

**LONDON CYCLE HIRE SCHEME AGREEMENT**

**Schedule 17 – Agreed Form of Guarantee**

**SCHEDULE 17**

**Agreed Form of Guarantee**

**DATED**

**2009**

**Provided by**

**[PARENT COMPANY OF SERVICE PROVIDER]**

**in favour of**

**TRANSPORT TRADING LIMITED**

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**DEED OF GUARANTEE**

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**THIS DEED** is dated

2009 and made

**BY:**

[ ], a company registered in England & Wales with company number [ ] and having its registered office at [ ] (the “**Guarantor**”).

**BACKGROUND:**

- (A) Transport Trading Limited, a company registered in the United Kingdom with company number 03914810 and having its registered office at Windsor House, 42-50 Victoria Street, London SW1H 0TL (“**TTL**”) and [ ], a company registered in [ ] with company number [ ] and having its registered office at [ ] (the “**Service Provider**”) have entered into an agreement relating to the provision of services for the London Cycle Hire Scheme dated [ ] 2009 (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 TTL, and has agreed to guarantee the Service Provider’s obligations under the Agreement in accordance with the terms and conditions contained in this Guarantee.

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Deed:

“**Guarantee**” means this Deed;

“**TTL Group**” means TTL and all its subsidiaries (as defined in section 736 of the Companies Act 2006) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any “**member of the TTL Group**” shall refer to TTL or any such subsidiary;

“**Third Parties Act**” means the Contracts (Rights of Third Parties) Act 1999; and

“**Trigger Amount**” means £[ ]].

1.2 **References**

The Guarantor agrees that in this Guarantee:

- (A) references to clauses are, unless otherwise stated, references to clauses of this Guarantee;
- (B) 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;

- (C) references to any person are to be construed to include that person's assigns, transferees or successors-in-title; and
- (D) 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 TTL to procure the due and punctual performance and observance by the Service Provider of all its payment, performance and other obligations in, under and arising from the Agreement and any other agreements entered into by TTL and the Service Provider pursuant to the Agreement (the “**Guaranteed Obligations**”) and to pay to TTL immediately (although no earlier than required of the Service Provider) and in the currency in which the same falls due for payment 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, TTL under or in relation to the Agreement.
- 2.2 As a separate and independent obligation, without prejudice to clause 2.1 above, but taking into account any payments made thereunder, the Guarantor hereby irrevocably and unconditionally agrees, as a primary obligation, to indemnify and keep indemnified TTL in full and on demand from all losses, claims, liabilities, damages, costs and expenses which may be incurred or suffered by TTL 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, perform 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, performance or discharge.
- 2.3 The Guarantor agrees to indemnify TTL and keep it indemnified on demand from and against all liabilities, losses, costs and expenses incurred or suffered by TTL in connection with or as a result of:
  - (A) TTL entering into the Agreement.
  - (B) any provision in the Agreement being or becoming void, voidable, invalid or unenforceable;
  - (C) the enforcement of the provisions of this Guarantee; and
  - (D) TTL entering into or being a party to this Guarantee (including in the event that any of the obligations or undertakings expressed to be assumed by the Guarantor in this Guarantee are not performed or observed fully and punctually).
- 2.4 Notwithstanding any other provision of this Guarantee, this Guarantee shall not be construed so as to impose on the Guarantor any greater obligations or liabilities in scope or in value 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, 2.3, and 2.4 above 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 continue in effect until all sums demanded and due at any time from the Service Provider to TTL under the Agreement have been finally paid in full, and all obligations of the Service Provider under the Agreement have been fully performed, notwithstanding any intermediate payment, partial settlement or partial performance or other matter,

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) any provision of the Agreement (however fundamental and whether or not more onerous), including any or replacement of any provision of the Agreement;
- (B) any variation, novation, restatement, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which TTL 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;
- (C) any of the administration, receivership, insolvency, bankruptcy, liquidation, winding-up, incapacity or any change in the constitution of the Service Provider; or
- (D) 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 TTL) 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(C) 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(C) 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 the Agreement, any document setting out the terms of a liability or any other document or security.

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 TTL may enforce this Guarantee without first making demand on, or taking any proceeding against, the Service Provider or resorting to any other security, guarantee or other means of payment or performance. No action (or inaction) by TTL in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor under this Guarantee.

#### 4. **Interest**

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

4.2 The Guarantor agrees to pay interest to TTL at the Interest Rate after as well as before judgment which shall accrue on a day-to-day basis and be calculated by TTL 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 TTL of any sums received by TTL from the Guarantor under this Guarantee.

#### 6. **Discharge to be Conditional**

6.1 Any release, discharge or settlement between the Guarantor and TTL in relation to this Guarantee shall be conditional upon no right, security, disposition or payment to TTL 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, TTL 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 TTL in full without:
- (A) any right it may have by way of set-off, condition or counterclaim or otherwise; and
  - (B) free and clear of any deductions or withholding whatsoever save only as may be required by law which in either case is binding on it, in which case the sum due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, TTL receives on the due date and retains (free of any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made.
- 7.2 TTL may apply any credit balance to which the Guarantor is entitled from TTL in or towards satisfaction of any sum then due and payable from the Guarantor under this Guarantee.
- 7.3 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 3 (*Beneficiary Protections*) above, until the date on which TTL notifies the Guarantor that the Guaranteed Obligations have been discharged in full by the Service Provider in accordance with the Agreement, the Guarantor agrees that it will not:
- (A) exercise any rights of subrogation, contribution or indemnity against the Service Provider;
  - (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 TTL;
  - (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 TTL or where the Guarantor's actions would adversely affect TTL.

8.2 Any amount recovered as a result of the exercise of the rights listed in clause 8.1 above shall be paid to TTL on demand.

8.3 The Guarantor warrants to TTL that it has not taken any security from the Service Provider in relation to this Guarantee. If any security is taken in breach of this provision, the Guarantor agrees that:

- (A) all its interests in the assets secured under such security shall in all respects rank after TTL's claim and interest in those assets; and
- (B) it will hold such security on trust for TTL and shall pay over to TTL forthwith any monies it receives as a result of any realisation of such security.

## 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 TTL.

9.2 The terms of this Guarantee shall remain binding on the Guarantor notwithstanding any change in the constitution of TTL 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 TTL 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 TTL.

## 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 TTL 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 TTL 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 TTL 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 below, any Service Provider Confidential Information disclosed is held and used by TTL in accordance with Clause 71 (*Confidentiality*) of the Agreement.

11.2 Without prejudice to any right or duty of disclosure conferred or imposed by law, TTL 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 above to:

- (A) any person connected or associated with TTL; 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 TTL; and/or
- (D) any person who has otherwise entered into or may otherwise enter into any contractual relations with TTL 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 TTL 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 TTL that:

- (A) it is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has the power to carry on its business as now being conducted and to own its own property and other assets;
- (B) the execution, delivery and performance by the Guarantor of this Guarantee and the performance of its obligations under this Guarantee do not contravene or conflict with:
  - (1) the Guarantor's memorandum and articles of association or other equivalent constitutional documents; or

- (2) any existing law, statute, rule or regulation or any judgement, decree or permit to which the Guarantor is a party or which is binding upon it or any of its assets; or
  - (3) the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
- (C) this Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms;
- (D) 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;
- (E) 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;
- (F) 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) (*Corrupt Gifts or Payment and Fraud*) below;
- (G) the detail set out in the accounts, annual return and list of shareholders provided to TTL on the Effective Date (as such term is defined in the Agreement) 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 TTL 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; and
- (H) the execution of this Guarantee does not contravene the terms of any licence, regulation or other restrictions applicable to the Guarantor.
- 12.2 Following the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditor of the Service Provider, the Guarantor shall not exercise any right or remedy that it may have against the Service Provider in respect of any amount paid or other obligation performed by the Guarantor under this Guarantee.

12.3 The Guarantor acknowledges that TTL has accepted this Guarantee in full reliance on the representations and warranties set out in this clause 12.

### 13. **Confidentiality**

13.1 The Guarantor acknowledges that in connection with the Agreement and/or with this Guarantee it may receive and/or obtain TTL Confidential Information (as such term is defined in the Agreement). The Guarantor undertakes that:

- (A) it shall receive and/or maintain the TTL Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
- (B) it shall not use the TTL Confidential Information for any purposes whatsoever (and in particular shall not use the TTL Confidential Information to the detriment of TTL) other than for the purpose of compliance with its obligations under this Guarantee;
- (C) it shall not disclose the TTL Confidential Information to any Third Party (as such term is defined in the Agreement) without the prior written consent of TTL except that it is entitled to the extent strictly necessary to disclose the TTL Confidential Information to its auditors and any other person or body having a legal right or duty to know the TTL Confidential Information in connection with the Guarantor's business provided that prior to such disclosure the Guarantor consults with TTL as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before TTL Confidential Information is disclosed;
- (D) it shall inform each of the persons referred to in clause 13.1(C) above to whom TTL Confidential Information is disclosed of the restrictions as to use and disclosure of the TTL 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 TTL;
- (E) it shall, at TTL's request, deliver to TTL 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 TTL Confidential Information and if instructed by TTL in writing, remove all electronically held TTL Confidential Information, including (without limitation) the purging of all disk-based TTL Confidential Information and the reformatting of all disks; and
- (F) it shall not, except where provided in clause 13.1(C) above, or without the prior written consent of TTL, disclose to any Third Party the nature or content of any discussions or negotiations between the parties relating to the TTL Confidential Information.

13.2 The obligations set out in clause 13.1 above do not apply to any TTL 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 TTL;
- (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 TTL;

- (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 above and that (without prejudice to all other remedies which TTL may be entitled to as a matter of law) TTL shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this clause 13 and no proof of special damages shall be necessary for the enforcement of the provisions of this clause 13.

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

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 13.

#### 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 LCHS Assets, the Services, the Agreement, this Guarantee or any other agreement with TTL.
- (B) The Guarantor shall not conspire with any person to do any of the acts mentioned in clause 14.1(A) above.
- (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 TTL Group (as such term is defined in the Agreement), The Greater London Authority and/or other associated bodies,

shall entitle TTL to terminate the Agreement in accordance with Clause 62 (*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 TTL as a result of, or which would not have arisen but for, the breach of this clause 14.

- (D) The decision of TTL 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 the London Cycle Hire Scheme, the LCHS Assets or the Services, the Guarantor shall notify TTL 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 TTL shall have the right to terminate the Agreement in accordance with Clause 62 (*Termination*) of the Agreement and to recover from the Guarantor any cost, loss, liability or damage incurred or suffered by TTL as a result of, or which would not have arisen but for, such fraudulent activity.

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

The Guarantor shall promptly and in an event within five (5) Working Days inform TTL of the public announcement of any event that may give rise to a Change of Control or a Change of Ownership (both terms, as defined in the Agreement) affecting it and/or a future Change of Control or a Change of Ownership and provide such information, to the extent in the public domain, as TTL requires in relation to such a Change of Control or a Change of Ownership.

#### 16. **NOT USED**

#### 17. **Cumulative Rights**

TTL's rights under this Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as TTL deems expedient.

#### 18. **Notices**

18.1 Any notice (which term shall in this clause 18 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.

18.2 Any such notice shall be addressed as provided in clause 18.4 below 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 Working Day (as such term is defined in the Agreement) , 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 18.3 below, 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.

18.3 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 TTL 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 18.2 above.

18.4 The addresses and other details of the parties referred to in clause 18.2 above are, subject to clause 18.5 below:

- (A)  Name: Transport Trading Limited  
For the attention of: TfL's Director of Congestion Charging and Traffic Enforcement  
Address: Palestra, 197 Blackfriars Road, London SE1 8NJ  
Facsimile number: Information Redacted  
E-mail address: Information Redacted
- (B) Name:   
For the attention of:   
Address:   
Facsimile number:   
E-mail address:

18.5 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 18.4 above, 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.

19. **Certificate**

Subject to clause 2.3(D) (*Guarantee and Indemnity*) above, any demand, notification or certificate given by TTL 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 TTL under the Agreement.

20. **Entire Agreement**

20.1 Subject to clause 12.1(F) (*Representations and Warranties*) above, the Guarantor:

- (A) 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; and
- (B) 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 20.1(B).

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

21. **Assignment**

21.1 TTL 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.

21.2 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.

21.3 In the event of a breach by the Guarantor of clause 21.2 above, the Guarantor acknowledges and agrees that TTL shall be entitled to terminate the Agreement immediately pursuant to Clause 62 (*Termination*) of the Agreement.

22. **Relationship**

22.1 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.

22.2 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 TTL or bind TTL in any way.



23. **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.

24. **Third Parties**

24.1 Any member of the TTL Group has the right to enforce the terms of this Guarantee in accordance with the Third Parties Act.

24.2 Except as set out in clause 24.1 above, the parties do not intend that any of the terms of this Guarantee will be enforceable by virtue of the Third Parties Act by any person not a party to it.

24.3 Notwithstanding clause 24.1 above, the parties are entitled to vary this Guarantee without the consent of any or all members of the TTL Group.

25. **Law and Jurisdiction**

25.1 This Guarantee, executed and delivered as a Deed, is governed by and shall be construed in accordance with the law of England and Wales.

25.2 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 TTL 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. TTL 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 ) \_\_\_\_\_  
[X] ) Director  
acting by a Director and the )  
Secretary or by two Directors ) \_\_\_\_\_  
) Director/Secretary

OR

The common seal of ) \_\_\_\_\_  
[X] ) Director  
was affixed in the presence of: )  
) \_\_\_\_\_  
) Director/Secretary