

SCHEDULE 17

Agreed Form of Guarantee

DATED

200[]

Provided by

[Information Redacted]

in favour of

TRANSPORT FOR LONDON

DEED OF GUARANTEE

THIS DEED is dated

200[] and made

BY:

[Information Redacted] (the “**Guarantor**”), ***[Information Redacted]***.

BACKGROUND:

- (A) Transport for London (“**TfL**”) and IBM United Kingdom Limited (the “**Service Provider**”) have entered into the London Road User Charging Agreement dated [] 2007 (the “**Agreement**”).
- (B) The Guarantor is a shareholder of the Service Provider.
- (C) The Guarantor has agreed to enter into this Guarantee in favour of TfL.

1. **References**

The Guarantor agrees that in this Guarantee:

- 1.1 references to clauses are, unless otherwise stated, references to clauses of this Guarantee;
- 1.2 references to this Guarantee and any provisions of this Guarantee or to any other document or agreement are to be construed as references to this Guarantee, those provisions or that document or agreement as is in force for the time being and as amended, varied or supplemented, from time to time;
- 1.3 references to any person are to be construed to include that person's assigns, transferees or successors-in-title; and
- 1.4 terms the meaning of which are not defined in this Guarantee shall have the meanings ascribed to them in the Agreement.

2. **Guarantee And Indemnity**

- 2.1 The Guarantor hereby irrevocably and unconditionally guarantees to TfL to procure the due and punctual performance and observance by the Service Provider of all its obligations in, under and arising from the Agreement and any other agreements entered into by TfL and the Service Provider pursuant to the Agreement (the “**Guaranteed Obligations**”) and to pay to TfL immediately (although no earlier than required of the Service Provider) on written demand all monies, liabilities and obligations which are now or at any time hereafter shall have been demanded from the Service Provider and have become due or owing to, or incurred by, TfL under or in relation to the Agreement.
- 2.2 As a separate and independent obligation, without prejudice to clause 2.1 but taking into account any payments made thereunder, the Guarantor hereby agrees, as a primary obligation, to indemnify and keep indemnified TfL on demand from all losses, claims, liabilities, damages, costs and expenses which may be incurred or suffered by TfL as a result of or in connection with (whether directly or indirectly)

any failure by the Service Provider (whether or not caused by or connected with any invalidity, illegality, voidability, unenforceability or ineffectiveness) fully and promptly to pay or discharge the Guaranteed Obligations as and when the same shall respectively become (or, but for any such invalidity, illegality, voidability, unenforceability or ineffectiveness, would have become) due for payment or discharge

- 2.3 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:
- (A) 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
 - (B) any of the obligations or undertakings expressed to be assumed by the Guarantor in this Guarantee not being performed or observed fully and punctually.
- 2.4 The Guarantor's obligations under clauses 2.1, 2.2 and 2.3(B) are subject to the same defences, limitations and exclusions as are available to the Service Provider under the Agreement and, subject to clause 2.3(A), this Deed shall not be construed so as to impose on the Guarantor any greater obligations or liabilities than those assumed by the Service Provider under the Agreement.
- 2.5 The obligations of the Guarantor under each of clauses 2.1, 2.2 and 2.3 of this Guarantee shall be separate and independent from each other.

3. **Beneficiary Protections**

- 3.1 The Guarantor acknowledges and agrees that the provisions of this Guarantee are and at all times shall be a continuing security and shall extend to cover sums demanded and due at any time from the Service Provider to TfL under the Agreement.
- 3.2 The Guarantor acknowledges and agrees that none of its liabilities or obligations under this Guarantee shall be reduced, discharged, released or otherwise adversely affected by:
- (A) except where undertaken in accordance with the Agreement and to the extent that the Guaranteed Obligations are affected thereby, any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which TfL may now or hereafter have from or against the Service Provider and any other person in respect of any of the Service Provider's obligations under the Agreement;
 - (B) any of the administration, receivership, insolvency, bankruptcy, liquidation, winding-up, incapacity or any change in the constitution of the Service Provider; or
 - (C) any act, omission, matter or thing which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of guarantor or indemnitor or by anything done or omitted by any person which

but for this provision might operate to exonerate or discharge the Guarantor or otherwise reduce, release, prejudice or extinguish its liability under this Guarantee (without limitation and whether or not known to it or TfL) including but not limited to:

- (1) any time, waiver or consent granted to, or composition with, the Service Provider or any other person in relation to any of the matters set out in clause 3.2(B) above;
- (2) the release of the Service Provider or any other person under the terms of any composition or arrangement with any creditor in relation to any of the matters set out in clause 3.2(B) above;
- (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;
- (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;
- (5) any unenforceability, illegality or invalidity of any obligation of any person under any document setting out the terms of a liability or any other document or security where such results from any of the matters set out in clauses 3.2(B) or 3.2(C)(4) above.

3.3 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.

3.4 Unless an Insolvency Event (as such term is defined in the Agreement) has occurred in relation to the Service Provider, before TfL may exercise its rights under this Guarantee, TfL shall have obtained a determination of the Expert under the Agreement against the Service Provider or obtained a judgment of a court of competent jurisdiction against the Service Provider, in each case in relation to the performance or amount demanded by TfL under this Guarantee.

4. **Interest**

4.1 The Guarantor agrees to pay interest to TfL at the Interest Rate (as set out in the Agreement) on all sums properly due and payable under this Guarantee from the date of TfL's demand under this Guarantee.

4.2 The Guarantor agrees to pay interest to TfL at the Interest Rate after as well as before judgment which shall accrue on a day-to-day basis and be calculated by TfL on the basis of a 365 day year and interest shall be compounded at monthly intervals.

5. **Appropriation**

The Guarantor shall not direct the application by TfL of any sums received by TfL from the Guarantor under this Guarantee.

6. **Discharge to be Conditional**

- 6.1 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 and 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.
- 6.2 If any such right, security, disposition or payment is void or at any time so set aside or ordered to be refunded, TfL shall be entitled subsequently to enforce this Guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment had not been made.

7. **Payment and Taxes**

- 7.1 All sums payable by the Guarantor under this Guarantee shall be paid to TfL in full without:
- (A) any right it may have against the Service Provider by way of set-off, condition or counterclaim or otherwise; and
 - (B) free and clear of any deduction or withholding whatsoever save only as may be required by law which in either case is binding on it.
- 7.2 All sums payable by the Guarantor under or pursuant to this Guarantee are exclusive of any value added tax.

8. **Waiver of Guarantor's Rights**

- 8.1 Subject to clause 8.2, until the earlier of either the date on which TfL notifies the Guarantor that the Guaranteed Obligations have been discharged in full by the Service Provider in accordance with the Agreement or the date which is twenty-four (24) Months after the date of termination or expiry of the Agreement howsoever arising (and notwithstanding payment of a dividend in any liquidation or under any compromise or arrangement) the Guarantor agrees that it will not:
- (A) exercise any rights of subrogation, contribution or indemnity against the Service Provider for the Service Provider's obligations under the Agreement;
 - (B) take the benefit of share in or enforce any security or guarantee or indemnity for the Service Provider's obligations against the Service Provider;
 - (C) take any step to enforce any right against the Service Provider in respect of any of the Service Provider's obligations;
 - (D) exercise any right of set-off or counterclaim against the Service Provider or have the benefit of, or share in, any payment from or composition with, the Service Provider or any security or right now or hereafter held by TfL;
 - (E) claim payment of any other moneys for the time being due, owing, payable or incurred to the Guarantor from or by the Service Provider or any other surety

on any account whatsoever, or exercise any other right, claim or remedy of any kind which the Guarantor has in respect thereof;

- (F) sell, negotiate, endorse, assign, charge or otherwise deal with any liability or obligation to the Guarantor of the Service Provider or any other surety (whether arising from any payment made by the Guarantor under or in respect of this Guarantee or on any other account whatsoever); or
- (G) in the event of any bankruptcy, liquidation, winding-up or dissolution of the Service Provider or any other surety claim or prove, or accept any direct or indirect payment or distribution, in respect of any moneys owing to the Guarantor by the Service Provider or such other surety on any account whatsoever, in competition with TfL or where the Guarantor's actions would adversely affect TfL.

8.2 Nothing in clause 8.1 shall prevent the Guarantor either:

- (A) in the event that the Guarantor has paid any amount to TfL under this Guarantee, from claiming reimbursement of such amount from the Service Provider; or
- (B) from taking any of the actions referred to in clauses 8.1(D), 8.1(E) and 8.1(F) where such actions do not relate to, and will not have any adverse impact upon TfL's rights and remedies under, either the Agreement or this Guarantee.

9. **Benefit of Guarantee**

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

9.2 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.

10. **Variation of the Agreement**

The Guarantor agrees that any variation or amendment to the Agreement 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.

11. **Information**

11.1 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 assets, liabilities and financial affairs) which TfL reasonably requests to the extent that such information is within

the public domain and where not the Guarantor shall make such reasonable disclosures as are possible, provided that, subject to clause 11.2, any Service Provider Confidential Information disclosed is held and used by TfL in accordance with clause 81 (Confidentiality) of the Agreement.

- 11.2 Without prejudice to any right or duty of disclosure conferred or imposed by law, TfL shall be entitled to disclose any information about the Guarantor and/or any of its subsidiaries, associates or affiliates obtained in accordance with clause 11.1 to:
- (A) any person connected or associated with TfL; and/or
 - (B) any actual or potential assignee or transferee of the whole or any part of the benefit of this Guarantee and/or any of the Service Provider's obligations under the Agreement; and/or
 - (C) any other successor or proposed successor of TfL; and/or
 - (D) any person who has otherwise entered into or may otherwise enter into any contractual relations with TfL in relation to this Guarantee and/or any of the Service Provider's obligations under the Agreement (including any sub-participation arrangement); and/or
 - (E) any person for the purpose of or in connection with any exercise by TfL of any of its rights under this Guarantee and/or in relation to any of the Service Provider's obligations under the Agreement; and/or
 - (F) whomsoever, and to the extent that, information is required to be disposed by any applicable law or regulation.

12. **Representations and Warranties**

- 12.1 Without limitation to the Guarantor's other obligations under this Guarantee, the Guarantor hereby warrants, represents and undertakes to TfL that:
- (A) it has full capacity and authority and all authorisations, consents, approvals and permits necessary for it to discharge its obligations under this Guarantee and that this Guarantee has been executed by a duly authorised representative of the Guarantor;
 - (B) 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;
 - (C) it has not, prior to or on the date of execution of this Guarantee, committed any of the acts referred to in clauses 14.1(A) or 14.1(B);
 - (D) 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, at the Effective Date, to the best of the Guarantor's knowledge, information and belief, true and accurate and 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;

- (E) the provisions of the Guarantee are within its power and do not put the Guarantor in breach of any other agreements to which it is a party to the extent that it would make this Guarantee invalid; and
- (F) the execution of this Guarantee does not contravene the terms of any licence, regulation or other restrictions applicable to the Guarantor.

13. **Confidentiality**

13.1 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 that:

- (A) it shall receive and/or maintain the TfL Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
- (B) it shall not use the 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;
- (C) it shall not disclose the 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 the TfL Confidential Information to its auditors and any other person or body having a legal right or duty to know the 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;
- (D) it shall inform each of the persons referred to in clause 13.1(C) to whom TfL Confidential Information is disclosed of the restrictions as to use and disclosure of the TfL Confidential Information and shall use its best endeavours to ensure that each of them observe such restrictions and enter into any written undertakings required by TfL;
- (E) it shall, at TfL's request, deliver to TfL or destroy all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the TfL Confidential Information and if instructed by TfL in writing, remove all electronically held Confidential Information, including (without limitation) the purging of all disk-based Confidential Information and the reformatting of all disks; and
- (F) it shall not, except where provided in clause 13.1(C), 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 the TfL Confidential Information.

13.2 The obligations set out in clause 13.1 do not apply to any TfL Confidential Information which:

- (A) the Guarantor can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Guarantor by TfL;
- (B) the Guarantor can show by documentary evidence was created independently by the Guarantor;
- (C) is lawfully disclosed to the Guarantor otherwise than in breach of the obligation of confidentiality owed to TfL;
- (D) is or has come into the public domain through no fault of the Guarantor or its employees or agents; or
- (E) is required by law or by order of a court of competent jurisdiction to be disclosed.

13.3 The Guarantor acknowledges that damages may not be an adequate remedy for any breach of clause 13.1 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 and no proof of special damages shall be necessary for the enforcement of the provisions of this clause.

13.4 The Guarantor acknowledges and agrees that TfL Confidential Information shall be and shall remain the property of TfL.

13.5 The obligations of confidentiality set out in this clause 13 shall remain in effect indefinitely, or until the relevant information is no longer confidential in accordance with the provisions of this clause.

14. **Corrupt Gifts or Payment and Fraud**

14.1 **Corrupt Gifts or Payment**

- (A) The Guarantor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Services, the Agreement, this Guarantee or any other agreement with TfL.
- (B) The Guarantor shall not conspire with any person to do any of the acts mentioned in clause 14.1(A).
- (C) The Guarantor acknowledges and agrees that any:
 - (1) breach by the Guarantor of the foregoing provision of this clause 14; or
 - (2) commission of any offence by the Guarantor, its agents or employees under the Prevention of Corruption Acts 1889-1916 in relation to the Agreement, this Guarantee or any contract with any member of TfL Group, The Greater London Authority and/or other associated bodies,

shall entitle TfL to terminate the Agreement in accordance with clause 72 (Termination) of the Agreement and recover from the Guarantor the amount of value of any such gift, consideration or commission and any cost, loss, liability or damage incurred or suffered by TfL as a result of, or which would not have arisen but for, the breach of this clause.

- (D) The decision of TfL in relation to the foregoing provisions of this clause 14 shall be final and conclusive provided always that it shall have acted proportionately having regard to the nature of the breach by the Guarantor of this clause 14.

14.2 **Fraud**

- (A) If any fraudulent activity comes to the attention of the Guarantor in relation to a Scheme, the Schemes or the Services, 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.
- (B) In the event of any fraudulent activity on the part of the Guarantor, its agents or employees, the Guarantor agrees and acknowledges that TfL shall have the right to terminate the Agreement in accordance with clause 72 (Termination) of the Agreement and to recover from the Guarantor any cost, loss, liability or damage incurred or suffered by TfL as a result of, or which would not have arisen but for, such fraudulent activity.

15. **Change of Control and Change of Ownership**

- 15.1 The Guarantor shall promptly and in an event within five (5) Working Days inform 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 and provide such information, to the extent in the public domain, as TfL requires in relation to such a Change of Ownership.

16. **Notices**

- 16.1 Any notice (which term shall in this clause include any other communication) required to be given under this Guarantee or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing in the English language.
- 16.2 Any such notice shall be addressed as provided in clause 16.4 and may be:
- (A) personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address if it is delivered not later than 17.00 hours on a day other than Saturday or Sunday or any public holiday in England (a "**Working Day**"), or, if it is delivered later than 17.00 hours on a Working Day or at any time on a day which is not a Working Day, at 08.00 hours on the next Working Day;

- (B) if within the United Kingdom, sent by first class pre-paid post, in which case it shall be deemed to have been given two (2) Working Days after the date of posting;
- (C) if from or to any place outside the United Kingdom, sent by pre-paid airmail, or by air courier in which case it shall be deemed to have been given seven (7) Working Days after the date of posting in the case of airmail or two Working Days after delivery to the courier, in the case of air courier;
- (D) sent by facsimile, in which case it shall be deemed to have been given when despatched, subject to confirmation of uninterrupted transmission by a transmission report provided that any notice despatched by facsimile after 17.00 hours on any Working Day or at any time on a day which is not a Working Day shall be deemed to have been given at 08.00 on the next Working Day; or
- (E) subject to clause 16.3, sent by electronic mail, in which case, it shall be deemed to be given when actually received but subject to the same provisions regarding receipt after 17.00 hours as apply to notices sent by facsimile.

16.3 The following provisions shall apply in respect of any notice sent by electronic mail:

- (A) Notices sent by electronic mail shall:
 - (1) be in a form and context calculated to come to the recipient's immediate attention, including by being classified as "urgent";
 - (2) be set up such that the sender is able to check whether they have been received and opened by the recipient;
 - (3) be in immediately intelligible form and saveable to the relevant information systems; and
 - (4) comply with any other requirements specified in writing by TfL from time to time.
- (B) If any notice is received in an unintelligible or unrecognisable form, the recipient shall immediately notify the sender (if identifiable from such notice) and the sender shall re-send the notice and simultaneously serve a copy of the notice by one or other of the methods referred to in clause 16.2.

16.4 The addresses and other details of the parties referred to in clause 16.2 are, subject to clause 16.5:

[Information Redacted]

16.5 Either party to this Guarantee may notify the other party of any change to the address or any of the other details specified in clause 16.4, provided that such notification shall only be effective on the date specified in such notice or five (5) Working Days after the notice is given, whichever is later and provided also that any new address shall be in the United Kingdom.

17. **Certificate**

Subject to clause 2.4, any demand, notification or certificate given by TfL specifying all or any amounts at any time due from the Guarantor under any provision of this Guarantee shall, in the absence of manifest error, be conclusive and binding on the Guarantor, provided that such amounts are owed by the Service Provider to TfL under the Agreement.

18. **Entire Agreement**

18.1 Subject to clause 12.1 (D) (Representations and Warranties), 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.

18.2 Subject to clause 12.1 (D) (Representations and Warranties) the Guarantor acknowledges that it has not been induced to enter into this Guarantee by any representation or warranty other than those contained in this Guarantee and, having understood and freely entered into this Guarantee, agrees that it shall have no remedy in respect of any other such 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 18.2.

18.3 No variation to this Guarantee shall be effective unless made in writing and duly executed on behalf of the parties.

19. **Assignment**

19.1 TfL is entitled to assign the benefit of this Guarantee in whole or in part provided that such assignment is in connection with a corresponding assignment of the Agreement to the same person.

19.2 The Guarantor may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.

19.3 In the event of a breach by the Guarantor of clause 19.2, the Guarantor acknowledges and agrees that TfL shall be entitled to terminate the Agreement immediately pursuant to clause 72 (Termination) of the Agreement.

20. **Relationship**

20.1 Nothing in this Guarantee shall constitute, or be deemed to constitute, a partnership between the parties nor, except as expressly provided to the contrary in this Guarantee, shall it constitute or be deemed to constitute any party the agent of any other party for any purpose.

20.2 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.

21. **Severability**

If any provision of this Guarantee shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Guarantee in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Guarantee in any other jurisdiction shall not be affected.

22. **Governing Law and Jurisdiction**

This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that TfL has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Guarantor is incorporated or in which any of its assets may be situated. TfL and the Guarantor agree to submit to that jurisdiction.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by) _____
[Information Redacted]) Director
acting by a Director and the)
Secretary or by two Directors) _____
) Director/Secretary

OR

The common seal of) _____
[Information Redacted]) Director
was affixed in the presence of:)
) _____
) Director/Secretary