

SCHEDULE 17

Agreed Form of Guarantee

DATED

201[]

Provided by

[•]

in favour of

TRANSPORT FOR LONDON

DEED OF GUARANTEE

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THIS DEED is dated 201[] and made between:

- (1) [], a company registered in [●], with registered number[●] whose registered office is at [●] (the "**Guarantor**"); and
- (2) **Transport for London** (which expression shall include any firm, corporation or other contracting authority succeeding to the functions of TfL in relation to the Services to be provided under the Agreement), of Windsor House, 42-50 Victoria Street, London SW1H 0TL ("**TfL**").

RECITALS:

- A. TfL and [●] (the "**Service Provider**") have entered into a Services Agreement dated [] 201[●] (the "**Agreement**").
- B. The Guarantor is a parent company of the Service Provider.
- C. The Guarantor has agreed to enter into this Guarantee in favour of TfL.

1. DEFINITIONS, CONSTRUCTION AND THIRD PARTY RIGHTS

1.1 Definitions

1.1.1 Terms defined in the Agreement shall, unless otherwise defined in this Guarantee or unless a contrary intention appears, bear the same meanings when used in this Guarantee and the following terms shall have the following meaning:

"Guarantee" means this deed of Guarantee.

"Guaranteed Liabilities" means all moneys, obligations and liabilities due, owing, incurred or payable by the Service Provider to TfL under or in connection with the Agreement or any other agreement entered into by TfL and the Service Provider pursuant to the Agreement.

"Security" means a mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment by way of security, title retention agreement or other security interest or preferential arrangement securing any obligation of any person or any other agreement or arrangement having a similar effect.

1.1.2 Unless a contrary intention appears, words defined in the Companies Act 2006 have the same meanings when used in this Guarantee.

1.2 Construction and Third Party Rights

- 1.2.1 Unless a contrary intention appears, any reference in this Guarantee to:
- (A) the singular includes the plural and vice versa;
 - (B) **"TfL"** the **"Service Provider"**, the **"Guarantor"** or any other person shall be construed so as to include its respective successors in title, permitted assigns and transferees;
 - (C) **"assets"** includes present and future properties, revenues and rights of every description;
 - (D) **"liabilities"** includes any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;
 - (E) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (F) a provision of law is a reference to that provision as extended, applied amended or re-enacted and includes any subordinate legislation;
 - (G) a Clause is a reference to a clause to this Guarantee;
 - (H) this Guarantee shall be construed as references also to any separate or independent stipulation or agreement contained in it;
 - (I) another agreement (including the Agreement), document or instrument shall be construed as a reference to such agreement, document or instrument as the same may have been modified, extended, amended, varied or supplemented or novated from time to time;
 - (J) references to any form of property or asset shall include a reference to all or any part of that property or asset; and
 - (K) the word **"including"** is without limitation.
- 1.2.2 Clause headings are for ease of reference only.
- 1.2.3 The words **"other"**, **"or otherwise"** and **"whatsoever"** shall not be construed ejusdem generis or be construed as any limitation upon the generality of any preceding words or matters specifically referred to.

1.2.4 The terms of this Guarantee may be enforced only by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

2. **GUARANTEE AND INDEMNITY**

2.1 The Guarantor irrevocably and unconditionally:

2.1.1 guarantees to TfL punctual performance and payment by the Service Provider of all of the Guaranteed Liabilities;

2.1.2 undertakes with TfL that whenever the Service Provider does not pay any of the Guaranteed Liabilities when due, the Guarantor shall immediately on demand pay that amount as if it was the principal debtor; and

2.1.3 agrees with TfL that if any obligation guaranteed by it under this Guarantee is or becomes unenforceable, invalid or illegal it will, as an independent and primary obligation and as principal debtor indemnify TfL immediately on demand against any cost, loss or liability it incurs as a result of the Service Provider not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under or in connection with the Agreement or any other agreement entered into by TfL and the Service Provider, whether pursuant to the Agreement or otherwise on the date when it would have been due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Guarantee if the amount claimed had been recoverable on the basis of a guarantee.

2.2 The Guarantor agrees to indemnify TfL and keep it indemnified on demand from and against all liabilities, losses, costs and expenses incurred or suffered by TfL in connection with or as a result of:

2.2.1 the enforcement of the provisions of this Guarantee and which are in addition to any related costs and expenses connected to any corresponding dispute or other proceedings with the Service Provider; and

2.2.2 any of the obligations or undertakings expressed to be assumed by the Guarantor in this Guarantee not being performed or observed fully and punctually,

provided that TfL shall take all reasonable steps to mitigate any such liabilities, losses, costs and expenses (except in relation to court awards, settlements, legal costs and the amount of fines recoverable under the obligations set out in clause 41 (*Intellectual Property Rights Indemnity*) of the Agreement and clause 49 (*Information Compliance*) of the Agreement in each case to the extent they are assumed by the Guarantor) .

- 2.3 Each of the obligations of the Guarantor under Clauses 2.1 and 2.2 of this Guarantee shall be separate and independent from each other.
- 2.4 Nothing in this Guarantee nor the provision of this Guarantee shall in any way restrict, reduce, impair or qualify:
- 2.4.1 the exercise or performance of TfL's statutory rights or statutory obligations;
 - 2.4.2 any rights or obligations of TfL under any other agreement, instrument or document or under law; or
 - 2.4.3 the ability of TfL to take any action against any person or otherwise to enforce any rights which it may have, whether under contract, general law or otherwise.
- 2.5 The Guarantor acknowledges and agrees that:
- 2.5.1 TfL shall not be deemed to have waived any of its rights with respect to any obligation of any person to TfL (pursuant to contract, law or otherwise) directly or indirectly relating to any of the Guaranteed Liabilities or under any document, instrument or agreement relating thereto or law by virtue of entering into this Guarantee and exercising its rights and performing its obligations hereunder; and
 - 2.5.2 any rights, benefits, assets and payments received or exercised by TfL pursuant to any other arrangement or under applicable law shall be in addition and shall not prejudice or be prejudiced by, the rights, benefits and entitlements of TfL under this Guarantee.
- 2.6 In the event of any conflict or inconsistency between Clauses 2.4 and 2.5 and:
- 2.6.1 any other term of this Guarantee,
 - 2.6.2 any term of any other document, agreement or instrument; or
 - 2.6.3 any applicable law,
- then, to the extent permitted by applicable law, Clauses 2.4 and 2.5 shall prevail.
- 2.7 Nothing in this Clause 2 shall entitle TfL to recover more than once in respect of any specific cost, loss, liability or expense.

3. **CONTINUING GUARANTEE**

- 3.1 The Guarantor acknowledges and agrees that the provisions of this Guarantee are and at all times shall be a continuing guarantee and will extend to the ultimate balance of sums payable by the Guarantor in respect of the Guaranteed Liabilities, regardless of any intermediate payment or discharge in whole or in part or other matter whatsoever.

- 3.2 The obligations and liabilities expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not merely as a surety.

4. REINSTATEMENT

- 4.1 Any release, discharge or settlement between the Guarantor and TfL in relation to this Guarantee shall be conditional upon no right, Security, disposition or payment to TfL by any of the Guarantor, the Service Provider or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty of any person, bankruptcy, liquidation, administration, the protection of creditors or insolvency or for any other reason.
- 4.2 If any discharge, release or arrangement (whether in respect of the obligations of the Service Provider or Guarantor or any Security or guarantee for those obligations or otherwise) is made by TfL in whole or in part on the basis of any payment, Security or guarantee or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Guarantee will continue or be reinstated as if the discharge, release or arrangement had not occurred.

5. WAIVER OF DEFENCES

The obligations of the Guarantor under this Guarantee will not be affected by (and the intention of the Guarantor is that its obligations shall continue in full force and effect notwithstanding) any act, omission, matter or thing which, but for this Clause 5 (Waiver of defences) would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or TfL) including:

- 5.1 any time, waiver or consent granted to, or composition with, the Service Provider or any other person;
- 5.2 the release of any other person under the terms of any composition or arrangement with any creditor of the Service Provider or any other person;
- 5.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, the Service Provider or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 5.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Service Provider or any other person;

- 5.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of this Guarantee or any other document, instrument, Security, law or regulation;
- 5.6 any unenforceability, illegality or invalidity of any obligation of any person under or in connection with this Guarantee or any other document, instrument or Security or in respect of any of the Guaranteed Liabilities or otherwise;
- 5.7 any winding up, insolvency or similar proceedings;
- 5.8 any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor or by anything done or omitted which but for this provision might operate to exonerate the Guarantor; or
- 5.9 the occurrence of any analogous or equivalent event or circumstance to those specified above, or the taking of or omitting to take any action in respect of the Service Provider.

6. GUARANTOR INTENT

Without prejudice to the generality of Clause 5 (Waiver of Defences), the Guarantor expressly confirms that it intends that this Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Liabilities.

7. IMMEDIATE RECOURSE

The Guarantor waives any right it may have to first require TfL (or any agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Guarantor under this Guarantee. This waiver applies irrespective of any law or any provision of any document, agreement or instrument to the contrary.

8. APPROPRIATION

- 8.1 The Guarantor shall not direct the application by TfL of any sums received by TfL from the Guarantor under this Guarantee or otherwise on account of the Guaranteed Liabilities.
- 8.2 Until all amounts of the Guaranteed Liabilities which may be or become payable have been irrevocably paid in full, TfL (or any agent on its behalf) may:
 - 8.2.1 refrain from applying or enforcing any other moneys, Security or rights held or received by TfL (or any agent on its behalf) in respect of those amounts or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and

8.2.2 hold in an interest-bearing suspense account any moneys received from the Service Provider or the Guarantor or on account of the Guarantor's or the Service Provider's liability under or in respect of this Guarantee or the Guaranteed Liabilities.

9. DEFERRAL OF GUARANTOR'S RIGHTS

9.1 Until all amounts of, or which may be or become payable under or in connection with, the Guaranteed Liabilities have been irrevocably paid in full or unless TfL otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under this Guarantee or by reason of any amount being payable or any liability arising under or in connection with this Guarantee:

9.1.1 to be indemnified by the Service Provider;

9.1.2 to claim any contribution from any other guarantor of the Service Provider's obligations under or in respect of any of the Guaranteed Liabilities;

9.1.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of TfL under or in respect of any of the Guaranteed Liabilities or of any other guarantee or Security or other assurance against loss taken by TfL pursuant to, or in connection with, any of the Guaranteed Liabilities;

9.1.4 to bring legal or other proceedings for an order requiring the Service Provider to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under or pursuant to this Guarantee;

9.1.5 to exercise or claim any right of set-off or counterclaim against the Service Provider or any other person liable or claim or prove in competition with TfL in the bankruptcy or liquidation of the Service Provider or any other person liable or have the benefit of, or share in, any payment from or composition with, the Service Provider or any other person liable or any other Security now or hereafter held by TfL for any Guaranteed Liabilities or for the obligations or liabilities of any other person liable but so that, if so directed by TfL, it will prove for the whole or any part of its claim in the liquidation or bankruptcy of, or other process or proceeding relating to the Service Provider or any other person liable on terms that the benefit of such proof and of all of the money received by it in respect thereof shall be held on trust for TfL and applied in or towards discharge of the Guaranteed Liabilities and the obligations of the Guarantor under or in connection with this Guarantee in such manner as TfL shall deem appropriate; and/or

9.1.6 to demand or accept repayment in whole or in part of any indebtedness now or hereafter due to the Guarantor from the Service Provider or from any other person liable or accept any Security in respect of the same or dispose of the same.

9.2 If the Guarantor fails to claim or prove in the liquidation or bankruptcy of, or other process or proceeding relating to, the Service Provider or any other person liable then, promptly upon being directed to do so by TfL as contemplated by Clause 9.1.5 (Deferral of Guarantor's rights):

9.2.1 TfL may, and is irrevocably authorised on behalf of the Guarantor to, file any claims or proofs in such liquidation or bankruptcy on its behalf; and

9.2.2 the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of the Service Provider or any other person liable or their proceeds is directed to pay distributions on the obligations or liabilities of the Service Provider or any other person liable direct to TfL until the Guaranteed Liabilities have been irrevocably paid in full.

10. **ADDITIONAL SECURITY**

This Guarantee is in addition to and is not in any way prejudiced by, nor shall it prejudice, any other guarantee, Security, undertaking or assurance now or subsequently held by TfL.

11. **FURTHER ASSURANCE**

The Guarantor agrees that it shall promptly, upon the request of TfL, execute and deliver at its own expense any document (executed as a deed or under hand as TfL may direct) and do any act or thing in order to confirm or establish the validity and enforceability of, or to perfect or give full effect to the undertakings, obligations and the guarantee and indemnity intended to be created by it under this Guarantee.

12. **RETENTION OF THIS GUARANTEE**

TfL shall be entitled to retain the original of this Guarantee after as well as before the payment or discharge of all of the Guaranteed Liabilities for such period as TfL may determine.

13. **REPRESENTATIONS AND WARRANTIES**

13.1 The Guarantor warrants and represents that it has not taken or received, and undertakes that until all the Guaranteed Liabilities and other amounts due under this Guarantee have been paid or discharged in full, it will not take or receive, the benefit of any Security or encumbrance of any kind or any assurance against loss from the Service Provider or any other person in respect of its obligations under or pursuant to this Guarantee.

13.2 The Guarantor represents and warrants in favour of TfL that:

13.2.1 it is duly formed and validly existing under the laws of its jurisdiction of formation and, where applicable, in good standing;

- 13.2.2 it has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Guarantee;
- 13.2.3 this Guarantee constitutes, subject to any general principles of law applicable to companies generally, its legal, binding, valid and enforceable obligations;
- 13.2.4 as at the date of this Guarantee, no stamp or registration duty or similar tax or charge is payable in its jurisdiction of incorporation in respect of this Guarantee and it is not necessary that this Guarantee be filed, recorded or enrolled with any court or other authority in any jurisdiction;
- 13.2.5 its payment obligations under this Guarantee rank at least *pari passu* with all its other present and future unsecured and unsubordinated payment obligations, except for obligations mandatorily preferred by law;
- 13.2.6 all information provided by it or on its behalf in connection with or pursuant to this Guarantee was true and accurate in all material respects as at the date it was provided or as at the date (if any) it was stated to apply and nothing was omitted from such information as at that date that results in such information being untrue or misleading in any material respect;
- 13.2.7 the entry into and performance by it of, and the transactions contemplated by, this Guarantee do not and will not conflict with:
- (A) any law or regulation or judicial or official order applicable to it; or
 - (B) its constitutional documents; or
 - (C) any agreement, instrument, licence or regulation which is binding upon it or any of its assets or result in the creation of (or a requirement for the creation of) any Security or encumbrance of any kind over its assets;
- 13.2.8 all authorisations required by it in connection with the entry into, performance, validity and enforceability of this Guarantee, have been obtained or effected and are in full force and effect;
- 13.2.9 no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a material adverse effect on it, its assets, its financial performance or its ability to perform its obligations under or pursuant to this Guarantee, have been started or threatened against it;

13.2.10 it is entering into this Guarantee as principal and not as agent for any person and it will act as an independent contractor in carrying out its obligations under this Guarantee

13.2.11 it has not committed any of the acts referred to in Clause 20.8 (Fraud);

13.2.12 the detail set out in the accounts, annual return and list of shareholders provided to TfL on the Effective Date was, to the extent relevant to the Guarantor, true and accurate (and the Guarantor separately undertakes that it shall advise TfL of any fact, matter or circumstance of which it may become aware which would render any material statement or representation to be false or misleading);

13.2.13 the execution by it of this Guarantee constitutes, and the exercise by it of its rights and performance of its obligations under this Guarantee will constitute, private and commercial acts performed for private and commercial purposes and it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Guarantee;

13.2.14 it is not necessary under the laws of its jurisdiction of incorporation:

- (A) in order to enable TfL to enforce its rights under this Guarantee; or
- (B) by reason of the execution of this Guarantee or the performance by it of its obligations under this Guarantee,

that TfL should be licensed, qualified or otherwise entitled to carry on business in its jurisdiction of incorporation and TfL is not and will not be deemed to be resident, domiciled or carrying on business in its jurisdiction of incorporation by reason only of execution, performance and/or enforcement of this Guarantee;

13.2.15 without prejudice to the generality of Clause 13.2.3, its:

- (A) irrevocable submission under this Guarantee to the jurisdiction of the courts of England;
- (B) agreement that this Guarantee is governed by English law; and
- (C) agreement not to claim any immunity to which it or its assets may be entitled,

are legal, valid and binding under the laws of its jurisdiction of incorporation and any judgment obtained in England will be

recognised and be enforced by the courts of its jurisdiction of incorporation.

The representations and warranties set out in this Clause 13 (*Representations and warranties*) are made on the date of this Guarantee and are deemed to be repeated daily for so long as the Guarantor has any liability (actual or contingent) under or in connection with this Guarantee.

14. AMOUNTS PAYABLE

14.1 Interest

14.1.1 The Guarantor hereby agrees to pay to TfL, in respect of any amount demanded from it in accordance with this Guarantee (to the extent that interest on such amount is not otherwise being paid pursuant to any agreement between the Guarantor and TfL) interest from first demand by TfL of the Guarantor at the rate per annum which is equal to the Interest Rate, such interest being calculated in accordance with Clause 23.4 (Certificates) and compounded at monthly rests. Interest shall be payable after as well as before judgment.

14.1.2 Such interest shall accrue due on a daily basis from the day of demand by TfL until actual payment by the Guarantor (both before and after any further demand or judgment or the liquidation of the Guarantor or the Service Provider).

14.2 No Deductions

All payments to be made by the Guarantor under or in connection with this Guarantee or otherwise in relation to the Guaranteed Liabilities shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If the Guarantor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to TfL under or in connection with this Guarantee or otherwise in relation to the Guaranteed Liabilities or, if any such withholding or deduction is made in respect of any recovery under this Guarantee or otherwise in relation to the Guaranteed Liabilities, the Guarantor shall pay such additional amount on demand so as to ensure that the net amount received by TfL shall equal the full amount due to it under the provisions of this Guarantee or otherwise in relation to the Guaranteed Liabilities (had no such withholding or deduction been made).

14.3 Currency of Account

14.3.1 Subject to Clauses 14.3.2 and 14.3.3 below, Pounds Sterling is the currency of account and payment for any sum due from the Guarantor under this Guarantee.

14.3.2 Each payment in respect of costs, expenses or taxes shall be made in the currency in which the costs, expenses or taxes are incurred.

14.3.3 Any amount expressed to be payable in a currency other than Pounds Sterling shall be paid in that other currency.

14.4 **Currency of Payment**

The obligation of the Guarantor under this Guarantee to make payments in any currency shall not be discharged or satisfied by any tender, or recovery pursuant to any judgment or otherwise, expressed in or converted into any other currency, except to the extent that tender or recovery results in the effective receipt by TfL of the full amount of the currency expressed to be payable under this Guarantee.

14.5 **Currency Indemnity**

14.5.1 If any sum due from the Guarantor under this Guarantee (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:

- (A) making or filing a claim or proof against the Guarantor;
- (B) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings; or
- (C) applying the Sum in satisfaction of any of the Guaranteed Liabilities,

the Guarantor shall, as an independent obligation, on demand, indemnify TfL against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to TfL at the time of its receipt of that Sum.

14.5.2 The Guarantor waives any right it may have in any jurisdiction to pay any amount under this Guarantee in a currency unit other than that in which it is payable.

14.6 **Costs**

The Guarantor shall, on demand, reimburse TfL for all costs and expenses (including legal fees) incurred by TfL together with any applicable VAT in connection with the enforcement or attempted enforcement or preservation of any rights under or in connection with this Guarantee or otherwise relating to the Guaranteed Liabilities.

14.7 **Tax**

The Guarantor covenants to pay to TfL immediately on demand a sum equal to any liability which TfL incurs in respect of stamp duty, registration fees and other taxes which is or becomes payable in connection with the entry into, performance or enforcement of this Guarantee or the Guaranteed Liabilities (including any interest, penalties, liabilities, costs and expenses resulting from any failure to pay or delay in paying any such duty, fee or tax).

14.8 Turnover

If contrary to this Guarantee the Guarantor takes or receives the benefit of any Security or receives or recovers any money or other property, such Security, money or other property shall be held on trust for TfL and shall be delivered to TfL on demand and if such asset or property is no longer capable of delivery the Guarantor shall pay to TfL an amount equal to the value of such asset or property.

15. SET-OFF

TfL may set off any matured obligation owed to it by the Guarantor under this Guarantee (to the extent beneficially owned by TfL) against any obligation (whether or not matured) owed by TfL to the Guarantor, regardless of the place of payment or currency of either obligation. If the obligations are in different currencies, TfL may, at the cost of the Guarantor, convert either obligation at market rate of exchange selected by it for the purpose of the set off.

16. BENEFIT OF GUARANTEE

16.1 The terms of this Guarantee shall be binding upon the Guarantor and its successors in title and shall enure for the benefit of TfL.

16.2 The terms of this Guarantee shall remain binding on the Guarantor notwithstanding any change in the constitution of TfL or its absorption in, or amalgamation with, or the acquisition of all or part of its undertaking or assets by any other person, or any reconstruction or reorganisation of any kind, to the intent that this Guarantee shall remain valid and effective in all respects in favour of any assignee, transferee or other successor in title of TfL in the same manner as if such assignee, transferee or other successor in title had been named in this Guarantee as a party instead of, or in addition to, TfL.

17. VARIATION OF THE AGREEMENT

The Guarantor agrees that any variation, supplement, addition, modification or amendment to the Agreement or any of the Guaranteed Liabilities agreed by the Service Provider shall in all cases be deemed agreed by the Guarantor and that TfL and the Service Provider shall not be required to consult with or notify the Guarantor in relation to any such variations or amendments. Accordingly any such variation, supplement, addition, modification or amendment shall be binding on the Guarantor and shall constitute part of the Guaranteed Liabilities.

18. INFORMATION

- 18.1 The Guarantor will provide promptly TfL with any information about the Guarantor and/or any of its subsidiaries, associates or affiliates (including information about its and/or any such subsidiary's, associate's or affiliate's business, assets, liabilities and financial affairs) which TfL reasonably requests, provided that, any such information which is by its very nature confidential (and whether or not such information is marked or designated as confidential) shall be deemed to be Service Provider Confidential Information and shall be held and used by TfL in accordance with clause 74 (*Confidentiality*) of the Agreement, which shall apply mutatis mutandis to any such provision of information by the Guarantor and disclosure thereof by TfL.

19. CONFIDENTIALITY

- 19.1 The Guarantor acknowledges that in connection with the Agreement and/or with this Guarantee it may receive and/or obtain TfL Confidential Information. The Guarantor undertakes, subject to Clause 19.2, that:
- 19.1.1 it shall receive and/or maintain TfL Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
 - 19.1.2 it shall not use TfL Confidential Information for any purposes whatsoever (and in particular shall not use the Confidential Information to the detriment of TfL) other than for the purpose of compliance with its obligations under this Guarantee;
 - 19.1.3 it shall not disclose TfL Confidential Information to any Third Party without the prior written consent of TfL except that it is entitled to the extent strictly necessary to disclose TfL Confidential Information:
 - (A) to such of its personnel and advisers who need to know the TfL Confidential Information for the purpose of the Guarantor's compliance with its obligations under this Guarantee provided that the Guarantor shall be responsible for any breach of its obligations occasioned by any act or omission of such personnel and shall, before disclosing TfL Confidential Information to members of its personnel either: (i) require such personnel to enter into a written confidentiality undertaking in the form set out in Schedule 19 (*Deed of Confidentiality*) of the Agreement; or (ii) have obtained prior written notice from TfL confirming that the obligations of confidentiality imposed on such members of personnel by the Guarantor are sufficient and that no such written undertaking is required; or
 - (B) to the Guarantor's auditors and any other person or body having a legal right or duty to know TfL Confidential

Information in connection with the Guarantor's business provided that prior to such disclosure the Guarantor consults with TfL as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before TfL Confidential Information is disclosed;

- 19.1.4 it shall inform each of the persons referred to in Clauses 19.1.3(A) and 19.1.3(B) to whom TfL Confidential Information is disclosed of the restrictions as to use and disclosure of TfL Confidential Information;
 - 19.1.5 it shall, at TfL's request, deliver to TfL or destroy all or any documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of TfL Confidential Information and if instructed by TfL in writing, remove all electronically held TfL Confidential Information, including (without limitation) the purging of all disk-based TfL Confidential Information and the reformatting of all disks; and
 - 19.1.6 it shall not, except where provided in Clause Error! Reference source not found., or without the prior written consent of TfL, disclose to any Third Party the nature or content of any discussions or negotiations between the Parties relating to TfL Confidential Information.
- 19.2 The obligations set out in Clause 19.1 do not apply to any TfL Confidential Information that:
- 19.2.1 the Guarantor can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Guarantor or Service Provider by or on behalf of TfL;
 - 19.2.2 is lawfully disclosed to the Guarantor otherwise than in breach of the obligations of confidentiality owed by it or the Service Provider to any member of the TfL Group;
 - 19.2.3 is or has come into the public domain through no fault of the Guarantor or any of its subsidiaries, associates or affiliates or any of its employees or agents; or
 - 19.2.4 is required by law or by the regulations of any stock exchange or regulatory or supervisory authority (including the Panel on Takeovers and Mergers) to which TfL is subject or by the regulations of any stock exchange or regulatory or supervisory authority (including the Panel on Takeovers and Mergers) to which the Guarantor is subject or by order of a court of competent jurisdiction to be disclosed.
- 19.3 If the Guarantor becomes required, in circumstances contemplated by Clause 19.2.4, to disclose any information it shall (if permitted by law) give

to TfL such notice as is practical in the circumstances of such disclosure and shall co-operate with TfL, having due regard to TfL's views, and take such steps as TfL may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

- 19.4 The Guarantor acknowledges that damages may not be an adequate remedy for any breach of Clause 19.1 and that (without prejudice to all other remedies which TfL may be entitled to as a matter of law) TfL shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this Clause as such remedies may be more appropriate remedies than damages and that no proof of special damages shall be necessary for the enforcement of the provisions of this Clause.
- 19.5 The Guarantor acknowledges and agrees that TfL Confidential Information shall be and shall remain the property of TfL.
- 19.6 The obligations of confidentiality set out in this Clause 19 (Confidentiality) shall remain in effect indefinitely, or until the relevant information is no longer confidential in accordance with the provisions of this Clause.

20. **ETHICS, BRIBERY AND CORRUPTION**

- 20.1 With respect to any of the matters which are the subject of this Guarantee or in connection with this Guarantee and any matters resulting from it, the Guarantor undertakes that it and its group undertakings and any person acting on its or their behalf, including directors, officers, employees and agents (together, "**Representatives**"), either in private business dealings or in dealings with the public or government sector, directly or indirectly:
- 20.1.1 have not given, made, offered, or received (or agreed to give, make, offer or receive); and
- 20.1.2 will not give, make, offer or receive (nor agree to give, make, offer or receive), any payment, gift or other advantage which: (i) would violate any applicable Laws; (ii) was intended to, or did, influence any person to act or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept; (iii) was made to or for a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or (iv) which a reasonable person would otherwise consider to be unethical, illegal or improper, (a "**Corrupt Act**").
- 20.2 With respect to any of the matters which are the subject of this Guarantee or in connection with this Guarantee and any matters resulting from it, the Guarantor undertakes that it and its Representatives will not:
- 20.2.1 request any action, inaction or services that would violate applicable Laws; or

- 20.2.2 receive, agree or attempt to receive the benefits of or profits from a crime or any Corrupt Act or agree to assist any person to retain the benefits of or profits from a crime or any Corrupt Act.
- 20.3 The Guarantor represents that, save as disclosed to TfL, neither it nor any of its Representatives: has been investigated (or is being investigated or is subject to a pending or threatened investigation) or is involved in an investigation (as a witness or suspect) in relation to any Corrupt Act by any law enforcement, regulatory or other governmental agency or any customer or supplier; or has admitted to; or been found by a court in any jurisdiction to have engaged in, any Corrupt Act, or been debarred from bidding for any contract or business; or are Public Officials or persons who might otherwise reasonably be considered likely to assert a corrupt or illegal influence on behalf of TfL. The Guarantor agrees that if, at any time, it becomes aware that any of the representations set out at in this Clause 20.3 is no longer correct, it will notify TfL of this immediately in writing.
- 20.4 TfL or its nominee shall be entitled to have access to, inspect and audit all invoices and accompanying documents issued by, and the financial books and records of, the Guarantor in order to verify compliance with this Clause 20. The Guarantor undertakes that it will co-operate fully and promptly with any such audit or inspection conducted by or on behalf of TfL pursuant to this Clause 20.4.
- 20.5 The Guarantor undertakes that it and its Representatives will report to TfL, where permitted by law, any suspected violations of Corruption Law in connection with any matters to which this Guarantee relates (which for the avoidance of doubt includes acts or omissions which may affect directly or indirectly TfL or any member of the TfL Group). The Guarantor consents to TfL making any disclosures of this information as may reasonably be required, provided that, to the extent it is legally permitted to do so, where TfL intends to so disclose gives the Guarantor reasonable notice of this disclosure and, where notice of disclosure is not prohibited and is given in accordance with this Clause 20.5 it takes into account the reasonable request of the Guarantor in relation to the content of such disclosure.
- 20.6 The Guarantor undertakes to fully and effectively indemnify, keep indemnified and hold harmless each member of the TfL Group from and against all Losses (including all Losses, suffered or incurred in investigating, settling or disputing any action (actual or potential) and/or seeking advice as to any such action (actual or potential)) which any of them may suffer or incur or which may be brought against any of them in any jurisdiction arising, directly or indirectly, out of, in respect of, or in connection with any alleged or actual violations of any Corruption Law.
- 20.7 Without prejudice to any other express remedies referred to elsewhere in this Guarantee or any remedies available at law or in equity, in the event of a breach by the Guarantor of any of the undertakings contained in this Clause 20, TfL may terminate this Guarantee:

- 20.7.1 if the Service Provider refuses to take any actions reasonably requested by TfL (i) to reduce the risk of any further breach of this Clause 20 or (ii) to remedy or address the consequences of the breach that has occurred;
- 20.7.2 if such breach involves a Corrupt Act by the Service Provider or its Representatives; or
- 20.7.3 if TfL reasonable concludes that it should terminate this Agreement to ensure that it is in compliance with Corruption Law.

20.8 **Fraud**

- 20.8.1 If any fraudulent activity comes to the attention of the Guarantor in relation to a Scheme, the Schemes or the Services, or in relation to any of the Guaranteed Liabilities, the Guarantor shall notify TfL by the most expeditious means available. The Guarantor shall then co-operate in the investigation of such fraudulent activity and shall procure that the Service Provider implements any necessary changes to the procedures or working practices employed in the provision of the Services as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised.
- 20.8.2 In the event of any fraudulent activity on the part of the Guarantor, its agents or employees or Sub-Contractors, the Guarantor agrees and acknowledges that TfL shall have the right to terminate this Guarantee and to recover from the Guarantor any cost, loss, liability or damage incurred or suffered by TfL or member of the TfL Group as a result of, or which would not have arisen but for, such fraudulent activity provided that, in the case of fraudulent activity on the part of agents or employees such termination right shall only be exercisable in the event that either: (i) the Guarantor has not taken action which TfL, acting reasonably, considers appropriate, in relation to the relevant agent or employee; or (ii) such cost, loss, liability or damage arose due to or was contributed to by, the negligence or default of the Guarantor.

21. **CHANGE OF CONTROL AND CHANGE OF OWNERSHIP**

The Guarantor shall promptly and in an event within five (5) Working Days notify TfL of the public announcement of any event that may give rise to a Change of Ownership or a Change of Control affecting it and/or a future Change of Ownership or Change of Control of it and provide such information as TfL requires in relation to such Change of Ownership or Change of Control.

22. **NOTICES**

- 22.1 A notice (including any approval, consent or other communication) in connection with this Guarantee:

- 22.1.1 must be in writing in the English language;
- 22.1.2 must be left at the address of the addressee or sent by pre-paid recorded delivery (airmail if posted from a place outside the United Kingdom) to the address of the addressee in each case which is specified in this Clause in relation to the party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address in the United Kingdom, and/or marked for the attention of such other person as the relevant party may from time to time specify by notice given in accordance with this Clause.

The relevant details of each party at the date of this Guarantee are:
[Note to Bidders: Details of Guarantor to be completed.]

TfL:

Name: Transport for London

Address: Palestra, 197 Blackfriars Road, London SE1 8NJ

Attention: James Summers

with a copy to:

Address: Windsor House, 42-50 Victoria Street, London SW1H 0TL

Attention: General Counsel

Guarantor:

Name: []

For the attention of: []

Address: []

- 22.1.3 for the avoidance of doubt, must not be sent by electronic mail.
- 22.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 22.3 below.
- 22.3 Subject to Clause 22.4 below, a notice is deemed to be received:
 - (A) in the case of a notice left at the address of the addressee, upon delivery at that address; and
 - (B) in the case of a posted letter, on the third day after posting or, if posted from a place outside the United Kingdom, the seventh day after posting.

22.4 A notice received or deemed to be received in accordance with Clause 22.3 on a day that is not a Working Day, or after 5pm on any Working Day, shall be deemed to be received on the next following Working Day.

23. CERTIFICATE

23.1 Any certification or determination by TfL of a rate or amount under this Guarantee is, in the absence of manifest error, conclusive evidence of the matters to which it relates (other than, for the avoidance of doubt, in relation to the Guaranteed Liabilities, any claim under the indemnity in Clause 2.1.3 and any other claim for damages as a result of a breach by the Guarantor of the terms of this Guarantee, including Clause 2.2.2).

23.2 TfL undertakes to provide the Guarantor with such information in relation to any certification or determination by TfL of rates or amounts in Clause 23.1 as the Guarantor may reasonably request in writing from time to time to the extent that TfL may do so without breaching any law or regulation by which it is bound or any agreement which is binding on it or to disclose such information would result in legal privilege being lost.

23.3 In any litigation or arbitration proceedings arising out of or in connection with this Guarantee, or the Guaranteed Liabilities the entries made in the accounts maintained by TfL in connection with this Guarantee or the Guaranteed Liabilities (as the case may be) are *prima facie* evidence of the matters to which they relate.

23.4 Any interest accruing under this Guarantee will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

24. ENTIRE AGREEMENT

24.1 The Guarantor agrees that this Guarantee, together with any documents referred to in it, constitutes the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

24.2 The Guarantor acknowledges that it has not been induced to enter into this Guarantee by any representation or warranty and, having understood and freely entered into this Guarantee, agrees that it shall have no remedy in respect of any representation or warranty except in the case of fraud. The Guarantor acknowledges that its legal advisers have explained to it the effect of this Clause 24.2 and the terms of this Guarantee.

24.3 No amendment or variation of the terms of this Guarantee shall be effective unless it is made or confirmed in a written document signed by the Parties.

25. ASSIGNMENT

- 25.1 TfL is entitled to assign or transfer all or part of its rights and/or obligations under this Guarantee provided that such assignment or transfer is in connection with a corresponding assignment or transfer of the Agreement to the same person. The Guarantor shall enter into such agreements and documents as TfL may reasonably require in order to give full effect to such assignment or transfer.
- 25.2 The Guarantor may not assign and/or transfer any of its rights or obligations under this Guarantee in whole or in part or enter into any transaction which would result in any of those rights and/or obligations passing to another person.
- 25.3 In the event of a breach by the Guarantor of Clause 25.2, the Guarantor acknowledges and agrees that TfL shall be entitled to terminate the Agreement immediately pursuant to clause 61(Termination) of the Agreement.

26. RELATIONSHIP

- 26.1 Nothing in this Guarantee shall constitute, or be deemed to constitute, a partnership between TfL and the Guarantor, except as expressly provided to the contrary in this Guarantee, shall it constitute or be deemed to constitute any person the agent of any other person for any purpose.
- 26.2 The Guarantor shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of TfL or bind TfL in any way.

27. SEVERABILITY

- 27.1 If, at any time, any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Guarantee, nor the legality, validity or enforceability of that provision under the law of any other jurisdiction, shall be affected or impaired in any way.

28. MISCELLANEOUS

- 28.1 If this Guarantee ceases to be continuing for any reason whatsoever TfL may nevertheless continue any account of the Service Provider or the Guarantor or open one or more new accounts and the liability of the Service Provider and the Guarantor under this Guarantee or otherwise relating to the Guaranteed Liabilities shall not in any manner be reduced or affected by any subsequent transactions or receipts or payments into or out of any such account.
- 28.2 The Guarantor agrees to be bound by this Guarantee notwithstanding that any other person intended to execute or to be bound by this Guarantee or to execute a guarantee in respect of the Guaranteed Liabilities may not do so or may not be effectually bound and notwithstanding that this Guarantee

or such other guarantee may be determined or be or become invalid or unenforceable against any other person, whether or not the deficiency is known to TfL.

- 28.3 No failure to exercise, nor delay in exercising, on the part of TfL any right or remedy under this Guarantee shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise, or the exercise of any other right or remedy. No waiver by TfL shall be effective unless it is in writing. The rights and remedies of TfL are cumulative and not exclusive of any rights or remedies provided by law.

29. **LAW**

This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

30. **ENFORCEMENT**

30.1 **Jurisdiction of English courts**

30.1.1 The courts of England have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Guarantee or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual dispute or claim) (a "**Dispute**").

30.1.2 Subject to Clause 30.1.3 below, the Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly the Guarantor will not:

- (A) argue to the contrary; or
- (B) initiate or pursue any proceedings relating to a Dispute in any jurisdiction other than England.

30.1.3 This Clause 30.1(Jurisdiction of English courts) is for the benefit of TfL. As a result, TfL shall not be prevented from initiating or pursuing proceedings relating to a Dispute in any other courts with jurisdiction nor from contending that such courts are appropriate and convenient. To the extent allowed by law, TfL may initiate or pursue:

- (A) proceedings in any other court; and
- (B) concurrent proceedings in any number of jurisdictions, irrespective of whether proceedings have already been initiated by any party in England.

30.2 **Waiver of immunity**

The Guarantor irrevocably and unconditionally:

- 30.2.1 agrees not to claim any immunity from proceedings brought by TfL against it in relation to this Guarantee and to ensure that no such claim is made on its behalf;
- 30.2.2 consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- 30.2.3 waives all rights of immunity in respect of it or its assets.

IN WITNESS whereof this Guarantee has been executed and delivered as a deed on the date first above written.

SIGNATURE PAGES

The Common Seal of)
TRANSPORT FOR LONDON)
was hereto affixed by order;)

Secretary / Assistant Secretary

The Guarantor)
EXECUTED AS A DEED by)
[])
acting by))
) Director
)
and)
)
)
acting by))
) Director