

LONDON CYCLE HIRE SCHEME AGREEMENT

Schedule 21 – CEDR Model Determination Agreement

SCHEDULE 21**CEDR Model Expert Determination Agreement (As Amended)****Date**

Parties

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

(“**Party A**”)

(“**Party B**”)

(jointly the “**Parties**”)

[], appointed on [], by [] (the “**Expert**”).

(the “**Assistant**”).

Centre for Effective Dispute Resolution Limited (“**CEDR Solve**”) of IDRC, 70 Fleet Street, London EC4Y 1EU

Dispute

Any dispute arising under out of or in connection with the agreement relating to the provision of services for the London Cycle Hire Scheme dated [X] 2009 (the “**Agreement**”) that has been referred to Expert Determination in accordance with the Agreement (referred to in this CEDR Model Determination Agreement as the “**Dispute(s)**”).

1. **Appointment of Expert**

The Expert has been appointed to resolve the Disputes. The Parties agree that the Expert shall resolve the Disputes by Expert Determination. The Expert shall act as an expert and not as an arbitrator.

2. **Purpose of Expert Determination**

Unless the Parties subsequently agree otherwise, each Expert Determination (whether interim or final) shall lead to a decision being issued by the Expert (the “**Determination**”). Subject to paragraphs 6 and 14 of this CEDR Model Determination Agreement, and save in the case of fraud or manifest error, the Determination shall be final and binding on the Parties.

3. **Confidentiality**

Each Expert Determination process shall be private and confidential. The Parties, the Expert (and any expert and/or professional adviser appointed by him under paragraph 5.4 below) shall keep the existence and subject matter of each Expert Determination process and each Determination private and confidential, except to the extent that it is necessary in order to implement or enforce a Determination or is required by law.

4. **Independence**

The Expert, CEDR Solve and any expert and/or professional adviser appointed by the Expert are and shall remain independent of the Parties, neutral and impartial, and do not and shall not act as advisers to the Parties.

5. **Conduct of Expert Determination**

5.1 The Expert shall conduct each Expert Determination in accordance with procedural directions which the Expert shall seek to agree with the Parties. If procedural directions cannot be agreed, the Expert's directions will prevail. The Parties have already agreed that in respect of each Dispute, either Party may request the Expert to issue declaratory relief or to issue an interim determination, which if issued by the Expert shall be binding on the Parties until the Expert issues his final Determination, subject to the right to appeal to the courts in respect of any declaratory relief or interim determination which either:

- (A) is of a non-financial nature and made in relation to ownership or use of Intellectual Property Rights; or
- (B) which expressly prevents the relevant Party from conducting business other than in relation to the London Cycle Hire Scheme,

and provided that, pending the final decision of such courts, the Parties shall comply with such declaratory relief or interim determination (as appropriate). The Parties have also agreed that if the Expert's Determination is rejected pursuant to paragraph 14 of this CEDR Model Determination Agreement, the Determination shall nevertheless be binding on the Parties until a court orders otherwise.

5.2 In respect of each Dispute (and particularly in respect of a Dispute which is in any way concerned with the exercise of Step-in Rights or termination of the Agreement, or the implementation of the Exit Plan or otherwise relating to a New Service Provider being appointed for the supply of services similar or the same as the Services), when considering whether to issue:

- (A) declaratory relief; or
- (B) an interim determination,

the Expert shall be requested by the Parties to take into account the fact that the London Cycle Hire Scheme is a service provided to the public and, as such, each should where possible continue to operate in an efficient and reliable manner.

5.3 The Parties have agreed that, in respect of any Dispute arising under the Agreement:

- (A) either Party may make an application to the Expert requesting that Third Party Service Providers (as defined in the Agreement) be joined to proceedings before the Expert, provided that the Party making the application has a direct contractual relationship with such Third Party Service Provider;
- (B) the Expert shall, on an application by either Party, be entitled to join Third Party Service Providers to proceedings between the Parties in the event that he considers in his sole discretion that it is appropriate to do so and provided that such Third Party Service Providers consent to be joined to such proceedings;
- (C) the Parties shall amend this CEDR Model Determination Agreement to take account of a decision by the Expert to join a Third Party Service Provider to proceedings before the Expert;
- (D) without prejudice to the foregoing provisions of this paragraph 5.3(D), Third Party Service Providers may be joined to proceedings before the Expert by mutual consent of the Parties which shall be communicated in writing to the Expert and which shall enclose a document signed for and on behalf of such Third Party Service Providers confirming their consent to be joined to such proceedings. In the event that the Parties agree to join Third Party Service Providers to proceedings before the Expert, the Parties and the Expert shall amend this CEDR Model Determination Agreement accordingly; and
- (E) where a Third Party Service Provider is joined to the proceedings, this shall not prejudice the assessment of the rights and obligations as between TTL and the Service Provider under the Agreement.

5.4 The Expert shall be entitled to appoint experts or other professional advisers to assist him in reaching his Determination. The fees of such experts or professional advisers shall be treated as part of the fees and expenses of the Expert Determination process.

6. **Challenge to the Procedure**

Subject to the right to appeal to the courts as set out in paragraph 5.1 above, the Parties agree that they are not permitted to challenge the Expert's rulings on issues arising relating to the procedure including those on the Expert's own jurisdiction.

7. **Mediation Option**

At any time before the issue of the Determination by the Expert, the Parties may agree to refer the relevant Dispute to mediation, in accordance with CEDR's Model Mediation Procedure. In that case, each of the Parties shall notify the Expert and CEDR Solve, and the Expert Determination shall be suspended. If the Dispute is settled by mediation, the Expert Determination comes to an end and the Parties settle the fees and expenses of the Expert and of CEDR Solve. If the Dispute is not settled by mediation, the Expert Determination resumes, and if he has been acting as mediator the Expert may take up his previous role.

8. **Reasons in the Determination**

Each Determination of the Expert shall include the Expert's reasons for arriving at such Determination.

9. **Interest**

The Expert is empowered to award interest as part of each Determination.

10. **Costs, Fees and Expenses**

10.1 Unless the Parties agree, or the Expert directs upon an application by any Party, otherwise, the costs, fees and expenses of each Expert Determination shall be borne by the Parties in equal shares.

10.2 Where a Party makes an application in respect of costs, fees and expenses, the Expert may make a determination in respect of what proportion of costs, fees and expenses (including those of the Expert and the legal and related expenses of each party) are to be met by each Party.

10.3 The fees and expenses (see Appendix 1 (*Fees and Expenses*)) shall be estimated by the Expert and paid to the Expert as a condition precedent for each Expert Determination to start. The Expert shall be paid fees and expenses. Interim bills may be raised to cover the Expert's fees at the Expert's option. A final account of the fees and expenses shall be sent to the Parties by the Expert when the relevant Determination is ready for issue to the Parties and the Determination shall be released on payment by the Parties of any further amounts due. If the Parties agree not to proceed with Expert Determination, the Expert will refund a proportionate amount of the fees and expenses advanced, depending on the amount of work done by the Expert.

10.4 If any Third Party Service Providers are joined to the Dispute, the costs and expenses referred to in paragraph 10.1 above shall, if directed by the Expert upon an application by any Party, be allocated equitably by the Expert between the separate Disputes that are being determined through the same process and then

apportioned for each dispute between each party thereto as the Expert deems appropriate.

11. **Implementation of the Determination**

The Parties agree to implement each Determination within seven (7) days of its being published to them. The Determination shall be enforceable as a matter of contract between the Parties, not an arbitral award.

12. **No Liability**

The Expert (and any expert and/or professional adviser appointed by him) shall not be liable for anything done or omitted to be done in the discharge or purported discharge of their appointment, unless the act or omission is shown to be fraudulent or in bad faith. However, nothing in this forgoing exclusion shall relieve the Expert (or any expert and/or professional adviser appointed by him) of their duty to provide their Determination as soon as reasonably possible.

13. **Role of CEDR Solve**

Subject to the provisions of Clause 81.6 (*Dispute Resolution Procedure*) of the Agreement, CEDR Solve shall appoint the Expert. The Expert is responsible for the procedure from the time when he has been appointed. CEDR Solve may be consulted by any of the Parties to this CEDR Model Determination Agreement in case of difficulty. Should the Expert refuse to complete, or be or become incapable of completing the task, CEDR Solve will appoint a substitute Expert within a reasonable time.

14. **After the Determination**

14.1 Where the Expert's Determination relates to:

- (A) a Dispute with a value in excess of three million pounds (£3,000,000) (as certified by the Expert in his Determination); or
- (B) a Dispute arising out of or in connection with or in relation to the termination, actual or threatened repudiation or abandonment of the Agreement by either of the Parties; or
- (C) where the Determination relates principally to the grant of relief of a non-financial nature made in relation to ownership or use of Intellectual Property Rights;

the Parties reserve their rights to reject the Determination pursuant to Clause 81.12 (*Dispute Resolution Procedure*) of the Agreement and to apply instead to the English courts in order to resolve the Dispute.

14.2 None of the Parties shall call the Expert, or any expert and/or professional adviser appointed by him, or CEDR Solve (or any employee, consultant, officer or representative of CEDR Solve) as a witness, consultant, arbitrator or expert in any litigation or arbitration in relation to any Dispute the subject of a Determination under this CEDR Model Determination Agreement and the Expert and any expert

and/or professional adviser appointed by him, and CEDR Solve will not act voluntarily in any such capacity without the written agreement of the Parties.

15. **Law and Jurisdiction**

This CEDR Model Determination Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English courts.

Signed

On behalf of Party A _____

On behalf of Party B _____

Signed by the Expert _____

Signed on behalf of CEDR Solve _____

Appendix 1**Fees and Expenses**

[Note: To be completed by the Expert and CEDR Solve in respect of each Dispute]

CEDR Solve appointment fee	£	
CEDR Solve professional support fee	£	
Expert's fees	£	per hour
Payment to be made on account by each Party	£	by [date]