data discloser warrants and undertakes that it will take all reasonable steps to ensure that shared personal data is accurate.
- Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law

### **3.18 INDEMNITY**

The data discloser and data receiver undertake to indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of any of the provisions of this Agreement, except to the extent that any such liability is excluded under those set out in the clause concerning Limitation of Liability.

### **3.19 LIMITATION OF LIABILITY**

The total liability of the parties to each other in respect of any liability, loss or claim whatsoever which may arise as a result of their performance of the obligations under this Agreement shall, save for death and injury of any person resulting from the negligence of either party (for which no limit applies), not exceed the total price or strategic value as is specified in schedule B.

Neither party shall be liable to the other for any loss of profits, loss of revenue, loss of contract or for any indirect or consequential loss suffered by them or for any damages assessed against or paid by them to any third party arising out of its use, inability to use, quality or performance of the Services provided by either party, even if the party concerned has been advised of the possibility of such loss or damages.

### **3.20 THIRD PARTY RIGHTS**

A person who is not a party to this Agreement shall have no rights under this Agreement. This does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the relevant legislation

### **3.21 DIRECT MARKETING**

- 3.21.1 Neither party shall use the shared personal data for the purposes of direct marketing without the explicit agreement of the other; in such circumstances, each party shall ensure that:

- Effective procedures are in place to allow the data subject to "opt-out" from having their shared personal data used for such direct marketing purposes; and
- The appropriate and explicit consent has been obtained from the relevant data subjects to allow the shared data to be used for the purposes of direct marketing.

### **3.22 VARIATION**

No variation to this Agreement shall be considered valid unless in writing and signed by both parties.

### **3.23 CHANGES TO THE LAW**

In such a case where the relevant legislation changes and this results in the Agreement no longer being adequate for the purpose for which it was entered, the parties to agree to negotiate amendments in good faith in light of the changes.

### **3.24 NO PARTNERSHIP**

Nothing in this Agreement shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the parties.

### **3.25 FORCE MAJURE**

If either party is prevented from performing any of its obligations under this Agreement by a Force Majeure Event then:

That party's obligations under the Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent that the party is so prevented and any time limit for the performance of any obligation under the Agreement shall be extended for that period;

As soon as reasonably possible after commencement of the Force Majeure Event the affected party shall notify the other in writing of the occurrence of the Force Majeure Event, the date of commencement and an estimated duration of the Force Majeure Event and the effects of the Force Majeure Event on its ability to perform its obligations under the Agreement;

The affected party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under the Agreement and as soon as reasonably possible after the cessation of the Force Majeure Event it shall resume performance of its obligations under the Agreement and shall notify the other party in writing of the cessation of the Force Majeure Event.

For the avoidance of doubt, a Force Majeure Event is an event outside the control of the party which, notwithstanding the exercise of reasonable diligence and foresight, it was unable to prevent or overcome.

## 4 Definitions

### 1. Definitions relating to the Service Agreement

- "The Agreement" means the whole shared services agreement concluded between Transport Focus and London TravelWatch including any objectives, scope, conditions, principles, caveats or other arrangements which may be specified in section 2.
- "Consideration" means the method of settling of costs between the parties as arise under this Agreement which may either be "price" or "strategic value".
- " Price" means the sum in GBP specified as such in the Agreement, and agreed in advance
- "Strategic Value" which, in line with the intention for a closer working relationship, is where each organisation provides agreed services for both organisations, as set out in Section 2.1, requiring approximately equivalent levels of staff time, having regard to the principles of partnership working as set out at schedule A.
- "Loss" includes destruction.
- "Month" means calendar month unless otherwise defined.
- "The Services" means all Services which the parties are required to carry out under the Agreement and which are specified therein.
- "Sub-Contractor" means any person, firm or company appointed at any time by Transport to perform work or provide services and/or supply goods in connection with the provision of the Services.
- The headings of these Conditions shall not affect the interpretation thereof.

- Unless the context otherwise requires the reference to one gender shall include a reference to all genders.
- The singular includes the plural and vice versa.
- Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
- “Joint Task Force” means a group of Transport Focus and London TravelWatch board members, including the Joint Chief Executive and supported by the Transport Focus Head of Board and Governance and the Director, London TravelWatch, which may be convened by the Chairs of both organisations for a specific purpose from time to time or, as they jointly determine, on a standing basis, with or without specific terms of reference.
- “Provider contact” and “Client contact” mean those individuals best placed to give effect to the provisions of this Agreement at signing; they may be changed or updated by the Joint Chief Executive during the term of this Agreement as circumstances dictate.

- **2. Definitions relating to the Data Sharing Agreement**

- “The Agreement” means the data sharing agreement, which is a free-standing document that does not incorporate other commercial terms between the parties; but which is informed by the contractual relationship in so far as the nature of personal and other data to be shared is concerned.
- “The data discloser” means the party disclosing personal data to the data receiver.
- “The Data Protection Authority” means within the United Kingdom of Great Britain and Northern Ireland the Information Commissioner’s Office (ICO)
- “The data receiver” means the party receiving personal data from the data discloser.
- “The data subject” means any living individual whose personal data is the subject of this agreement.

- “Data breach” means any breach of security that leads to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the personal data.
- "Personal data" means any information relating to an identified or identifiable living person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person. This will include information submitted from the Data Subject pertaining to their claim and which shall include their name, address, telephone number, email address and any biographical or other identifiable personal data, including any expressions of opinion or intent.
- “Special categories of personal data” means information about racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, physical or mental health or condition, sexual life or sexual orientation, genetic data and biometric data that can, or may be, identified with a data subject.
- “Relevant legislation” means any applicable laws, decisions, binding and non-binding codes of practice and guidance of a competent institution supervising or regulating data protection including, including the General Data Protection Regulation (EU) 2018/679 (as incorporated into UK law by the Data Protection Act 2018), and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended by the Data Protection, Privacy and Electronic Communications (EU Exit) Regulations effective 31 January 2020), including any supplemental statutory change or re-enactment thereof.
- “Technical and organisational security measures” means measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing.
- Unless the context otherwise, requires, words in the singular shall include the plural and in the plural shall include the singular and the reference to one gender shall include a reference to all genders.
- A reference to a statute or statutory provision will also include all subordinate legislation.

## SCHEDULES

### SCHEDULE A: PRINCIPLES FOR PARTNERSHIP WORKING

In the spirit of partnership working it is anticipated that both London TravelWatch and Transport Focus will receive equal benefit from the shared service arrangements so resources (staff hours) will be shared in delivering these services rather than entering a formal recharging arrangement. (The exception to this will be the Joint Chief Executive where costs will be directly recovered by Transport Focus from London TravelWatch and the existing safety advice provided by London TravelWatch which will continue to be recharged to Transport Focus.)

The underlying approach to this arrangement is one of achieving overall balanced best value for the transport user and the taxpayer, via its inputs and outcomes. In this respect:

1. time should be budgeted, not just incurred, and budgeted to balance over a reporting year to the greatest possible extent;
2. assumptions used for resource planning will initially, and thereafter periodically, validated;
3. hours forming part of the reconciliation should not be broken down by pay grade but assumed to be of a reasonable uniform benefit, taking account of the range of roles and responsibilities of the staff members concerned;
4. a formal review (and reconciliation if necessary) assumptions and resourcing should take place after six months, and every six months thereafter. Where an imbalance is identified, it should be put to work to deliver best value by identifying additional benefits like access to additional insight analysis or policy advice for the appropriate organisation;
5. quality / performance measures should be set out in the shared services agreement;
6. monthly monitoring of time recording will take place for staff providing shared services (via 10,000 ft or any such time recording system in use by Transport Focus) and for case volume information (via data from the customer service centre)
7. other costs, where they occur, including those in respect of the joint chief executive, as pre-agreed, would be invoiced and settled in the normal way;
8. for purposes of transparency, both organisations should disclose this arrangement and, excepting any commercially sensitive data, provide underlying details of it in their respective annual reports.

## SCHEDULE B: STRATEGIC VALUE AND PRICING 2021-22

### Strategic Value

Service section	Transport Focus - time related to LONDON TRAVELWATCH activities	LONDON TRAVELWATCH time related to Transport Focus activities
	Estimated annual resource (hours)	Estimated annual resource (hours)
Corporate services (staff time)	940	
Corporate services (non-staff time)	254	
Director, London		85
Corporate Governance 1 (staff time)	-	
Corporate Governance 2		-
Casework (staff time)		2527
Casework (non-staff time)	975	
<b>Estimated totals</b>	<b>2,169</b>	<b>2,612</b>

**Note:** any difference in the resource (hours) utilised in favour of one party will be available to deliver additional value activities from the other party subject to mutual agreement

### Price

Service section	Transport Focus charges to LONDON TRAVELWATCH			LONDON TRAVELWATCH charges to Transport Focus		
	Net annual charge	VAT (if applicable)	Total annual charge	Net annual charge	VAT (if applicable)	Total annual charge
Chief executive	17,457	3,491	20,948			
Safety Advice				-	-	-
<b>Total</b>	<b>17,457</b>	<b>3,491</b>	<b>20,948</b>	<b>-</b>	<b>-</b>	<b>-</b>

## **SCHEDULE C: PROTOCOLS**

### **(1) Pre-agreed protocols relating to the substantive second term of this Collaboration Agreement**

- (a) Anthony Smith, the Chief Executive of Transport Focus remains the joint chief executive of both organisations
- (b) The right of both parties to publish or comment on an issue in a different way where the geographic or other interests differ is reserved
- (c) The finances of the two organisations are to be kept separate
- (d) Appropriate records are to be kept to ensure that staff time can be accounted for to funders
- (f) A reporting structure and protocol should be agreed for any policy areas when there is a conflict or difference of views; but in the first instance the relevant chair(s) should be consulted for advice
- (g) If there are any differences of approach which cannot easily be resolved, that the joint chief executive will liaise directly with the chair of London TravelWatch (to avoid the London TravelWatch director being pulled in different directions)
- (h) A further protocol may be agreed to determine which areas of published work should be covered by joint branding, and which individual.
- (i) A review will take place after six months and every six months thereafter.

### **(2) Protocols proposed and agreed during the substantive term of these Agreements**

**SCHEDULE D: FRAMEWORK AGREEMENT BETWEEN TRANSPORT FOCUS AND THE DEPARTMENT FOR TRANSPORT**

[provided separately]

**SCHEDULE E: MEMORANDUM OF UNDERSTANDING BETWEEN LONDON TRAVELWATCH AND THE LONDON ASSEMBLY TRANSPORT COMMITTEE**

[provided separately]

## SCHEDULE F: TERMINATION PROVISIONS

- 1 Either party may give six months' notice to terminate the Agreements. Such termination shall be without prejudice to the rights of the parties accrued to the date of determination, but subject to the operation of the following provisions.
- 2 In the event of such notice being given the parties shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as it considers expedient:
  - to direct a party, where work has not been commenced, to refrain from commencing work;
  - to direct a party to complete in accordance with the Agreement all or any of the Services, or any part of component thereof, which shall be paid for at a fair and reasonable price.
- 3 The parties acknowledge that they may need to terminate any Sub-contract which may have been entered into in connection with the Services. They will use reasonable endeavours to mitigate the effects of termination on the Sub-contract but the parties will remain liable for any costs which ensue from performance of and termination of the Sub-contract.
- 4 The Agreements may be terminated summarily by giving notice to the other party upon the occurrence of any of the following events:
  - (a) a party commits a material breach of any term of the Collaboration Agreement and associated agreements and (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
  - (b) a party repeatedly breaches any of the terms of the Collaboration Agreement and associated agreements in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms therein;
  - (c) a party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (d) a party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation.

- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of a party other than for the sole purpose of a scheme for a solvent amalgamation of the party with one or more other companies or the solvent reconstruction of the party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over a party;
- (g) the holder of a qualifying floating charge over the assets of a party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of a party or a receiver is appointed over the assets of a party;
- (i) a creditor or encumbrancer of a party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to a party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
- (k) a party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) any warranty given by a party is found to be untrue or misleading;
- (m) a party suspends or ceases, or is likely to suspend or cease, to carry on all or a substantial part of its business, by a force majeure event that causes a material detrimental impact on the other party and for which mitigating or resolving issues cannot be put in place to the satisfaction of the affected party within a period of three months.

## SCHEDULE G: JOINT DATA INCIDENT AND BREACH GUIDELINES

Reporting incidents whereby personal data has been or may have been disclosed by mistake is a key responsibility of all information asset owners and management team members.

In pursuit of our culture of openness and recognising that mistakes sometimes happen, all staff are reminded that it is far better to report a breach or potential breach of policy or process immediately and fully rather than try to pretend it never happened, cover it up or forget about it. The real test of any organisation is not that mistakes happen, but how mistakes are dealt with. Data breaches can only be dealt with effectively and with minimum impact to those affected if we are geared up to respond to them, and we swing into action if and when they happen.

An 'incident' may be a breach of personal data; the point is to determine whether that is the case or not, to take appropriate action, and to record details of any action.

*What is a personal data breach?*

A personal data breach can be broadly defined as a security incident that has affected the confidentiality, integrity or availability of personal data. In short, there will be a personal data breach whenever any personal data is lost, destroyed, corrupted or disclosed; if someone accesses the data or passes it on without proper authorisation; or if the data is made unavailable, for example, when it has been encrypted by ransomware, or accidentally lost or destroyed.

Recital 87 of the UK GDPR makes clear that when a security incident takes place, you should quickly establish whether a personal data breach has occurred and, if so, promptly take steps to address it, including telling the ICO if required.

*Personal data breaches can include:*

- access by an unauthorised third party;
- deliberate or accidental action (or inaction) by a controller or processor;
- sending personal data to an incorrect recipient;
- computing devices containing personal data being lost or stolen;
- alteration of personal data without permission; and
- loss of availability of personal data.

What is the process?

Steps	Notes
<p>An incident occurs and is reported to the appropriate Information Asset Owner (IAO)* immediately. The IAO gathers the facts of the incident.</p> <p>The IAO ensures all the facts of the incident are set out in an email to the SIRO (or SIAO if not available) and their line manager (if the head of team is not the IAO) requesting an urgent meeting or conference call next day.</p>	<p>INCIDENT SAME DAY</p>
	
<p>The meeting or conference call determines if there has been a breach of personal data, based on the definitions provided above.</p>	<p><b>INCIDENT + 24 HOURS MAX</b></p>
<ul style="list-style-type: none"> <li>• if <b>NOT</b>, any entry is made in the incident log and no further action is necessary</li> </ul>	<p><b>See Annex 1</b></p>
<ul style="list-style-type: none"> <li>• if <b>YES</b>, a <b>risk assessment</b> must be carried out based on severity and likelihood. A breach can have a range of adverse effects on individuals, which include emotional distress, and physical and material damage. Some personal data breaches will not lead to risks beyond possible inconvenience to those who need the data to do their job. Other breaches can significantly affect individuals whose personal data has been compromised. We need to assess this case by case, looking at all relevant factors. In assessing risk to rights and freedoms, it's important to focus on the potential negative consequences for individuals.</li> <li>• The risk assessment will enable us to develop a containment and mitigation plan, which must be developed for implementation the next day at the latest. The plan must include resourcing</li> </ul>	<p>At this point, the Data Protection Officer must be informed and advice sought.</p>
	
<p>The containment, mitigation, documentation and filing plan must be implemented.</p>	<p><b>INCIDENT + 48 HOURS MAX</b> <b>See Annex 2</b></p>
	
<p>ICO filing</p>	<p><b>INCIDENT + 72 HOURS MAX</b></p>

*Risk Assessment*

This is based on Transport Focus' s standard approach to managing risk.

- (a) first, identify the severity of the breach based on individuals ('data subjects') rights and freedoms under UK GDPR, if the breach was uncontained.
- (b) second, determine how likely it is that, based on the circumstances of the breach, these freedoms and rights may have been compromised

The following table illustrates how severity and likelihood may be determined:

Level	Severity	Likelihood
1	Insignificant	Rare
2	Minor	Unlikely
3	Moderate	Possible
4	Major	Likely
5	Catastrophic	Almost certain

- (c) compute and determine impact

<b>IMPACT</b>	=	<b>SEVERITY</b>	X	<b>LIKELIHOOD</b>
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<i>Severity</i>	5	5	10	15	20	25
	4	4	8	12	16	20
	3	3	6	9	12	15
	2	2	4	6	8	10
	1	1	2	3	4	5
	1	2	3	4	5	

*Likelihood*

*Containment, mitigation, documentation and filing plan (CoMDoFP)*

The Plan has 5 distinct sections; a template is attached to this section which is available on Connect.

### Section 1: nature of data breach

Include relevant facts. Responsible IAO and team manager (if different).  
Summary of risk assessment and **determination of impact level**.

### Section 2: containment.

What have we done / need to do now to ensure the breach is contained and any data leakage is stopped or, if possible, data is recaptured, restored, reclaimed, salvaged or repossessed?

### Section 3: mitigation

Contacting individuals / data subjects effected by the breach

If the breach risk assessment has resulted in **medium or high** risk to the rights and freedoms of individuals, we must inform those concerned directly and without undue delay. In other words, this should take place as soon as possible. One of the main reasons for informing individuals is to help them take steps to protect themselves from the effects of a breach.

*What information must we provide to individuals when telling them about a breach?*

We must describe, in clear and plain language, the nature of the personal data breach, and:

- the name and contact details of your data protection officer or other contact point where more information can be obtained;
- a description of the likely consequences of the personal data breach; and
- a description of the measures taken, or proposed to be taken, to deal with the personal data breach and including, where appropriate, of the measures taken to mitigate any possible adverse effects.

### Section 4: documentation and internal review

Article 33(5) requires us to document the facts relating to the breach, its effects and the remedial action taken. This is part of our overall obligation to comply with the accountability principle, and allows us to verify our compliance with our notification duties under the UK GDPR.

As with any security incident, we should investigate whether or not the breach was a result of human error or a systemic issue and see how a recurrence can be prevented – whether this is through better processes, further training or other corrective steps.

The CMDP template has been developed to ensure it captures all the necessary information required by Article 33(5) and, following its passage through ISG and ARARC, is stored on a joint accessible library.

### Section 5: breach notification to ICO?

This section records when and how the ICO has been notified.

When reporting a breach, the UK GDPR says we must provide:

- a description of the nature of the personal data breach including, where possible:
  - the categories and approximate number of individuals concerned; and
  - the categories and approximate number of personal data records concerned;
- the name and contact details of the data protection officer (if your organisation has one) or other contact point where more information can be obtained;
- a description of the likely consequences of the personal data breach; and
- a description of the measures taken, or proposed to be taken, to deal with the personal data breach, including, where appropriate, the measures taken to mitigate any possible adverse effects.

#### *What if we don't have all the required information available yet?*

The UK GDPR recognises that it will not always be possible to investigate a breach fully within 72 hours to understand exactly what has happened and what needs to be done to mitigate it. Article 34(4) allows us to provide the required information in phases, as long as this is done without undue further delay. ICO however expects controllers to prioritise the investigation, give it adequate resources, and expedite it urgently. We must still notify them of the breach when we become aware of it and submit further information as soon as possible. If you know you won't be able to provide full details within 72 hours, it is a good idea to explain the delay to us and tell us when you expect to submit more information.

#### *Finally...*

The materiality threshold for notifying **individuals** and the **ICO** is different, which is confusing and unhelpful. This means we can notify ICO without notifying individuals, which frankly is the wrong way around. The parties therefore apply a **unified threshold** based on the risk assessment impact conclusion.