

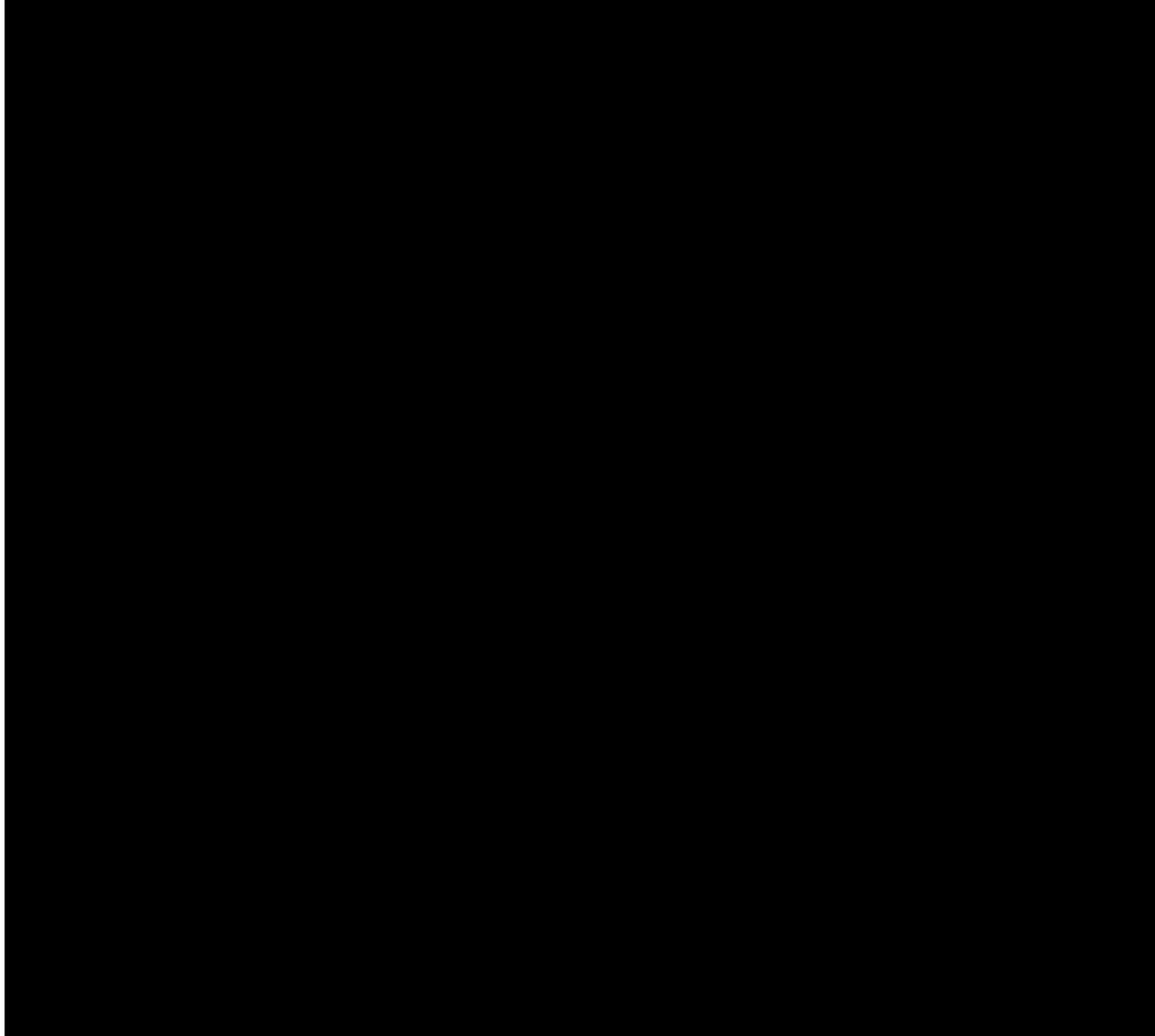
87	Ballast will be compacted twice over new formation of base ballast	1	Item		-
88	1 Team work on Location box 6, one team work on location box 7.	1	Item		-
89	Lay in new sleeper's rails as contractor 's method.	1	Item		-
90	Connect to existing head shunt track Install top ballast and profile	1	Item		-
91	Tamp run in and new extension of head shunt road	1	Item		-
92	Re-Fit the Buffer stop onto the new head shunt extension	1	Item		
93	ETE/ETM to fit new extension of Conductor rail & cables	1	Item		
94	S&T to fit cables & stop light on buffer stop extension	1	Item		
95	S&T Check alterations and connections to location boxes and REB 26	1	Item		
96	S&T teams to work on location boxes 17 to 21 plus A team working on the REB 26 testing and change ove Commissioning of tracks to be undertaken as planned	1	Item		
97	Hand work site back to control	1	Item		
98	Live tests to be checked on all conductor rails and cables as required to plan	1	Item		
Construction of North Sidings - Work stage C3W					
99	Removal of location boxes	1	Item		
100	Install new gateway on North East side for new plant access	1	Item		
101	Install temporary security fence to retaining wall construction area	1	Item		
102	Construct raised walkway bases	1	Item		
103	Lineside equipment bases	1	Item		
104	Construct raised walkways blockwork piers(500m)	1	Item		
105	Completion of all raised walkways - PCC planks	1	Item		
106	Track level walkways	1	Item		
107	Lighting mast	1	Item		
108	CCTV Mast bases	1	Item		
109	MEP installation to raised walkways	1	Item		
110	Construction of ballast formation & tracks BA, BB, BC, BD, DE, BF, BG, BH and associated S&C	1	Item		
111	Install all new S&T equipment & fittings to switches	1	Item		
112	Install all new Conductor Rails and equipment	1	Item		
113	Install all new Point Heaters to new S&C	1	Item		
114	UTX's & surface troughs	1	Item		
115	New cable routes – beside walkways buried	1	Item		
116	Perimeter retaining wall & fence extension around North East corner	1	Item		
117	Test Track fence	1	Item		
118	Signage	1	Item		
119	Test all S&C fittings and tracks (approx. 40)	1	Item		
Possession of North Sidings - Work stage C4P					
120	Take possession & Isolation	1	Item		-
121	Temporary fencing and stop signs to be dismantled	1	Item		-
122	Finalise temporary walkway	1	Item		
123	Cat scan area at west end and check for hidden services/cables	1	Item		
124	S&T will disconnect Cables and equipment as necessary at both sites	1	Item		
125	ETE/ETM will disconnect Conductor rails and cables as necessary	1	Item		
126	The Track to fit into the gap can be laid in as formation is already complete	1	Item		
127	Excavator to be placed in west side plain line area and excavate spoil from area as re Lay in Geo membrane over excavated area	1	Item		
128	Lay in new base ballast on top of Geo blanket Compact base ballast twice	1	Item		

129	Lay in new sleeper's rails as contractor's method. Connect existing track to new North	1	Item		
130	Install top ballast and profile to West end connection	1	Item		
131	Install top ballast and profile to Gap connection on BK track	1	Item		
132	Tamp run in & Runout and new West end connecti on	1	Item		
133	Tamp run in & Runout and new track in Gap section of BK track	1	Item		
134	ETE/ETM to fit new Conductor rail & cables as planned on West end of North sidings	1	Item		
135	ETE/ETM to fit new Conductor rail & cables as planned on BK Track gap section	1	Item		
136	S&T fit and connect cables and equipment as required to plan on West end plain line connection	1	Item		
137	Disconnection and recovery of all S&T equipments (LOE)	1	Item		
138	Testing of equipment and track circuits to be undertaken	1	Item		
139	Changes to GUI	1	Item		
140	Hand work site back to control	1	Item		
141	Live tests to be checked on all conductor rails and cables as required to plan	1	Item		
142	Test train to check all roads are correct for operational use	1	Item		
Construction of North Sidings - Work stage C5W					
143	Test Clamp locks in cluding correspondance test to control panel	1	Item		-
144	Test Signal Head including correspondance test to control panel	1	Item		
145	Test HVI Track circuit including correspondance test to control panel	1	Item		-
146	Connect Conductor rails	1	Item		
147	Test Conductor rail under power	1	Item		
148	Bring majority of Northern sidings into operation	1	Item		-
149	Hand over tracks to DLR (No East end connection made yet)	1	Item		-
Possession of North Sidings - Work stage C6P					
150	Take Possession & isolation of depot	1	Item		-
151	Remove required section of temporary fencing	1	Item		-
152	S&T Disconnect cables & equipment as necessary	1	Item		
153	Remove conductor rail and cables as necessary	1	Item		
154	Remove existing S&C and tracks	1	Item		-
155	Cat Scan ground for hidden services	1	Item		
156	Remove old spoil	1	Item		
157	Lay new Geo blanket membrane down	1	Item		
158	Lay in new ballast as per design level	1	Item		
159	Compact ballast	1	Item		-
160	S&T Fix Signals & equipment in with new cables	1	Item		
161	Install new S&C Units and associated tracks	1	Item		
162	S&T Point's fitter , wire & connect points	1	Item		
163	Lay in new top ballast	1	Item		
164	Tamp S&C and tracks	1	Item		
165	Refit all Conductor rail and cables	1	Item		
166	Clear all tools and equipment from site	1	Item		-
167	S&T Test Clamp locks	1	Item		
168	Test Signal Heads including correspondence to control panel	1	Item		
169	Correspondence testing only - Two aspect signals - Track Circuits - Clamp l ock	1	Item		-
170	Complete all track hand back and final geometric trolley run for As-Built records	1	Item		-
171	PICOW hands back worksite to control	1	Item		-
172	Completion of Design works by S&T	1	Item		
173	ETE/ETM live testing of new conductor rail	1	Item		
174	Test train to run on sidings to test all existing & new Signals, track circuits, structure clearances	1	Item		

	Construction of North Sidings - Final Commissioning Work - stage C7F				
175	Construction of a strail crossing on the East Side for the new MFB works	1	Item		
176	All checks and remedial works to be carried on all new installed track work	1	Item		
177	Full commisioning of Northern sidings track works	1	Item		
	Construction of North Sidings - Work Stage D5P				
178	Build BM & BL Piers & Walkways	1	Item		-
179	Build BM & BL tracks & install Con Rail next to new MFB	1	Item		-
180	Connect all CCTV and lighting masts	1	Item		-
	Possession Works - Work Stage D5P				
181	Site induction and briefing by site access controller	1	Item		-
182	Take possession & Isolation	1	Item		-
183	Temporary fencing and stop signs to be dismantled	1	Item		-
184	Clear area from 1434 points up to new BM & BL sidings	1	Item		
185	Level new base ballast from 1434 points up to new BM & BL sidings	1	Item		
186	Lay new plain line tracks from 1434 points up to new BM & BL sidings	1	Item		
187	Connect all conductor rails and cables (Not connected to live)	1	Item		
188	S&T to Install 39 & 41 Signals on West end of BM & BL sidings	1	Item		-
189	Drop top ballast into tracks from 1434 points up to new BM & BL sidings	1	Item		
190	Clear area from 1460 points up to 1461 & 1464 up to 1465 Points	1	Item		
191	Tamp tracks from 1434 points up to new BM & BL sidings	1	Item		
192	Level new base ballast from 1460 points up to 1461 & 1464 up to 1465 Points	1	Item		
193	Lay new plain line tracks from 1460 points up to 1461 & 1464 up to 1465 Points	1	Item		
194	Connect all conductor rails and cables (Not connected to live)	1	Item		-
195	S&T to Install any equipment and test	1	Item		-
196	Drop top ballast into tracks from 1460 points up to 1461 & 1464 up to 1465 Points	1	Item		
197	Clear area from 1422 points up to 1421 Points	1	Item		
198	Tamp tracks from 1460 points up to 1461 & 1464 up to 1465 Points	1	Item		
199	Level new base ballast from 1460 points up to 1461 & 1464 up to 1465 Points	1	Item		-
200	Lay new plain line tracks from 1460 points up to 1461 & 1464 up to 1465 Points	1	Item		-
201	Connect all conductor rails and cables (Not connected to live)	1	Item		-
202	S&T to Install any equipment and test	1	Item		
203	Drop top ballast into tracks from 1460 points up to 1461 & 1464 up to 1465 Points	1	Item		-
204	Tamp tracks from 1460 points up to 1461 & 1464 up to 1465 Points	1	Item		-
205	S&T Test Clamp locks	1	Item		-
206	Test Signal Heads including correspondence to control panel	1	Item		-
207	Correspondence testing only - Two aspect signals - Track Circuits	1	Item		-
208	PICOW hands back worksite to control	1	Item		-
209	ETE/ETM live testing of new conductor rail	1	Item		
210	Test train to run on sidings to test all existing & new Signals, track circuits, structure clearances	1	Item		
	Handover Documentation				
211	Final Inspection	1	Item		
212	Handback Site & Demobilise	1	Item		-

213	Submit ITPs and Assurance Documentation	1	Item	██████	-
214	AFC Updates (refer to AFC Price Change Detail)	1	item	██████	██████
	Sub Total				

RISK INFORMATION					PRE-MITIGATED ASSESSMENT			MITIGATION PLAN			POST-MITIGATED ASSESSMENT			RISK VALUE BID PRICE	
Risk ID	Risk Title	Cause	Description	Effect	Risk Owner	Likelihood of occurrence	Expected Cost Impact	Expected Schedule Impact	Mitigation	Actionee	Action Due Date	Likelihood of occurrence	Expected Cost Impact	Expected Schedule Impact	Risk value included by the Tenderer in the Bid Price
		Due to...	There is a risk that...	Resulting in...	Contractor / Employer	%	£k	wks				%	£k	wks	£k





**DLR Rolling Stock Replacement Programme; Beckton
Depot Northern Sidings; NEC3 ECC Option C**

Section 1.04

The Schedules

1.040

THE SCHEDULES

Schedule

- 1 Additional definitions
- 2 Performance Bond
- 3 Form of Parent Company Guarantee
- 4 Form of Warranty from *Contractor*
- 5 Form of Warranty from Subcontractor
- 6 Form of Warranty from Subconsultant
- 7 Corporate IPR
- 8 Dispute Resolution Procedure
- 9 Disruption Damages
- 10 Form of Deed of Novation
- 11 Escrow Agreement
- 12 Legal Opinion
- 13 Processing Statement

SCHEDULE 1

(Additional Definitions)

The following defined terms apply to this contract:

Act is The Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

Adjudicator means any adjudicator appointed from time to time in accordance with the Dispute Resolution Procedure.

Anti-Slavery Policy means a policy implemented by the *Contractor* which sets out the procedures the *Contractor* has put in place to comply with section 54 of the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under section 54 of that Act.

Certified Ethical Labour Provider means a labour provider who meets the qualifying requirements of a Certified Ethical Labour Scheme and who is verified, at or within six months (or such longer period as the Employer may agree, acting reasonably) of the starting date, by a competent and independent third party as meeting such qualifying requirements.

Certified Ethical Labour Scheme means any of the following

- the BRE Ethical Labour Sourcing standard BES 6002 ("BRE Standard"),
- the Clearview Global Labour Provider Certification Scheme ("Clearview Scheme"), or
- an alternative standard or scheme, which in the reasonable opinion of the Employer, is an acceptable substitute to the BRE Standard or Clearview Scheme ("Alternative Labour Scheme"),

and references to the BRE Standard, Clearview Scheme and Alternative Labour Scheme are to such standard or schemes as updated from time to time.

Background IPR means IPR owned by the *Contractor* or a Subcontractor or other third party and which is not assigned to the *Employer* pursuant to clause Z2.7.1..

Change of Control means a change of ownership of the *Contractor* (or *parent company* if applicable) where such change relates to fifty percent or more of the issued share capital of the *Contractor* (or *parent company* as the case may be).

Connected Persons means all and any of the *Contractor's* employees, directors, contractors, agents, Subcontractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters.

CDM Regulations means the Construction (Design and Management) Regulations 2015 and any amendment, consolidation, revision and/or replacement thereto and related code of practice together with any requirements issued from time to time by the Health and Safety Executive.

Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005 and amendments to those regulations.

Contract Documents has the meaning given in article 4 in the Form of Agreement.

Contract Information means, for the purposes of Z2.16, (i) the contract in its entirety (including from time to time agreed changes to the contract) and (ii) data extracted from the invoices submitted pursuant to clause 5 [REDACTED]

Corporate IPRs are those trade marks, trade names and other IPRs listed in Schedule 7 as amended by the *Employer* to (i) add further IPRs to the list of Corporate IPRs or (ii) remove or otherwise amend IPRs from or in the list of Corporate IPRs as a result of changes in the Standards.

Data Controller has the meaning given to it in Data Protection Legislation, noting that under the General Data Protection Regulation this would be using the definition of "Controller".

Data Processor has the meaning given to it in Data Protection Legislation, noting that under the General

Data Protection Regulation this would be using the definition of "Processor".

Data Protection Impact Assessment means a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Personal Data.

Data Protection Legislation means:

- (a) any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (b) the General Data Protection Regulation;
- (c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data; and
- (d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation.

Data Subject has the meaning given to it in Data Protection Legislation.

Dispute means any dispute, controversy or claim arising out of or in connection with this contract.

Dispute Resolution Procedure means the procedure for resolving Disputes under this contract, a copy of which is included in Schedule 8.

DLR means Docklands Light Railway Limited registered in England and Wales under company number 02052677 whose registered office is at 5 Endeavour Square, London, E20 1JN.

DLR Network means the Stations and depots (wherever situate), assets, systems, track, and other buildings, which are used in the maintenance and provision of the light rail service known as "the Docklands Light Railway".

Documentation means all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or supplied by or on behalf of the *Contractor* in the performance of this contract.

Employer Data means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including without limitation electronic, magnetic, optical and tangible media) and which are supplied to the *Contractor* by or on behalf of the *Employer* and any IPR relating to the same which are vested in the *Employer*.

Employer Personal Data means Personal Data and/or Sensitive Personal Data Processed by the *Contractor* (including any Subcontractor) on behalf of the *Employer*, pursuant to or in connection with this contract as set out in the Processing Statement.

European Standards means those standards ratified by the European Committee for Standardization (CEN) of Avenue Marnix 17, B-1000 Brussels, Belgium.

FOI Legislation means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department of Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation.

Form of Agreement means the form of agreement to which these *conditions of contract* are attached.

General Data Protection Regulation means the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data.

GLA Act means the Greater London Authority Act 1999.

Greater London means that term as it is used in the GLA Act.

Information means information recorded in any form held by or on behalf of the *Employer*.

Information Request means a request for any Information under the FOI Legislation.

International Standards means those Standards produced by the International Standards Organisation (IS)) 1, ch. De la Voie-Creuse, CP 56, CH-1211 Geneva 20 Switzerland.

IPR means intellectual property rights including patents, trade marks, service marks, trade names, design rights, copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names and other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.

Interfacing Others means Others identified or referred to in the Works Information with whom the Contractor is to interface.

Key Sub-Contractor means any Subcontractor identified such in the Works Information;

Licence means any permit, consent, approval, authorisation, agreement, no objection certificate, waiver or licence which must be obtained from any person (including both private persons and public sector entities) in order for the works to be performed and for any goods to be transported, imported or exported.

London Living Wage means the basic hourly wage current at the date of this contract (before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the *Employer*.

Losses means any expenses, liability, losses, claims, proceedings, compensation and costs whatsoever or howsoever arising.

Management Plans mean any management plans (including any plans relating to key person succession, the Subcontractor Procurement Plan, the Risk Management Plan and the Quality Plan identified as such in the Works Information).

Mayor means the person from time to time holding the office of Mayor of London as established by the GLA Act.

Minimum Records means:

- (a) all necessary information for the evaluation of claims or compensation events, whether or not relating to the *Contractor* or to any Subcontractors (or sub-sub-contractors of any tier);
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) compensation event files (including documentation covering negotiated settlements);
- (i) schedules including capital works costs, timetable and progress towards Completion;
- (j) general ledger entries detailing cash and trade discounts and rebates;
- (k) commitments (agreements and leases) greater than £5,000 (five thousand pounds);
- (l) detailed inspection records;
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*,
- (n) accounts and records of the Price for Work Done to Date and all other amounts to be paid to the *Contractor* under this contract, and
- (o) test and commissioning results.

Operator means a person with statutory duties to provide or secure the provision for Greater London of public passenger services by railway.

Pay Less Notice means the notice referred to in clause 51.2B.

Personal Data has the meaning given to it in Data Protection Legislation.

Processing has the meaning given to it in Data Protection Legislation and “**Process**”, “**Processes**” and “**Processed**” will be construed accordingly.

Processing Statement is in the form set out in Schedule 13 of this contract.

Prohibited Act means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
- for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or
 - for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*;
- (b) entering into this contract or any other contract with the *Employer* in connection with which commission has been paid or has been agreed to be paid by the *Contractor* or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer*;
- (c) committing any offence:
- under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010,
 - under any law or legislation creating offences in respect of fraudulent acts, or
 - at common law in respect of fraudulent acts
- in relation to this contract or any other contract with the *Employer*; or
- (d) defrauding or attempting to defraud the *Employer*,

Prohibited Materials means any products or materials which are generally known to be deleterious at the time of specification or use, in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with:

- (a) the report entitled “Good Practice in the Selection of Construction Materials” (latest edition, by Hoare Lea published by the British Council for Offices and the British Property Federation) other than the recommendations for good practice contained in Section 2 of that report;
- (b) relevant British or European Standards or Codes of Practice; or
- any publications of the Building Research Establishment related to the specification of products or materials.

Project means the extension of the North Sidings at the DLR depot facility at Beckton.

Relevant Individual means, for the purposes of Z2.20, any servant, employee, officer, consultant or agent of the *Contractor* or any Subcontractor carrying out, or intended to carry out, any aspects of the *works*.

Relevant Conviction means, for the purposes of Z2.20, any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.

Responsible Procurement Principles mean the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated March 2006, as updated in January 2008 and as may be further updated from time to time.

Restricted Countries means any country outside the European Economic Area as may be constituted from time to time or the UK.

Safety Breach means a material breach of the contract caused by the gross incompetence, wilful default or reckless disregard to safety of the *Contractor* or any Subcontractor (or anyone employed or acting on behalf of the *Contractor* or any Subcontractor) which has materially affected (or which had the potential

to materially affect) the safe provision of the *works*, the safe operation of the DLR Network and/or the safety of the *Employer's* customers, staff or any other person.

Schedule of Core Group Members means [].

Schedule of Partners means []

Stakeholder is any party :

- who is a Funder,
- who is a first party taking or intending to take a lease of the premises comprising the Project and/or the works or a significant part thereof,
- who is a first party purchasing or intending to purchase the site and/or the premises comprising the Project and/or the works or any significant part thereof,
- who is responsible to the Employer for the construction and completion of the Project and/or the works, or a part thereof, including the Interfacing Others,
- whose assets may be affected as a result of the works,
- who is formed as a management company with responsibility for the maintenance or repair of the Project and/or the works or any substantial part of it and such management.

Standards means the following standards listed in order of priority with a lower ranking standard only applicable where a higher ranking standard is not applicable:

- First: DLR Standards;
- Second: European Standards:
- Third: International Standards and associated codes of practice.

Statutory Requirement means all or any of the following:

- any acts of parliament, European legislation and any statutory instruments, rules, orders, regulations, notices, directions, bye-laws, permissions and plans for the time being made under or deriving validity from any act of parliament or European legislation; and
- any regulations, orders, bye-laws or codes of practice of any local authority or of any Statutory Undertaker which has jurisdiction with regard to the *works* or with whose systems the same are or will be connected including any statutory provisions and any decisions of a relevant authority under the statutory provisions which control the right to develop the site in connection with which the *works* are to be provided.

Statutory Undertaker means any governmental or local authority or statutory undertaker:

- which has any jurisdiction with regard to the *works* and/or the Project including any jurisdiction to control development of the Site or any part of it;
- with whose requirements the *Employer* is accustomed to comply; or
- with whose systems and/or utilities the Project and/or the *works* will be connected.

Subcontractor Procurement Plan means a plan for the procurement and appointment of Subcontractors by the *Contractor* containing the information stated in the Works Information and which is submitted and accepted in accordance with the provisions of the Works Information.

Subject Access Request means a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted in Data Protection Legislation.

Supplementary Notes means the notes entitled "Schedule of Cost Components/Shorter Schedule of Cost Components Supplementary Notes" included in this contract.

TfL Group means Transport for London ("**TfL**"), a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The *Employer* is a member of the TfL Group.

Third Party Agreements means the agreements entered into by the *Employer* with third parties which are referred to in the Works Information.

Transparency Commitment means, for the purpose of Z2.16, the *Employer's* commitment to publish its contracts, tender documents and data from invoices received, in accordance with the Local Government Transparency Code 2015 and the *Employer's* own published transparency commitments.

SCHEDULE 2

(Form of Performance Bond)

Performance Bond

between

[CONTRACTOR]

and

[SURETY]

and

DOCKLANDS LIGHT RAILWAY LIMITED

relating to

BECKTON DEPOT NORTH SIDINGS CONTRACT

PARTIES:

- (1) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Contractor”); and
- (2) [SURETY] [(registered number [no.]) whose registered office is] [of] [Address] (“the Surety”); and
- (3) [EMPLOYER] of [of] [Address] (“the Employer”, which expression shall include its successors and assigns).

BACKGROUND:

- (A) By a contract (“the Contract”) entered into between the Employer and the Contractor, particulars of which are set out in Annex 1 to the Bond (“the Annex”), the Contractor has agreed with the Employer to execute works (“the Works”) upon and subject to the terms and conditions set out within the Contract.
- (B) The Surety has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Bond subject to the limitation set out in clause 2.

IT IS AGREED AS FOLLOWS:

1.GUARANTEE

The Surety guarantees to the Employer that in the event of a breach of the Contract (which for the avoidance of doubt, but without limitation, will include the occurrence of any of the events of insolvency listed in clause 91 of the Contract, (“an Insolvency Event”)) the Surety shall subject to the provisions of this Bond satisfy and discharge the damages sustained or debts incurred by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract taking into account all sums due or to become due to the Contractor.

2.BOND AMOUNT

The maximum aggregate liability of the Surety and the Contractor under this Bond shall not exceed the sum set out in the Annex (“the Amount”) but subject to such limitation and to clause 4 the liability of the Surety shall be co-extensive with the liability of the Contractor under the Contract and for such purposes the terms and conditions of the Contract shall be deemed to be incorporated.

3.NO DISCHARGE OF LIABILITY

3.1The Surety shall not be discharged or released by:

- 3.1.1 any fact, event or rule of law which, but for this clause 3 might operate to release in whole or in part the Surety from its obligations under this Bond including (without

limitation) any alteration, variation or waiver of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works on the part of the Employer shall in any way release reduce or affect the liability of the Surety under this Bond;

3.1.2 any fact event or rule of law which results in any total or partial invalidity, illegality or unenforceability of the Contract which the Contractor could have avoided by the use of its reasonable endeavours or could by using its reasonable endeavours have drawn to the attention of the Employer prior to the date of the Contract (in which case for the purposes of this Bond the Contract will be deemed valid, legal and enforceable as if such reasonable endeavours had been exercised and appropriate steps been taken to avoid or mitigate the invalidity, illegality or unenforceability); or

3.3 a legal limitation, disability or incapacity of the Contractor.

4. **EXPIRY**

Whether or not this Bond shall be returned to the Surety the obligations of the Surety under this Bond shall be released and discharged absolutely upon the Expiry Date (as defined in the Annex) save in respect of any breach of the Contract or an Insolvency Event which has occurred and in respect of which a claim in writing has been made upon the Surety before the Expiry Date.

5. **CONTRACTOR'S UNDERTAKING**

The Contractor, having requested the execution of this Bond by the Surety, undertakes to the Surety (without limitation of any other rights and remedies of the Employer or the Surety against the Contractor) to perform and discharge the obligations on its part set out in the Contract. Furthermore the Contractor undertakes to the Employer that he will not seek to recover from the Employer a sum due or to become due to the Contractor which has been taken into account when assessing sums due to the Employer under this Bond.

6. THIRD PARTY RIGHTS

- 6.1 Save that any member of the TfL Group (as defined in the Contract) has the right to enforce the terms of this Bond, the parties to this Bond do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 6.2 Notwithstanding clause 6.1, the parties to this Bond are entitled to vary or rescind this Bond without the consent of any or all members of the TfL Group.

7.ASSIGNMENT

The benefit of this Bond may be assigned by the Employer at any time without the prior written consent of the Surety or the Contractor subject to the Employer giving prior written notice of such assignment to the Contractor and the Surety.

8.JURISDICTION

The Bond shall be governed by and construed in accordance with the laws of England and Wales and be in all respects subject to the non-exclusive jurisdiction of the courts of England and Wales.

APPENDIX 1 ANNEX 1

The Contract: A contract dated [DATE] between the Employer and the Contractor for [**DESCRIBE WORKS**]

The Amount: In respect of any breach of the Contract or an Insolvency Event which has occurred and in respect of which a claim in writing has been made upon the Surety the sum of an amount being equivalent [REDACTED]
[REDACTED]
[REDACTED]

The Expiry Date: The [date of issue of the Defects Certificate].

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

[EXECUTION AS A DEED BY ALL PARTIES INCLUDING EMPLOYER]

SCHEDULE 3

(Form of Parent Company Guarantee)

THIS DEED OF GUARANTEE is effective as of the _____ day of _____ 20[●]

BETWEEN:

- (1) [●], a company incorporated in [●] with registered number [●] and having its registered office at [●] (the “**Guarantor**”);
- (2) [●], a company incorporated in [●] [(the Contractor)];
- (3) Docklands Light Railway Limited, a company incorporated in England and Wales with registered number 02052677 and having its registered office at 5 Endeavour Square, London, E20 1JN (the “**Company**”).

WHEREAS:

- (A) Pursuant to an agreement (the “**Contract**”) dated on or about the date hereof between the Company and [●] (the “**Contractor**”), the Contractor has agreed to carry out the services as described therein.
- (B) It is a condition of the entering into of the Contract that the Guarantor enters into and delivers this Guarantee in favour of the Company to guarantee the due performance of the Contract by [the Contractor] in the manner hereinafter described.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

1.1 In this Guarantee:

- 1.1.1 “**Contractor’s Obligations**”: shall mean (i) all liabilities and each and all of the obligations, warranties, duties and undertakings of the Contractor to the Company under or in connection with the Contract; and (ii) the payment and discharge of all sums of money and liabilities due, owing or incurred or payable, actual and contingent, by the Contractor to the Company under or in connection with the Contract or as a result of any breach thereof including, without limitation, all expenses (including legal fees and taxes) incurred by the Company in connection with the Company seeking to enforce any of the above;
- 1.1.2 references to Clauses are, unless otherwise stated, to clauses of this Guarantee;
- 1.1.3 references to “**Contractor**”, “**Guarantor**” and/or “**Company**” shall include their respective transferees, successors and assigns whether immediate or derivative;
- 1.1.4 the headings to Clauses are for convenience only and have no legal effect;
- 1.1.5 references herein to any agreement or document shall be construed as referring to such agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated or assigned;
- 1.1.6 the expression “**person**” shall be construed to include reference to any person, firm, company, partnership, corporation or unincorporated body of persons or any state or government or any agency thereof; and
- 1.1.7 unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.

1.2 The parties to this Guarantee intend it to be a deed.

2. Guarantee and Indemnity

2.1 The Guarantor irrevocably and unconditionally:

2.1.1 guarantees to the Company the prompt performance or discharge by the [Contractor] of the Contractor's Obligations;

2.1.2 undertakes with the Company that whenever the [Contractor]:

(a) does not pay any amount in respect of the Contractor's Obligations when due, it shall forthwith on written demand by the Company stating that the [Contractor] has failed to pay such amount pay the relevant amount; and

(b) does not perform or discharge any obligation in respect of the Contractor's Obligations when due, it shall within five (5) business days of written demand by the Company stating that the [Contractor] has failed to perform the Contractor's Obligations perform or cause to have performed or discharge such obligation,

in each case as if it, instead of the [Contractor], were expressed to be the principal obligor; and

2.1.3 as principal obligor agrees to indemnify the Company on written demand against any loss or liability suffered by it if any Contractor's Obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal.

2.2 The Guarantor's liability under this Guarantee shall be no greater than the liability of the Contractor under or pursuant to the Contract or what would have been the liability of the Contractor under or pursuant to the Contract were it not for the unenforceability, invalidity or illegality of the Contract and, accordingly, the Guarantor shall be entitled to raise the same defences as those which the Contractor is entitled to raise (save as to the unenforceability, invalidity or illegality of the Contract) or would have been entitled to raise were it not for the unenforceability, invalidity or illegality of the Contract (but so that the same defence shall not be raised more than once).

2.3 As between the Guarantor and the Company, the Guarantor shall remain liable under clause 2.1 as if it was the sole principal obligor and not merely a guarantor provided that nothing in this Guarantee set out herein shall render the Guarantor liable in respect of any provision of the Contract that is illegal, invalid or unenforceable.

3. Continuing Guarantee

This Guarantee is a continuing guarantee and, accordingly, shall remain in operation and in full force and effect (notwithstanding any intermediate satisfaction of the obligations and liabilities guaranteed hereunder by the [Contractor], the Guarantor or any other person) until all obligations (whether actual or contingent), warranties, duties and undertakings now or hereafter to be carried out or performed by the [Contractor] and the Company under the Contract and all the obligations (whether actual or contingent) of the Guarantor under this Guarantee have been satisfied or performed in full and will extend to the ultimate balance of all sums payable by the Contractor in respect of the Contractor's Obligations, regardless of any intermediate payment or discharge thereof in whole or in part.

4. Reinstatement

4.1 Where any discharge (whether in respect of the Contractor's Obligations or any security for such obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the Guarantor under this Guarantee shall continue as if the discharge or arrangement had not occurred.

4.2 The Company may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

5. Waiver of Defences

- 5.1 The obligations of the Guarantor under this Guarantee will not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Guarantee or prejudice or diminish those obligations in whole or in part, including (whether or not known to it or to the Company):
- 5.1.1 any time or waiver granted to, or composition with, the Contractor or any other person;
 - 5.1.2 any delay or forbearance by the Company in exercising its rights or remedies under this Guarantee;
 - 5.1.3 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 Contractor or any 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;
 - 5.1.4 any incapacity or lack of powers, authority or legal personality of, or dissolution or change in the members or status of, the Contractor or any other person;
 - 5.1.5 any variation (however fundamental) or replacement of the Contract or any other document or security so that references to such documents in this Guarantee shall include each variation or replacement;
 - 5.1.6 any unenforceability, illegality or invalidity of any obligation of any person under the Contract or any other document or security, to the intent that the Guarantor's obligations under this Guarantee shall remain in full force and its guarantee be construed accordingly, as if there were no such unenforceability, illegality or invalidity; or
 - 5.1.7 any postponement, discharge, reduction, non-provability or other similar circumstance affecting any of the Contractor's Obligations or any other document or security resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order so that each such obligation shall for the purposes of the Guarantor's obligations under this Guarantee be construed as if there were no such circumstance.

6. Immediate Recourse

- 6.1 The Guarantor:
- 6.1.1 gives the guarantee contained in this Guarantee as principal obligor and not merely as surety; and
 - 6.1.2 waives any right it may have of first requiring the Company to proceed against, or enforce any other rights or security or claim payment from, any person before claiming from the Guarantor under this Guarantee.

7. Appropriations

Until all amounts which may be or become payable in respect of the Contractor's Obligations have been irrevocably paid in full, the Company may:

- 7.1 refrain from applying or enforcing any other moneys, security or rights held or received by the Company 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
- 7.2 hold in a suspense account any moneys received from the Contractor on account of the Contractor's Obligations or on account of the Guarantor's liability under this Guarantee.

8. Non-Competition

- 8.1 Until all amounts which may be or become payable and all liabilities, obligations, warranties, duties and undertakings in respect of the Contractor's Obligations have been irrevocably paid, performed or

discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment, performance or discharge by it under this Guarantee:

- 8.1.1 be subrogated to any rights, security or moneys held, received or receivable by the Company or be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Guarantor's liability under this Guarantee;
- 8.1.2 claim, rank, prove or vote as a creditor of the Contractor or its estate in competition with the Company unless the Company so directs in which case it shall; or
- 8.1.3 receive, claim or have the benefit of any payment, distribution or security from or on account of the Contractor, or exercise any right of set-off as against the Contractor unless the Company so directs in which case it shall.

8.2 The Guarantor shall hold in trust for and forthwith pay or transfer to the Company any payment or distribution or benefit of security received by it either contrary to this Clause 8 (Non-Competition) or as a result of a direction of the Company under Clause 8.1.2 or 8.1.3.

9. Additional Security

This Guarantee is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Company.

10. Assignment

The Company may assign, charge or transfer any of its rights under this Guarantee without the consent of the Guarantor, provided that the Company shall give a written notice to the Guarantor to that effect.

11. Notices

Any notice to be given under this Guarantee shall be in writing and delivered by hand and/or sent by post (first class recorded delivery) or facsimile (in the case of facsimile to be confirmed in writing within 24 hours of being sent by such notice being delivered or sent by first class recorded delivery as aforesaid). The address for service of each party shall be as follows:

Guarantor:

Address: []

Attention: []

Company:

Address: []

Attention: []

with a copy to

Address: Transport for London, 5 Endeavour Square, London, E20 1JN

12. Miscellaneous

12.1 The Company is entitled to make any number of demands under this Guarantee.

12.2 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

12.3 Nothing in this Guarantee is intended to confer on any person any right to enforce any provision of this Guarantee which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

12.4 The Company acknowledges and agrees that it will notify the Guarantor within five (5) Business Days of any claim made against the performance bond provided pursuant to the Contract.

13. Counterparts

This Guarantee may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

14. Governing Law and Jurisdiction

14.1 This Guarantee and any non-contractual obligations arising out of or in connection with it are governed by English law.

14.2 If any dispute or difference arises between the Guarantor and the Company in connection with this Guarantee or any non-contractual obligation arising out of or in connection with this Guarantee which cannot be resolved by mutual agreement, it shall be referred to the jurisdiction of the English Courts.

15. Legal Opinion

15.1 If the Guarantor is not a company registered in England and Wales, the Guarantor provides to the Company a legal opinion in the form appended at Schedule 12 of the Contract on the Guarantor's execution of this Guarantee.

IN WITNESS whereof this Guarantee has been executed as a deed and delivered by the Guarantor and the Company the day and year first before written.

EXECUTED AS A DEED by)
[•])
on being signed by two) (duly authorised officer)
duly authorised officers)
)
) (duly authorised officer)

Date: _____

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of
Docklands Light Railway Limited
In the presence of:

Authorised Signatory _____

SCHEDULE 4

(Form of Warranty from *Contractor*)

THIS DEED is made on ● 20[●]

BETWEEN:

- (1) Docklands Light Railway Limited whose registered office is situate at 5 Endeavour Square, London, E20 1JN (the "**Beneficiary**"); and
- (2) [●] whose registered office is situate at [●] (the "**Contractor**").

WHEREAS:

- (A) By a contract dated [●] (the "**Contract**") Docklands Light Railway Limited (whose registered office is at 5 Endeavour Square, London, E20 1JN ("the *Employer*", which expression shall include its successors in title and assigns) appointed the *Contractor* to design, carry out and complete certain **Works** at Beckton Depot (the "**works**").
- B) [The Beneficiary [intends to enter into] [has entered into] an agreement to provide finance for the carrying out and completion of the *works*.] [The Beneficiary [intends to enter into] [has entered into] an agreement with the *Employer* under which it will agree that on or following Completion of the *works* it will [purchase] [take a lease of] the whole or part of the *works*.]

NOW IT IS AGREED:

1. Terms and expressions defined in the Contract shall where the context so permits have the same meanings in this Deed.
2. The *Contractor* warrants and undertakes to the Beneficiary that:
 - (a) it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent contractor experienced in carrying out works of a similar scope, size and complexity to the *works*; and
 - (b) it has complied with and will continue to comply with the terms of the Contract.
3. The *Contractor* warrants and undertakes to the Beneficiary that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. Provided that nothing in this Clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed, the *Contractor* further warrants and undertakes to the Beneficiary that:
 - (a) the *works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;

- (b) the *works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship;
 - (c) the *works* are integrated with the designs of Others as specified in the Contract;
 - (d) the *works* will on Completion comply with all applicable law and all relevant Standards; and
 - (e) the *works* will be carried out and completed timeously in accordance with the Accepted Programme.
5. The *Contractor* warrants and undertakes to the Beneficiary that it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract and that it has professional indemnity insurance with a limit of indemnity [REDACTED] in respect of each and every claim which may be made against the *Contractor* in relation to the *works*. The *Contractor* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the *Contractor's* insurance claims record.
6. As and when reasonably requested by the Beneficiary, the *Contractor* shall produce for inspection documentary evidence that the insurance referred to in Clause 5 is being properly maintained and that payment has been made of the last premium due in respect of such insurance.
7. To the extent that the intellectual property rights in any and all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the *Contractor* in connection with the *works* (whether in existence or to be made) ("**Documents**") have not already vested in the *Employer*, the *Contractor* grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the *Contractor* incorporated or referred to in them for the following purposes:
- (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the Underground Network;
 - (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the Underground Network;
 - (f) executing or completing the *works*; and
 - (g) designing, testing and commissioning the *works*

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the *Contractor*.

8. The *Contractor* agrees:
 - (a) on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
 - (b) at the *Contractor's* expense to provide the Beneficiary with a set of all such material on Completion of the *works*.
9. If called upon to do so by the Beneficiary, the *Contractor* shall provide the Beneficiary with such information relating to the *works* as the Beneficiary may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Contractor* for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the *Contractor* under the Contract or relieve the *Contractor* from any liability which it has in relation to the *works*.
10. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the *Contractor* being required and the *Contractor* shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the *Contractor*. For the purposes of this clause, "**TfL Group**" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The *Employer* is a member of the TfL Group.
11. The *Contractor* shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the *Contractor* under this Deed shall cease 12 years following Completion of the whole of the *works*.
13. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the *Contractor* including without limitation any remedies in negligence.
14. Not used
- 15.1 Notwithstanding any other provision of this Deed, the *Contractor* shall owe no greater obligations to the Beneficiary than he owes to the *Employer* under the Contract as if the Beneficiary was named in the Contract as a joint employer with the *Employer*.
- 15.2 The *Contractor* shall be entitled in any actions or proceedings by the Beneficiary to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability as he would have against the *Employer* thereunder.

16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principle place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 17.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 17.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 17.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
18. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of
 Docklands Light Railway Limited
 In the presence of:

Authorised Signatory _____

**[EXECUTED AND DELIVERED AS
 A DEED by
 [THE BENEFICIARY]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

**[EXECUTED AND DELIVERED AS
 A DEED by
 [THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

SCHEDULE 5A

(Form of Warranty from Subcontractor to Employer)

THIS DEED is made on ● 20[●]

BETWEEN:

- (1) ● whose registered office is ●¹ (the "**Employer**" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "**Subcontractor**"); and
- (3) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

- (A) The *Contractor* has entered into a contract dated [●] (the "**Contract**") with the *Employer* for the design and carrying out of certain [Works and/ or Services] at [●] (the "**works**").
- (B) The Subcontractor [has entered] [will shortly enter] into a subcontract (the "**Subcontract**") with the *Contractor* for the design and carrying out of certain parts (the "**subcontract works**") of the *works* more particularly defined in Annex [●] hereto².

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Connected Persons" means of any of the Subcontractor's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (b) "DLR Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the light rail service known as the "Docklands Light Railway".
 - (c) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made);
 - (d) "Minimum Records" means all records relating to the Subcontractor's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the *Employer* may reasonably request.
-

- (e) "Prohibited Act" means:
- (i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Contractor* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Subcontract or any other contract with the *Employer* or the *Contractor* or for showing or not showing favour or disfavour to any person in relation to the Subcontract or any other contract with the *Employer* or the *Contractor*;
 - (ii) entering into the Subcontract or any other contract with the *Employer* or the *Contractor* in connection with which commission has been paid or has been agreed to be paid by the Subcontractor or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer* or the *Contractor*;
 - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Subcontract or any other contract with the *Employer* or the *Contractor*; or
 - (iv) defrauding or attempting to defraud the *Employer* or the *Contractor*.
- (f) "Safety Breach" means a material breach of the Subcontract caused by the gross incompetence, wilful default or reckless disregard to safety of the Subcontractor (or anyone employed or acting on behalf of the Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the *subcontract works*, the safe operation of the Underground Network and/or the safety of the *Employer's* employees, or the public or any other persons.
- (g) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.

2. The Subcontractor warrants and undertakes to the *Employer* that:

- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out works of a similar scope, size and complexity to the *subcontract works*; and
- (b) he has complied with and will continue to comply with the terms of the Subcontract.

3. The Subcontractor warrants and undertakes to the *Employer* that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.

4. The Subcontractor further warrants and undertakes to the *Employer* that:

- (a) the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;

- (b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
 - (c) the *subcontract works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Subcontract;
 - (d) he has exercised and will continue to exercise all reasonable skill, care and diligence in the design of the *subcontract works* insofar as they have been or will be designed by or on behalf of the Subcontractor;
 - (e) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards;
 - (f) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (g) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.
5. The Subcontractor warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the *subcontract works*, he has professional indemnity insurance with a limit of indemnity of not less than £[●] in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the *Employer*, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subcontractor grants to the *Employer* an irrevocable non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:
- (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the DLR Network;

- (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the DLR Network;
- (f) executing or completing the *works*; and
- (g) designing, testing and commissioning the *works*

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the Subcontractor.

8. The Subcontractor agrees:

- (a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer's* expense to provide copies of any such material; and
- (b) at the Subcontractor's expense to provide the *Employer* with a set of all such material on Completion of the *subcontract works*.

9. If called upon to do so by the *Employer*, the Subcontractor shall provide the *Employer* with such information relating to the *subcontract works* as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the *Employer* nor the approval by the *Employer* of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the *subcontract works*.

10. The Subcontractor warrants and undertakes to the *Employer* that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the *works* with respect to all matters for which the Subcontractor is responsible under the Subcontract. The Subcontractor further warrants and undertakes to the *Employer* that the Subcontract contains open-book audit rights in favour of the *Employer* and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Subcontract on an open-book basis. The *Employer* and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subcontractor including, without limitation the Minimum Records. The Subcontractor further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems and senior personnel and making documents available. Without prejudice to the foregoing, the Subcontractor acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Subcontractor's obligations under the Subcontract with respect to Prohibited Acts and Safety Breaches at any time during performance of the Subcontract and during the 12 years thereafter.

11. The Subcontractor shall provide such assistance to the *Employer* as it may reasonably require in connection with the *subcontract works*.

12. In the event that the Contract or the employment of the *Contractor* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Contractor* (voluntary or otherwise), the Subcontractor shall without allowing any break or intermission to occur in the performance of his duties:

- (a) continue to observe and carry out his obligations under the Subcontract and this Deed;
 - (b) if so required by notice in writing from the *Employer* treat the *Employer* as *Employer* under the Subcontract to the exclusion of the *Contractor* whereupon all rights and obligations of the *Contractor* under the Subcontract shall thereafter be exercisable and performed by the *Employer*; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Subcontract reasonably required by the *Employer*.
- 13.1 The Subcontractor warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the *Contractor* under the Subcontract and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Subcontract or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Subcontract.
- 13.2 The Subcontractor's right to terminate the Subcontract or to treat the same as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and completion of the *subcontract works* upon the terms of the Subcontract.
14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subcontractor. Upon the issue of any such notice by the *Employer*, the Subcontract shall continue in full force and effect as if no right of termination on the part of the Subcontractor had arisen and the Subcontractor shall be liable to the *Employer* or its appointee under the Subcontract in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subcontractor to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the *Employer's* appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer's* notice.
15. The *Contractor* has agreed to be a party to this Deed for the purposes of acknowledging that the Subcontractor shall not be in breach of the Subcontract by complying with the obligations imposed on it by Clauses 12 or 13 hereof.
16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
17. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the *works*.

19. The Subcontractor hereby covenants that if required by the *Employer* it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the *subcontract works*. Each such deed of warranty shall be in the same form mutatis mutandis as this Deed or in such substantially similar form as may reasonably be required by the *Employer*.
- 20.1 Without limitation to Clause 2 above, the Subcontractor hereby warrants to the *Employer* that:
- (a) except as provided under deeds of warranty required pursuant to the Subcontract, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Subcontract, this Deed or the project to which the *subcontract works* relate;
 - (b) he shall treat all information obtained under, arising from or in connection with the Subcontract, this Deed and the project as confidential, and that other than for the purpose of providing the *subcontract works*, it shall not disclose any information or documents concerning the Subcontract to any other person; and
 - (c) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.
- 20.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.
- 20.3 Clause 20.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subcontractor to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 20.4 The Subcontractor shall procure that the Connected Persons comply with the provisions of this Clause 20 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 20.5 The Subcontractor shall notify the *Employer* promptly if the Subcontractor becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- 20.6 The Subcontractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 20 by the Subcontractor and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 20.

- 20.7 At the *Employer's* request and in any event upon the termination or expiry of the Subcontract, the Subcontractor shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the Subcontractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 21.1 The Subcontractor shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Subcontract.
- 21.2 The Subcontractor shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
22. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subcontractor including without limitation any remedies in negligence.
23. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the *Employer* in Clauses 12 and 13 override any obligations of the Subcontractor to the *Contractor* under the Subcontract.
24. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 25.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.
- 25.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
26. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of
Docklands Light Railway Limited
In the presence of:

Authorised Signatory _____

THE COMMON SEAL of
[THE SUB-CONTRACTOR]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

ANNEX

(subcontract works)

SCHEDULE 5B

(Form of Warranty from Subcontractor to Beneficiary)

THIS DEED is made on ● 20[●]

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**")
- (2) ● whose registered office is situate at ● (the "**Subcontractor**"); and
- (3) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

(A) The *Contractor* has entered into a contract dated [●] (the "**Contract**") with [●] whose registered office is situate at [●] (the "**Employer**") which expression shall include its successors and assigns for the design and carrying out of certain [**Works and/ or Services**] at [●] (the "**works**").

(B) The Subcontractor [**has entered**] [**will shortly enter**] into a subcontract (the "**Subcontract**") with the *Contractor* for the design and carrying out of certain parts (the "**subcontract works**") of the *works* more particularly defined in *Annex [●]* hereto¹.

(C) [The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *works*. [The Beneficiary intends to enter into an agreement with the *Employer* under which it will agree that on or following Completion of the *works* it will [purchase] / [take a lease of] the whole or part of the *works*.] [The Beneficiary has an interest in the whole or part of the *works* as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* in respect of [●]]/[The Beneficiary is a member of the TfL Group and has an interest in the *works* as ●]²

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made).
 - (b) "DLR Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the light rail service known as the "Docklands Light Railway".
 - (c) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.

¹ A description of the works should be provided in the Annex.

² Select appropriate recital depending on whether the Beneficiary is a (i) funder; (ii) purchaser/tenant; (iii) developer, or (iv) member of the TfL Group.

2. The Subcontractor warrants and undertakes to the Beneficiary that:
 - (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out works of a similar scope, size and complexity to the *subcontract works*; and
 - (b) he has complied with and will continue to comply with the terms of the Subcontract.
3. The Subcontractor warrants and undertakes to the Beneficiary that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. Provided that nothing in this Clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed the Subcontractor further warrants and undertakes to the Beneficiary that:
 - (a) the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;
 - (b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
 - (c) the *subcontract works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Subcontract;
 - (d) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards; and
 - (e) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.
5. The Subcontractor warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the *subcontract works*, he has professional indemnity insurance with a limit of indemnity of not less than £[●]³ in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the Beneficiary, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

³ The PI figure should be the same as the figure inserted in the Contract Data.

7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subcontractor grants to the Beneficiary an irrevocable non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:

- (a) understanding the *works*;
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
- (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
- (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the DLR Network;
- (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the DLR Network;
- (f) executing or completing the *works*; and
- (g) designing, testing and commissioning the *works*

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the prior consent of the Subcontractor.

8. The Subcontractor agrees:

- (a) on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
- (b) at the Subcontractor's expense to provide the Beneficiary with a set of all such material on Completion of the *subcontract works*.

9. If called upon to do so by the Beneficiary, the Subcontractor shall provide the Beneficiary with such information relating to the *subcontract works* as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary nor the approval by the Beneficiary of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the *subcontract works*.

10. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.

11. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the *works*.
- 13.1 The Subcontractor shall owe no greater obligations to the Beneficiary than he owes to the *Contractor* under the Subcontract.
- 13.2 The Subcontractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
14. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subcontractor including without limitation any remedies in negligence.
15. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 17.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 17.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 17.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
18. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of
Docklands Light Railway Limited
In the presence of:

Authorised Signatory _____

**[EXECUTED AND DELIVERED AS
A DEED by
[THE BENEFICIARY]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

**THE COMMON SEAL of
[THE SUB-CONTRACTOR]**
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**THE COMMON/CORPORATE SEAL of
[THE CONTRACTOR]**
was affixed to **THIS DEED**
in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

ANNEX

(subcontract works)

SCHEDULE 6A

(Form of Warranty from Subcontractor to Employer (where Subcontractor is providing consulting services))

THIS DEED is made on ● 20[●]

BETWEEN:

- (1) ● whose registered office is at ●¹ ("the **Employer**" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "**Subconsultant**"); and
- (3) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

- (A) The *Contractor* has entered into a contract dated [●] (the "**Contract**") with the *Employer* for the carrying out of certain [**Works and/or Services**] at ● (the "**works**").
- (B) The Subconsultant has been invited to design certain parts (the "**design works**") of the *works* and [has entered] [will shortly enter] into a deed of appointment with the *Contractor* (the "**Appointment**") for the *design works*.

NOW IT IS AGREED:

1. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Connected Persons" means of any of the Subconsultant's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (b) "DLR Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the light rail service known as the "Docklands Light Railway".
 - (c) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);
 - (d) "Minimum Records" means all records relating to the Subconsultant's operations, method statements, costs and expenses, subcontracts, claims relating to compensation events and financial arrangements and any document referred to therein or relating thereto and any similar records which the *Employer* may reasonably request.
 - (e) "Prohibited Act" means:

¹ Insert details of relevant member of the TfL Group.

- (i) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the *Contractor* any grant, gift or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Appointment or any other contract with the *Employer* or the *Contractor* or for showing or not showing favour or disfavour to any person in relation to the Appointment or any other contract with the *Employer* or the *Contractor*;
 - (ii) entering into the Appointment or any other contract with the *Employer* or the *Contractor* in connection with which commission has been paid or has been agreed to be paid by the Subconsultant or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer* or the *Contractor*;
 - (iii) committing any offence under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010, under any law or legislation creating offences in respect of fraudulent acts, or at common law in respect of fraudulent acts in relation to the Appointment or any other contract with the *Employer* or the *Contractor*; or
 - (iv) defrauding or attempting to defraud the *Employer* or the *Contractor*.
- (f) "Safety Breach" means a material breach of the Appointment caused by the gross incompetence, wilful default or reckless disregard to safety of the Subconsultant (or anyone employed or acting on behalf of the Subconsultant) which has materially affected (or which had the potential to materially effect) the safe provision of the *design works*, the safe operation of the Underground Network and/or the safety of the *Employer's* employees, or the public or any other persons.
- (g) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.

2. The Subconsultant warrants and undertakes to the *Employer* that;

- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Contractor* under the Appointment; and
- (b) he has complied with and will continue to comply with the terms of the Appointment.

3. The Subconsultant warrants to the *Employer* that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.

4. The Subconsultant further warrants and undertakes to the *Employer* that:

- (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;

- (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
 - (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;
 - (d) the *design works* will on Completion comply with all applicable law and all relevant Standards;
 - (e) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (f) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.
5. The Subconsultant warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than ██████████ in respect of each and every claim which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided that such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.
6. As and when reasonably requested by the *Employer*, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subconsultant grants to the *Employer* an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for the following purposes:
- (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the DLR Network;
 - (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the DLR Network;
 - (f) executing or completing the *works*; and

- (g) designing, testing and commissioning the *works*

provided always that the Subconsultant shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties without the prior consent of the Subconsultant.

8. The Subconsultant agrees:
 - (a) on request at any time to give the *Employer* or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the *Employer's* expense to provide copies of any such material; and
 - (b) at the Subconsultant's expense to provide the *Employer* with a set of all such material on Completion of the *design works*.
9. If called upon to do so by the *Employer*, the Subconsultant shall provide the *Employer* with such information relating to the *design works* as the *Employer* may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the *Employer* or its agents nor the approval by the *Employer* or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.
10. The Subconsultant warrants and undertakes to the *Employer* that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the *works* with respect to all matters for which the Subconsultant is responsible under the Appointment. The Subconsultant further warrants and undertakes to the *Employer* that the Appointment contains open-book audit rights in favour of the *Employer* and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Appointment on an open-book basis. The *Employer* and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or record of the Subconsultant including, without limitation the Minimum Records. The Subconsultant further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems or senior personnel and making documents available. Without prejudice to the foregoing, the Subconsultant acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Subconsultant's obligations under the Appointment with respect to Prohibited Acts and Safety Breaches at any time during performance of the Appointment and during the 12 years thereafter.
11. The Subconsultant shall provide such assistance to the *Employer* as it may reasonably require in connection with the *design works*.
12. In the event that the Contract or the employment of the *Contractor* thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the *Contractor* (voluntary or otherwise), the Subconsultant shall without allowing any break or intermission to occur in the performance of his duties:
 - (a) continue to observe and carry out his obligations under the Appointment and this Deed;
 - (b) if so required by notice in writing from the *Employer* treat the *Employer* as client under the Appointment to the exclusion of the *Contractor* whereupon all rights and obligations of the

Contractor under the Appointment shall thereafter be exercisable and performed by the *Employer*, and

- (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Appointment reasonably required by the *Employer*.

- 13.1 The Subconsultant warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the *Contractor* under the Appointment and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Appointment or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Appointment.

- 13.2 The Subconsultant's right to terminate the Appointment or to treat it as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subconsultant requiring the Subconsultant to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and Completion of the *design works* upon the terms of the Appointment.

- 14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subconsultant. Upon the issue of any such notice by the *Employer*, the Appointment shall continue in full force and effect as if no right of termination on the part of the Subconsultant had arisen and the Subconsultant shall be liable to the *Employer* or its appointee under the Appointment in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subconsultant to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the Subconsultant as guarantor for the payment of all sums from time to time due to the Subconsultant from the *Employer's* appointee. For the avoidance of doubt neither the *Employer* nor his appointee shall be liable for any work carried out prior to the date of the *Employer's* notice.

- 15. The *Contractor* has agreed to be a party to this Deed for the purposes of acknowledging that the Subconsultant shall not be in breach of the Appointment by complying with the obligations imposed on the Subconsultant by Clauses 12 or 13.

- 16. This Deed may be assigned by the *Employer* to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.

- 17. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

- 18. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *works*.

- 19.1 Without limitation to Clause 2 above, the Subconsultant hereby warrants to the *Employer* that:

- (d) except as provided under deeds of warranty required pursuant to the Appointment, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Appointment, this Deed or the project to which the *design works* relate;
 - (e) he shall treat all information obtained under, arising from or in connection with the Appointment, this Deed and the project as confidential, and that other than for the purpose of providing the *design works*, it shall not disclose any information or documents concerning the Appointment to any other person; and
 - (f) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.
- 19.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.
- 19.3 Clause 19.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subconsultant to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 19.4 The Subconsultant shall procure that the Connected Persons comply with the provisions of this Clause 19 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 19.5 The Subconsultant shall notify the *Employer* promptly if the Subconsultant becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- 19.6 The Subconsultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 19 by the Subconsultant and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 19.
- 19.7 At the *Employer's* request and in any event upon the termination or expiry of the Appointment, the Subconsultant shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the Subconsultant (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 20.1 The Subconsultant shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Appointment.

- 20.2 The Subconsultant shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
21. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subconsultant including without limitation any remedies in negligence.
22. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the *Employer* in Clauses 12 and 13 override any obligations of the Subconsultant to the *Contractor* under the Appointment.
23. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 23.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 23.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 23.3.
- 23.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
24. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of
Docklands Light Railway Limited
In the presence of:

Authorised Signatory

THE COMMON SEAL of
[THE SUBCONSULTANT]
was affixed to **THIS DEED**
in the presence of:

Signature of Director

.....

Print name of Director

.....

Signature of Director/Secretary

.....

Print name of Director/Secretary

.....

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SCHEDULE 6B

(Form of Warranty from Subcontractor to Beneficiary (where Subcontractor is providing consulting services))

THIS DEED is made on ● 20[●]

BETWEEN:

- (1) ● whose registered office is situate at ● (the "**Beneficiary**");
- (2) ● whose registered office is situate at ● (the "**Subconsultant**"); and
- (3) ● whose registered office is situate at ● (the "**Contractor**").

WHEREAS:

(A) The *Contractor* has entered into a contract dated [●] (the "**Contract**") with [●]¹ (the "**Employer**") which expression shall include its successors and assigns for the carrying out of certain [**Works and/or Services**] at [●] (the "**works**").

(B) The Subconsultant has been invited to design certain parts (the "**design works**") of the *works* and [has entered] [will shortly enter] into a deed of appointment with the *Contractor* (the "**Appointment**") for the *design works*.

(C) [The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *works*.] [The Beneficiary intends to enter into an agreement with the *Employer* under which it will agree that on or following Completion of the *works* it will [purchase] / [take a lease of] the whole or part of the *works*.] [The Beneficiary has an interest in the whole or part of the *works* as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* in respect of [●]/[The Beneficiary is a member of the TfL Group and has an interest in the *works* as ●]²

NOW IT IS AGREED:

1. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);
 - (b) "DLR Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the light rail service known as the "Docklands Light Railway".
 - (c) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.

¹ Insert details of relevant member of the TfL Group.

² Select appropriate recital depending on whether the Beneficiary is a (i) funder; (ii) purchaser/tenant; (ii) developer, or (iv) member of the TfL Group.

2. The Subconsultant warrants and undertakes to the Beneficiary that;
 - (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Contractor* under the Appointment; and
 - (b) he has complied with and will continue to comply with the terms of the Appointment.
3. The Subconsultant warrants to the Beneficiary that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. Provided that nothing in this clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed the Subconsultant further warrants and undertakes to the Beneficiary that:
 - (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
 - (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
 - (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;
 - (d) the *design works* will on Completion comply with all applicable law and all relevant Standards; and
 - (e) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.
5. The Subconsultant warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of indemnity of not less than ██████████ in respect of each and every claim which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided that such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.
6. As and when reasonably requested by the Beneficiary, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subconsultant grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and

all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for the following purposes:

- (a) understanding the *works*;
- (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
- (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
- (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the DLR Network;
- (e) enabling the *Employer* to perform his function and duties as Infrastructure Manager and Operator of the DLR Network;
- (f) executing or completing the *works*; and
- (g) designing, testing and commissioning the *works*

provided always that the Subconsultant shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties without the prior consent of the Subconsultant.

8. The Subconsultant agrees:

- (a) on request at any time to give the Beneficiary or any persons authorised by the *Employer* access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and
- (b) at the Subconsultant's expense to provide the Beneficiary with a set of all such material on Completion of the *design works*.

9. If called upon to do so by the Beneficiary, the Subconsultant shall provide the Beneficiary with such information relating to the *design works* as the Beneficiary may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.

10. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.

11. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such

assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

12. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *works*.
13. The Subconsultant shall owe no greater obligations to the Beneficiary than he owes to the Contractor under the Appointment.
- 13.1 The Subconsultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder.
14. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subconsultant including without limitation any remedies in negligence.
15. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 8 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 16.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 16.3.
- 16.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
17. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of
Docklands Light Railway Limited
In the presence of:

Authorised Signatory _____

**[EXECUTED AND DELIVERED AS
A DEED by
[THE BENEFICIARY]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

**THE COMMON SEAL of
[THE SUBCONSULTANT]
was affixed to THIS DEED
in the presence of:**

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

SCHEDULE 7

(Corporate IPR)

1. The Roundel (examples of which are given in Annex 1), including the following registered trade marks:

Country	Registration/ Application	Trademark	Class
UK	1321443	BLANK ROUNDEL	39
UK	1094664	ROUNDEL & DEVICE	6 16 19 21 26 28
UK	586249	ROUNDEL	16
UK	2236110	UNDERGROUND & ROUNDEL	3 16 18 32 42
UK	1094661	UNDERGROUND & ROUNDEL DEVICE	24 25
UK	2224385	UNDERGROUND AND ROUNDEL	25
UK	1321442	UNDERGROUND ROUNDEL	39
UK	1178433	BAR & CIRCLE DEVICE	12
CTM	1101336	LONDON UNDERGROUND & ROUNDEL	14 16 18 25 32
CTM	299206	ROUNDEL DEVICE	16 25 28 39
CTM	814004	ROUNDEL DEVICE & UNDERGROUND	18 25 42

2. The New Johnston typeface of design type NJBook98, NJLight98 and NJMedium98 (the *New Johnston Typeface*) (examples of which are attached in Annex 2).

3. The Underground map attached in Annex 3.

4. The following registered trade marks:

Country	Registration/ Application	Trademark	Class
UK	1527316	BAKERLOO	39
UK	1527393	JUBILEE	39
UK	2153485	MIND THE GAP	16 25 42
UK	1527319	THE CENTRAL LINE	39
UK	1527391	THE CIRCLE LINE	39
UK	1527429	THE DISTRICT LINE	39
UK	1527308	THE METROPOLITAN LINE	39
UK	1527388	THE NORTHERN LINE	39
UK	1527310	THE PICCADILLY LINE	39
UK	1527320	THE TUBE	39
UK	1527321	THE UNDERGROUND	39
UK	1527312	THE VICTORIA LINE	39
UK	2216375	TRAMLINK AND DEVICE	6 16 25 39

Country	Registration/ Application	Trademark	Class
UK	1454868	DEVICE ONLY	16
UK	1454869	DEVICE ONLY	35
UK	1454870	DEVICE ONLY	37
UK	1454871	DEVICE ONLY	39
UK	1454872	DEVICE ONLY	42
UK	1457590	LONDON UNDERGROUND	16
UK	2251158	THE TUBE/TUBE	3 9 14 16 18 21
UK	2251513	TFL	6 9 12 16 19 35 36 37 39
CTM	1580992	ALL ZONES	16 21 25
CTM	448571	LONDON UNDERGROUND	14 16 25 28
CTM	1677277	LOST PROPERTY	3 14 16
CTM	1677814	LOST PROPERTY	18 25 30
CTM	299578	UNDERGROUND	16 25 28

5. The following unregistered trade marks:

- The Hammersmith & City Line
- The Waterloo & City Line
- The East London Line

Annex 1

Examples of the London Underground Roundels



Annex 2

Examples of the New Johnston Typeface

ABCDEFGHIJKLMN**OP**QRSTUVWXYZ
Abcdefghijklmnopqrstuv**wxyz**
0123456789!"£\$%^&*()_+,.?/@'##

Annex 3

London Underground Tube Map

Tube map



SCHEDULE 8

(Dispute Resolution Procedure)

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

“Adjudicator” means an independent person appointed to act as an adjudicator in accordance with clause W2.2 of this Schedule 8.

“Nominating Authority” means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

“Notice of Adjudication” means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the Adjudicator in accordance with clause W2.1. The Notice of Adjudication includes:

- the nature and a brief description of the Dispute;
- details of where and when the Dispute arose; and
- the nature of the redress which is sought.

“Referral Notice” means a notice referring a Dispute to the Adjudicator in accordance with clause W2.5;

“Senior Representative” means a representative of a Party at senior executive level;

W2.A The *Employer, Contractor* and the *Project Manager* follow the procedure set out in Z2.10 (if used), W2.A, W2.B and W2.1-W2.26 for the avoidance and resolution of Disputes.

W2.B.1 Subject to clause W2.1, any Dispute may be referred in writing from the referring party to the Senior Representatives by notice in writing to the other party. The written notice from the referring party gives brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this contract that are relevant to the Dispute). The written notice also identifies the referring party's Senior Representative.

W2.B.2 Within 14 days of receipt of the notice pursuant to clause W2.B.1, the responding party provides the referring party with a brief written response. The response includes identification of the responding party's Senior Representative.

W2.B.3 The Senior Representatives meet and try to reach agreement to resolve the Dispute referred to them pursuant to clause W2.B.2.

W2.B.4 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under clause W2.B.2, court proceedings are not commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in clauses W2.1-W2.24 and notice has been given in accordance with clause W2.26.

W2.B.5 Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under clause W2.B.1 and any response under clause W2.B.2) are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any proceedings.

W2.1 Notwithstanding the provisions of W2.A and W2.B, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in this clause W2 by giving a Notice of Adjudication to the other parties to the Dispute.

W2.2 Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator the referring party requests the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within 4 days of receiving a request to do so.

- W2.3 Any person requested or selected to act as the Adjudicator in accordance with clause W2.2:
- is a natural person acting in his personal capacity; and
 - is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute
- W2.4 The terms of remuneration of the Adjudicator are agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same are settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with clause W2.2.
- W2.5 Where the Adjudicator has been selected in accordance with clause W2.2 the referring party refers the Dispute in writing to the Adjudicator by the Referral Notice in accordance with clause W2.6 within 7 days of the date of the Notice of Adjudication. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.
- W2.6 The Referral Notice includes:
- the facts relied upon by the referring party in support of its claim(s);
 - a statement of the contractual and/or other basis relied upon by the referring party in support of its claim(s);
 - a calculation of the specific monetary amount (if any) that the referring party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute; and
 - is accompanied by copies of, or relevant extracts from, this contract and such other documents on which the referring party relies.
- W2.7 If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the *Employer*, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator then decides the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith and in accordance with the general obligation under clause 10.1 any reasonable request by the Adjudicator for additional time to decide the main contract and subcontract disputes.
- W2.8 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period referred to in clause W2.11, or if that period is extended in accordance with clause W2.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with clause W2.11, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of clause W2.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.
- W2.8A The Nominating Authority and its employees and agents are not liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.
- W2.9 The referring party sends copies of the Referral Notice and the documents referred to in clause W2.6 to the other Party at the same time as he sends them to the Adjudicator.

- W2.10 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- W2.11 The Adjudicator reaches his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in clause W2.5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him.
- W2.12 The Adjudicator may extend the period of 28 days referred to in clause W2.11 by up to 14 days, with the consent of the Party by whom the Dispute was referred.
- W2.13 The Adjudicator's decision is binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to the contract. Any correction of a decision forms part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with W2.22. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.
- W2.14 The Adjudicator:
- acts impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
 - considers any relevant information submitted to him by any of the parties to the Dispute and makes available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
 - reaches his decision in accordance with the law of the contract;
 - may take the initiative in ascertaining the facts and the law in relation to the Dispute;
 - may review and revise any action or inaction of the Project Manager or Supervisor related to the Dispute and/or alter a quotation which has been treated as having been accepted; and
 - may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute.
- W2.15 The Adjudicator decides in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:
- convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
 - submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
 - require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
 - otherwise take such action and adopt such procedures as do not conflict with any of the provisions of the contract and are reasonable and proper for the just, expeditious and economical determination of the Dispute;
 - inspect any part of the Underground Network.

- W2.16 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator is similarly protected from liability.
- W2.17 All meetings are private and save as required by law the Adjudicator and the Parties keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
- W2.18 Notice of the Adjudicator's decision (stating that it is given under clause W2) is in writing and includes a summary of the Adjudicator's findings and a statement of the reasons for his decision.
- W2.19 The Parties to a contract to which the Dispute relates continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this option W2.
- W2.20 In any case where the Adjudicator is appointed as a replacement pursuant to clause W2.8, the parties to the Dispute each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.
- W2.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in W2.22 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they notify the Adjudicator who allocates costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- W2.22 Subject to any agreement of the Parties, the Adjudicator allocates payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- W2.23 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator are either delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator are also sent by first class post not later than the business day next following the date of the original facsimile transmission.
- W2.24 All information of whatever nature provided to the Adjudicator by any party to the Dispute is copied to the other parties simultaneously.
- W2.25 Any court or the Adjudicator takes into account any failure to comply with clause 10.1 when making any award (including an award of costs and/or expenses).
- W2.26 If any Party to a Dispute is dissatisfied with the Adjudicator's decision, then any party may, within three (3) months after the date on which it received notice of such decision, commence court proceedings for the final determination of the Dispute. Court proceedings may not be commenced unless commenced within three (3) months after receipt of the Adjudicator's decision.

SCHEDULE 9

LIQUIDATED DAMAGES FOR DISRUPTION

1. In this Schedule, "**Service Disruption**" means any disruption to customer services on the DLR Network comprising an interruption to train services or station services including train service disruptions, speed restrictions, full line suspensions, full or partial station closures, platform closures, escalator failures (either partial or total failures, that add to each passengers' overall journey time) and lift downtimes.
2. In the event of a Service Disruption resulting from a failure on the part of the *Contractor* to comply with its obligations under this contract the *Contractor* shall pay on demand and/or the *Employer* may deduct as liquidated damages such sums as may be calculated in accordance with this Schedule 9. The duration of any Service Disruption is measured and adjusted by the Docklands Light Railway operator Keolis Amey Docklands (KAD).
3. The amount to which the *Employer* is entitled in respect of any Service Disruption shall be calculated by multiplying (a) the relevant Service Disruption hours attributable to the applicable Service Disruption by (b) [REDACTED]
4. These liquidated damages are a genuine pre-estimate of the *Employer's* loss in the event of a Service Disruption and are in addition to any delay damages payable by the *Contractor* pursuant to Option X7. They are not intended to relieve the *Contractor* from any of its obligations or liabilities under the contract including liability for costs in respect of the rectification of Defects caused by the *Contractor*.

SCHEDULE 10

(Form of Deed of Novation for use with Option X22)

THIS AGREEMENT is made ● day of ● 20[●]

BETWEEN:

- (1) [● of ●]¹ (the "**Employer**" which expression includes its successors in title and assigns);
- (2) [INSERT NAME OF CONTRACTOR] whose registered office is situated at [INSERT REGISTERED ADDRESS OF CONTRACTOR] (the "**Contractor**"); and
- (3) [INSERT NAME OF ASSOCIATED CONTRACTOR] whose registered office is at [INSERT REGISTERED ADDRESS OF ASSOCIATED CONTRACTOR] (the "**Associated Contractor**").

WHEREAS:

- (A) The Employer has appointed the Associated Contractor to [INSERT DESCRIPTION OF THE WORKS AND/OR THE SERVICES] (the "**Services**") by an agreement dated [●] (the "**Associated Contract**").
- (B) The Employer has appointed the Contractor under a contract (the "**Contract**") to design and construct certain works as therein described (the "**Works**").
- (C) The Parties novate the Associated Contract from the Employer and the Associated Contractor to the Contractor and the Associated Contractor on the terms of this deed.

NOW IT IS HEREBY AGREED as follows:

1. NOVATION

- 1.1 The Employer as beneficial owner hereby novates to the Contractor its entire rights, benefits, liabilities and obligations under and pursuant to the Associated Contract including but without limitation, its accrued rights, benefits, liabilities and obligations.
- 1.2 The Associated Contractor releases and discharges the Employer from any and all obligations and liabilities owed to the Associated Contractor under the Associated Contract and accepts the liability of the Contractor under the Associated Contract in lieu of the liability of the Employer.
- 1.3 The Associated Contractor undertakes to perform the Associated Contract and to be bound by its terms in every way as if the Contractor were, and had been from the inception, a party to the Associated Contract in lieu of the Employer. The Contractor agrees that it will not hereafter terminate the Associated Contractor's engagement under the Associated Contract without the prior written consent of the Employer, such consent not to be unreasonably withheld or delayed.

¹ Insert the details of the relevant member of the Tfl Group.

- 1.4 The Contractor undertakes to perform the Associated Contract and to be bound by its terms in every way as if the Contractor were, and had been from the inception, a party to the Associated Contract in lieu of the Employer.
- 1.5 The Contractor shall not be prevented from recovering any loss, damage, cost or expense (including legal costs) ("**Losses**") incurred by the Contractor that result from any breach of clause 1.3 because:
- (a) the acts or omissions causing that breach occurred before this deed took effect; or
 - (b) the Employer will not incur, has not or would not have incurred those Losses.
- 1.6 All rights of action and remedies vested in the Employer against the Associated Contractor in respect of the Associated Contract shall vest in the Contractor from the date of this deed. All rights and remedies vested in the Associated Contractor against the Employer in respect of the Associated Contract shall lie against the Contractor from the date of this deed.
- 1.7 The Associated Contractor acknowledges that all fees and expenses properly due to the Associated Contractor under the Associated Contract up to the date of this Agreement have been paid by the Employer.

2. **SERVICES FOR THE EMPLOYER**

- 2.1 The Associated Contractor agrees that, notwithstanding the novation of the Associated Contract pursuant to this Agreement, it will perform the services ("**Further Services**") set out in Annex 2 to this Agreement for the Employer for the remuneration referred to in Annex 3 hereof².
- 2.2 The Associated Contractor warrants to the Employer that:
- (a) it will perform the Further Services using the reasonable skill, care and diligence to be expected of an appropriately qualified [**insert profession**]³ holding itself out as having the competence, experience and resources necessary for the performance of such services and in accordance with the terms set out in the Associated Contract as if they were set out in this Agreement; and
 - (b) it will have in place professional indemnity insurance on the terms set out in the Associated Contract in respect of such Further Services.

3. **PROPER LAW AND JURISDICTION**

This Agreement and the rights and obligations of the parties hereto shall be governed and construed according to English Law. Any dispute shall be subject to the jurisdiction of the English Courts.

4. **CONTRACTS (RIGHTS OF THIRD PARTIES ACT 1999)**

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to confer on any third person (save the Employer's successors in title or permitted assignees) any right to enforce

² Annexures 2 and 3 should be completed when the *Employer* requires the Associated Contractor to perform services for it after novation. Annex 2 lists the services to be performed while Annex 3 sets out the level of remuneration that will be paid for these services (e.g. a lump sum figure or hourly rate of specified staff).

³ [To be completed prior to signing deed of novation]

any of the provisions of this Agreement which such person would not have had, but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of

[●]⁴

In the presence of:

Authorised Signatory

**[EXECUTED AND DELIVERED AS
A DEED by
[THE CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

**[EXECUTED AND DELIVERED AS
A DEED by
[THE ASSOCIATED CONTRACTOR]**

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

⁴ _____
Insert name of member of TfL Group

ANNEX 1

NOT USED.

ANNEX 2⁵

(FURTHER SERVICES)

⁵ If further services are to be provided by the Associated Contractor to the *Employer* the relevant services should be inserted. If no further services are to be provided leave blank.

ANNEX 3⁶

(FURTHER SERVICES REMUNERATION)

⁶ If further services are to be provided by the Associated Contractor to the *Employer* and Annex 2 is completed, the level of remuneration for these further services should be inserted into Annex 3. If no further services are to be provided leave blank.

SCHEDULE 11

ESCROW AGREEMENT



Single Licensee Software Escrow Agreement

Date

Owner

Agreement Number

[Owner name]

[Agreement#]

Notice: This template has been drafted on the assumption that all contracting parties are based in England or Wales. If the contracting parties are based outside of England and Wales NCC Group recommends that the parties take independent legal advice to ascertain what appropriate amendments should be made to this agreement.

Escrow Agreement Dated:

Between:

- (1) [Owner name] whose registered office is at [Owner address] (CRN: [Owner CRN]) ("**Owner**");
- (2) [Licensee name] whose registered office is at [Licensee address] (CRN: [Licensee CRN]) ("**Licensee**"); and
- (3) NCC GROUP ESCROW LIMITED a company registered in England whose registered office is at XYZ Building, 2 Hardman Boulevard, Spinningfields, Manchester, M3 3AQ, England (CRN: 3081952) ("**NCC Group**").

Background:

- (A) The Licensee has been granted a licence to use the Package which comprises computer programs.
- (B) Certain technical information and/or documentation relating to the software package is the confidential information and intellectual property of the Owner and/or a third party.
- (C) The Owner acknowledges that in certain circumstances, such information and/or documentation would be required by the Licensee in order for it to continue to exercise its rights under the Licence Agreement.
- (D) The parties therefore agree that such information and/or documentation should be placed with a trusted third party, NCC Group, so that such information and/or documentation can be released to the Licensee should certain circumstances arise.

Agreement:

In consideration of the mutual undertakings and obligations contained in this Agreement, the parties agree that:

Definitions and Interpretation

1.1 In this Agreement the following terms shall have the following meanings:

"Affiliate" means any entity directly or indirectly controlling, controlled by or under common control with NCC Group.

"Agreement" means the terms and conditions of this escrow agreement set out below, including the schedules hereto.

"Assignee" shall have the meaning given to it in clause 6.1.6.

"Business Day" means a day on which banks in England and Wales are open for a full range of banking transactions.

"Confidential Information" means all technical and/or commercial information not in the public domain and which is designated in writing as confidential by any party together with all other information of any party which may reasonably be regarded as confidential information.

"Data Protection Legislation" means the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) and any related legislation, regulations, requirements or guidance from time to time.

"Deposit Form" means the form which is to be completed by the Owner and delivered to NCC Group with each deposit of the Material.

"Deposit Refresh" means NCC Group's deposit refresh service which ensures that the integrity of the media is maintained.

"Independent Expert" means a suitably qualified and independent solicitor or barrister.

"Intellectual Property Rights" mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database rights, moral rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any licences of or in respect of such rights.

"Licence Agreement" means the agreement under which the Licensee was granted a licence to use the Package.

"Material" means the Source Code of the Package and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with clause 2 of this Agreement.

"Media Check" means the tests and processes forming NCC Group's Media Check service, in so far as they can be applied to the Material.

"Medium" means the media upon which the deposited Material is stored.

"Order Form" means the order form setting out the details of the order placed with NCC Group for setting up this Agreement.

"Package" means the software package detailed in schedule 1 together with any updates and upgrades thereto and new versions thereof licensed to the Licensee under the Licence Agreement.

"Personal Data" shall have the meaning given to it in the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).

"Release Purposes" means the purposes of understanding, maintaining, modifying and correcting the Package exclusively for and on behalf of the Licensee together with such other purposes (if any) as are permitted under the Licence Agreement.

"Source Code" means the computer programming code of the Package in human readable form.

"Tax" means any tax, levy, impost, duty, charge or fee, or penalty or interest thereon.

"Third Party Material" means Source Code which is not the confidential information and intellectual property of the Owner or the Licensee.

"Verification" means the tests and processes forming NCC Group's verification services for verifying and/ or testing the Material and/or such other tests and processes as may be agreed between the parties.

"Virtual Machine Deposit" means a deposit of the Material in a virtual machine format.

1.2 This Agreement shall be interpreted in accordance with the following:

- 1.2.1 headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;
- 1.2.2 all references to clauses and schedules are references to clauses and schedules of this Agreement;
- 1.2.3 all references to a party or parties are references to a party or parties to this Agreement; and
- 1.2.4 any reference to any statute, statutory provision or subordinate legislation shall be interpreted as referring to such legislation as amended and in force from time to time and/or which replaces, re-enacts or consolidates such legislation.

2 Owner's Duties and Warranties

2.1 The Owner shall:

- 2.1.1 deliver a copy of the Material to NCC Group within 30 days of the date of this Agreement;
- 2.1.2 deliver a further copy of the Material to NCC Group each time that there is a change to the Package;
- 2.1.3 following completion of the NCC Group on-site or remote element any Verification either deliver a copy of the Material that has been verified to NCC Group within 7 days of the completion of the on-site or remote element of the Verification or, with NCC Group's consent, provide a copy of the same to the consultant undertaking such Verification on behalf of NCC Group in each case so that it can be deposited;
- 2.1.4 ensure that each copy of the Material deposited with NCC Group comprises the Source Code of the latest version of the Package used by the Licensee;
- 2.1.5 within 30 days after the anniversary of the last delivery of the Material either deliver to NCC Group a replacement copy of the Material ("**Annual Deposit**") or request that NCC Group perform a Deposit Refresh. If the Owner fails to make an Annual Deposit in accordance with this clause 2.1.5 and does not request a Deposit Refresh NCC Group shall automatically perform a Deposit Refresh at the cost of the parties as set out in Schedule 2;
- 2.1.6 deliver a replacement copy of the Material to NCC Group within 14 days of a notice given to it by NCC Group under the provisions of clause 4.1.3;
- 2.1.7 deliver with each deposit of the Material the following information:
 - 2.1.7.1 Deposit Form containing the details of the deposit including the full name of the Package (i.e. the original name as set out under schedule 1 together with any new names given to the Package by the Owner), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and
 - 2.1.7.2 password/encryption details required to access the Material;
- 2.1.8 deliver with each deposit of the Material the following technical information (where applicable):
 - 2.1.8.1 documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools; and
 - 2.1.8.2 software design information (e.g. module names and functionality);
- 2.1.9 if requested in writing by the Licensee, deposit a backup copy of the object code of any third party software package required to access, install, build or compile or otherwise use the Source Code contained in the Material; and
- 2.1.10 if the Licensee requests or orders a Virtual Machine Deposit, deliver a further copy of the Material to NCC Group within a Virtual Machine Deposit.

2.2 The Owner warrants to both NCC Group and the Licensee at the time of each deposit of the Material with NCC Group that:

- 2.2.1 other than any third party object code referred to in clause 2.1.9 or any Third Party Material, it owns the Intellectual Property Rights in the Material;

- 2.2.2 in respect of any Third Party Material, it has been granted valid and ongoing rights under licence by the third party owner(s) thereof to deal with such Third Party Material in the manner anticipated under this Agreement and that the Owner has the express authority of such third party owner(s) to deposit the Third Party Material under this Agreement as evidenced by a signed letter of authorisation in the form required by NCC Group;
 - 2.2.3 the Material deposited under clause 2.1 contains all information in human-readable form (except for any third party object code deposited pursuant to clause 2.1.9) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Package;
 - 2.2.4 in respect of any third party object code that the Owner, at its option, or, at the request of the Licensee, deposits with NCC Group in conjunction with the Material pursuant to clause 2.1.9, it has the full right and authority to do so; and
 - 2.2.5 there is no Personal Data contained within the Material held by NCC Group.
- 2.3 The Owner agrees and confirms that each time it makes a physical deposit of Material under this Agreement it transfers ownership of the Medium on which the Material is stored to NCC Group.
- 2.4 The Owner agrees that each time it makes an electronic deposit of Material under this Agreement and NCC Group downloads that Material on to a Medium, NCC Group shall own the Medium on which the Material is stored.

3 Licensee's Responsibilities and Undertakings

- 3.1 The Licensee shall notify NCC Group of any change to the Package that necessitates a replacement deposit of the Material.
- 3.2 In the event that the Material is released under clause 6, the Licensee shall:
- 3.2.1 keep the Material confidential at all times;
 - 3.2.2 use the Material only for the Release Purposes;
 - 3.2.3 not disclose the Material to any person or third party save such of the Licensee's employees or contractors who need to know the same for the Release Purposes or any other party as permitted under the Licence Agreement. In the event that Material is disclosed to its employees or contractors or a third party, the Licensee shall ensure that they are bound by the same confidentiality obligations as are contained in this clause 3.2;
 - 3.2.4 hold all media containing the Material in a safe and secure environment when not in use; and
 - 3.2.5 forthwith destroy the Material should the Licensee cease to be entitled to use the Package under the terms of the Licence Agreement.
- 3.3 In the event that the Material is released to the Licensee under clause 6, it shall be the responsibility of the Licensee to obtain the necessary licences to utilise the third party object code and/or any Third Party Material deposited by the Owner pursuant to clause 2.1.9.

4 NCC Group's Duties

- 4.1 NCC Group shall:
- 4.1.1 at all times during the term of this Agreement, retain the latest deposit of the Material in a safe and secure environment;
 - 4.1.2 inform the Owner and the Licensee of the receipt of any deposit of the Material by sending to both parties a copy of the Media Check report or Verification report (as the case may be) generated from the testing processes carried out under clause 10; and
 - 4.1.3 notify the Owner and the Licensee if it becomes aware at any time during the term of this Agreement that the copy of the Material held by it has been lost, damaged or destroyed so that a replacement may be obtained.
- 4.2 If NCC Group becomes aware that the Owner has not deposited Material when required to do so under the terms of this Agreement, then NCC Group may notify the Licensee of such failure (but it is not obliged to do so and shall not be responsible for procuring such deposit from the Owner).
- 4.3 NCC Group has the right to make such copies of the Material as may be necessary solely for the purposes of this Agreement.

5 Payment

- 5.1 The Owner and the Licensee shall pay NCC Group's standard fees and charges as published from time to time or as otherwise agreed, in the proportions set out in schedule 2. NCC Group's fees as published are exclusive of value added tax and any other applicable Tax.
- 5.2 NCC Group shall be entitled to review and vary its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon 45 days written notice to the parties.
- 5.3 Except in the case of release as stated in clause 6, all invoices are payable within 30 days from the date of invoice. NCC Group reserves the right to charge interest in respect of the late payment of any sum due under the Agreement (both before and after judgement) at the rate specified in the Late Payment of Commercial Debts (Interest) Act, such interest to accrue on a daily basis from the due date until full payment.
- 5.4 The Owner and the Licensee shall make all such payments due under this Agreement to NCC Group without withholding or deduction of, or in respect of, any Tax unless required by law. If any such withholding or deduction is

required, the Owner or the Licensee (as appropriate) shall, when making the payment to which the withholding or deduction relates, pay to NCC Group such additional amount as will ensure that NCC Group receives the same total amount that it would have received if no such withholding or deduction had been required.

6 Release Events

- 6.1 Subject to: (i) the remaining provisions of this clause 6 and (ii) the receipt by NCC Group of its release fee and any other fees and interest (if any) due under this Agreement, NCC Group will release the Material to a duly authorised officer of the Licensee if any of the following events ("**Release Event(s)**") occur:
- 6.1.1 if the Owner is a company:
- 6.1.1.1 an order is made for the winding up of the Owner, the Owner passes a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation) or a liquidator of the Owner is appointed; or
 - 6.1.1.2 an order is made for the appointment of an administrator of the Owner or an administrator of the Owner is appointed; or
 - 6.1.1.3 the Owner enters into a compromise or arrangement with creditors; or
 - 6.1.1.4 the Owner has a receiver, administrative receiver or manager appointed over all or any part of its assets or undertaking; or
 - 6.1.1.5 the Owner is dissolved; or
- 6.1.2 if the Owner is an individual:
- 6.1.2.1 the Owner enters into a compromise or arrangement with creditors; or
 - 6.1.2.2 the Owner is declared bankrupt; or
 - 6.1.2.3 the Owner dies; or
- 6.1.3 if the Owner is a partnership:
- 6.1.3.1 any of the partners in the Owner are declared bankrupt or enter into a compromise or arrangement with creditors; or
 - 6.1.3.2 the Owner is wound up or dissolved; or
 - 6.1.3.3 the Owner enters into a compromise or arrangement with creditors; or
 - 6.1.3.4 a partnership administration order is made in respect of the Owner; or
- 6.1.4 any similar or analogous proceedings or event to those in clauses 6.1.1 to 6.1.3 above occurs in respect of the Owner within any jurisdiction outside England; or
- 6.1.5 the Owner ceases to carry on its business or the part of its business which relates to the Package; or
- 6.1.6 the Owner assigns its rights to the Intellectual Property Rights in the Material to a third party ("**Assignee**") and the Assignee fails, within 60 days of all parties' knowledge of such assignment, to continue escrow protection for the benefit of the Licensee by failing to enter into either:
- 6.1.6.1 a novation agreement with the Licensee and NCC Group for the assumption of the Owner's rights and obligations under this Agreement by the Assignee; or
 - 6.1.6.2 a new escrow agreement with the Licensee for the Package which offers the Licensee substantially similar protection to that provided by this Agreement without significantly increasing the overall cost to the Licensee,
- provided that if the Assignee offers to enter into a novation or new escrow agreement within 60 days of all parties' knowledge of the assignment and the Licensee fails to accept the Assignee's offer within 30 days of such offer being notified to the Licensee, there shall be no Release Event under this clause; or
- 6.1.7 the Owner or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations as to maintenance or modification of the Package under the Licence Agreement or any maintenance agreement entered into in connection with the Package and has failed to remedy such default notified by the Licensee to the Owner within a reasonable period.
- 6.2 The Licensee must notify NCC Group of the Release Event specified in clause 6.1 by delivering to NCC Group a statutory or notarised declaration ("**Declaration**") made by an officer of the Licensee declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event, that, the Licence Agreement and any maintenance agreement, if relevant, for the Package was still valid and effective up to the occurrence of such Release Event, and exhibiting any applicable supporting documentary evidence. Without prejudice to clauses 11.5 and 11.6, NCC Group shall be fully entitled to rely and act upon the Declaration and shall not be required to verify its contents, truth or accuracy.
- 6.3 Upon receipt of a Declaration from the Licensee claiming that a Release Event has occurred:
- 6.3.1 NCC Group shall submit a copy of the Declaration to the Owner by courier or other form of guaranteed delivery; and
 - 6.3.2 unless within 14 days after the date of despatch of the Declaration by NCC Group, NCC Group receives a counter-notice signed by a duly authorised officer of the Owner stating that in their view no such Release Event has occurred or, if appropriate, that the event or circumstance giving rise to the Release Event has been rectified,

NCC Group will release the Material to the Licensee for its use for the Release Purposes.

- 6.4 Upon receipt of the counter-notice from the Owner under clause 6.3.2, NCC Group shall send a copy of the counter-notice to the Licensee by courier or other form of guaranteed delivery.
- 6.5 Within 90 days of despatch of the copy of the counter-notice to the Licensee by NCC Group, the Licensee may give notice to NCC Group that it wishes to invoke the dispute resolution procedure under clause 7.
- 6.6 If, within 90 days of despatch of the counter-notice by NCC Group to the Licensee, NCC Group has not been informed by the Licensee that it wishes the dispute resolution procedure under clause 7 to apply, the Declaration submitted by the Licensee will be deemed to be no longer valid and the Licensee shall be deemed to have waived its right to release of the Material for the particular reason or event specified in the original Declaration.
- 6.7 For the avoidance of doubt, where a Release Event has occurred under clauses 6.1.1 to 6.1.5 or 6.1.7, a subsequent assignment of the Intellectual Property Rights in the Material shall not prejudice the Licensee's right to release of the Material and its use for the Release Purposes.
- 6.8 If a Release Event has occurred under clause 6.1, the subsequent termination of the Licence Agreement shall not prejudice the Licensee's right to release of the Material and its use for the Release Purposes provided that the other provisions of this clause 6 have been complied with.

7 Disputes

- 7.1 NCC Group shall notify the Owner of the Licensee's request for dispute resolution pursuant to clause 6.5. Unless the Owner or the Licensee objects, NCC Group's Chief Executive Officer for the time being will appoint an Independent Expert to resolve the dispute of whether the Release Event(s) specified in the Declaration has/have occurred and, if applicable, whether the Release Event(s) has/have been rectified. If the Owner or the Licensee objects to this appointment, they shall endeavour to appoint a mutually acceptable Independent Expert within 7 days of registering their objection. If they fail to appoint an Independent Expert within this 7 day period, NCC Group shall, on behalf of and at the joint and several cost of the Owner and Licensee, request that the President of The Law Society appoints an Independent Expert to resolve the dispute. Any appointment of an Independent Expert under this clause shall be binding upon the parties. NCC Group shall not be party to the dispute resolution proceedings under this clause 7.
- 7.2 Within 7 days of the appointment of the Independent Expert, the Owner and the Licensee shall each provide full written submissions to the Independent Expert together with all relevant documentary evidence in their possession in support of their claim.
- 7.3 Based solely on the written submissions of the Owner and the Licensee and without the need for a hearing, the Independent Expert shall render and deliver his or her decision on the matter within 14 days or as soon as practicable thereafter of receiving the written submissions from the Owner and Licensee and shall send a copy of that decision to the Owner, Licensee and NCC Group. The Independent Expert's decision shall be final and binding on all parties and shall not be subject to appeal to a court in legal proceedings except in the case of manifest error.
- 7.4 The decision shall be limited to a determination of whether the Licensee is entitled to a release of the Material under clause 6.
- 7.5 If the Independent Expert's decision is in favour of the Licensee, NCC Group is authorised to release and deliver the Material to the Licensee within 7 days of the decision being notified by the Independent Expert to the parties. If the Independent Expert's decision is in favour of the Owner, then NCC Group shall not release the Material and shall continue to hold the Material in accordance with the terms of this Agreement.
- 7.6 The Owner and the Licensee hereby agree that the costs and expenses of the Independent Expert shall be borne by the party against whom the decision of the Independent Expert is given.

8 Confidentiality

- 8.1 Without prejudice to clause 6, the Material shall remain at all times the confidential and intellectual property of its owner.
- 8.2 In the event that NCC Group releases the Material to the Licensee, the Licensee shall be permitted to use the Material only for the Release Purposes.
- 8.3 NCC Group agrees to keep all Confidential Information relating to the Material and/or the Package that comes into its possession or to its knowledge under this Agreement in strictest confidence and secrecy. NCC Group further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties should agree otherwise in writing or as required by law or regulation or by the rules of any stock exchange or a court of competent jurisdiction or by any legal or regulatory authority (including the police), will not disclose or release it other than in accordance with the terms of this Agreement.

9 Intellectual Property Rights

- 9.1 The release of the Material to the Licensee will not act as an assignment of any Intellectual Property Rights that the Owner or any third party possesses in the Material.
- 9.2 The Intellectual Property Rights in the Media Check report and any Verification report shall remain vested in NCC Group. The Owner and the Licensee shall each be granted a non-exclusive right and licence to use such reports for the purposes of this Agreement and their own internal purposes only.

10 Media Check and Verification

- 10.1 NCC Group shall bear no obligation or responsibility to any party to this Agreement or person, firm, company or entity whatsoever to determine the relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of the Material received by NCC Group under this Agreement.

- 10.2 As soon as reasonably practicable after the Material has been deposited with NCC Group, NCC Group shall perform a Media Check on the Material.
- 10.3 The Owner or the Licensee may request that NCC Group carry out a Verification and the non-requesting party shall co-operate in facilitating such Verification. NCC Group shall at its discretion decide whether or not to undertake any Verification requested and may attach such requirements thereto as it considers appropriate. NCC Group's prevailing fees and charges for the Verification and all reasonable expenses incurred by NCC Group in carrying out the Verification shall be payable by the Owner.
- 10.4 If the Material fails to satisfy NCC Group's Verification tests as a result of being defective or incomplete in content, NCC Group's fees, charges and expenses in relation to the Verification tests shall be paid by the Owner.
- 10.5 Should the Material deposited fail to satisfy NCC Group's Media Check under clause 10.2, the Owner shall, within 14 days of the receipt of the notice of test failure from NCC Group, deposit such new, corrected or revised Material as shall be necessary to ensure its compliance with its warranties and obligations in clause 2. If the Owner fails to make such deposit of the new, corrected or revised Material as requested in accordance with this clause 10.5, NCC Group will inform the Licensee that the Material has failed the Media Check and retain such deposit in accordance with clause 4.1.1.
- 10.6 Should the Material deposited fail to satisfy NCC Group's Verification tests under clause 10.3, the Owner shall, within 14 days of the receipt of the notice of test failure from NCC Group, deposit such new, corrected or revised Material as shall be necessary to ensure its compliance with its warranties and obligations in clause 2. If the Owner fails to make such deposit of the new, corrected or revised Material as requested in accordance with this clause 10.6, NCC Group will issue a report to the Licensee detailing the problem with the Material as revealed by the relevant tests.
- 10.7 The Owner acknowledges that as part of the Verification services NCC Group may test the Material and hereby consents to the performance of such services ordered pursuant to this Agreement. This consent amounts to full authorisation for the purposes of Section 3 of the Computer Misuse Act 1990 as amended and/or replaced from time to time and any analogous legislation.
- 10.8 NCC Group's terms and conditions for the time being in relation to Verifications ("**Verification Terms**") will (unless NCC Group expressly agrees otherwise in writing) apply to any Verification undertaken by NCC Group in connection with this Agreement.

11 NCC Group's Liability

- 11.1 Nothing in this Agreement excludes or limits the liability of NCC Group for:
- 11.1.1 fraud or fraudulent misrepresentation;
 - 11.1.2 death or personal injury caused by NCC Group's (or its employees', agents' or sub-contractors') negligence; or
 - 11.1.3 any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 11.2 Without prejudice to clause 11.1, the provisions of clauses 11.3 and 11.4 set out the entire liability of NCC Group (including any liability for the acts or omissions of its employees, agents and sub-contractors) arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.
- 11.3 Subject to clause 11.1, NCC Group shall not be liable for any loss or damage caused to the other parties except to the extent that such loss or damage is caused by the negligent acts or negligent omissions of or a breach of any contractual duty by NCC Group, its employees, agents or sub-contractors in performing its obligations under this Agreement and in such event NCC Group's maximum aggregate liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement, shall be limited [REDACTED]
- 11.4 Subject to clause 11.1, NCC Group shall not be liable to the other parties for any:
- 11.4.1 indirect, consequential and/or special loss or damage;
 - 11.4.2 loss of profit (direct or indirect);
 - 11.4.3 loss of revenue, loss of production or loss of business (in each case whether direct or indirect);
 - 11.4.4 loss of goodwill, loss of reputation, or loss of opportunity (in each case whether direct or indirect);
 - 11.4.5 loss of anticipated saving or loss of margin (in each case whether direct or indirect);
 - 11.4.6 wasted management, operational or other time (in each case whether direct or indirect);
 - 11.4.7 loss or damage arising out of any failure by the Owner to keep full and up to date back-ups and security copies of any Materials delivered under this Agreement; and/or
 - 11.4.8 liability of any of the other parties to third parties (whether direct or indirect),
- in each case arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.

- 11.5 NCC Group shall not be liable in any way to the Owner or the Licensee for acting in accordance with the terms of this Agreement and specifically (without limitation) for acting upon any notice, written request, waiver, consent, receipt, statutory declaration or any other document furnished to it pursuant to and in accordance with this Agreement.
- 11.6 NCC Group shall not be required to make any investigation into and shall be entitled in good faith without incurring any liability to the Owner or the Licensee to assume (without requesting evidence thereof) the validity, authenticity, veracity and due and authorised execution of any documents, written requests, waivers, consents, receipts, statutory declarations or notices received by it in respect of this Agreement.
- 11.7 Nothing in this Agreement shall impose any liability on NCC Group in respect of non-performance of its obligations under this Agreement to the extent such non-performance is due to the Licensee's or the Owner's acts, omissions, negligence or default.

12 Indemnity

- 12.1 Save for any claim falling within the provisions of clause 11.1 or any claim in respect of which NCC Group is found by a court of competent jurisdiction to have breached this Agreement or been negligent, the Owner and the Licensee jointly and severally agree at all times to indemnify and hold harmless NCC Group in respect of all of its reasonable legal and all other costs, fees and expenses incurred directly or indirectly as a result of being brought into or otherwise becoming involved in any form of dispute resolution proceedings or any litigation of any kind between or involving the Owner and/or the Licensee in relation to this Agreement to the extent that this Agreement does not otherwise provide for reimbursement of such costs.
- 12.2 The Owner shall assume all liability and shall at all times indemnify and hold harmless NCC Group and its officers, agents, sub-contractors and employees from and against any and all liability, loss, damages, costs, legal costs, professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by NCC Group, whether direct, indirect or consequential as a result of or in connection with any claim by any third party(s) for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with all and any acts or omissions of NCC Group in respect of the Material as contemplated under this Agreement.

13 Term and Termination

- 13.1 This Agreement shall continue until terminated in accordance with this clause 13.
- 13.2 If the Owner or the Licensee, as the case may be, fails to pay an invoice addressed to it for services under this Agreement within 30 days of its issue, NCC Group reserves the right to give that party written notice to pay the outstanding invoice within 30 days. If the Licensee has not paid its invoice by the expiry of the 30 day notice period, NCC Group shall have the right to terminate this Agreement immediately on written notice. If the Owner has not paid its invoice by the expiry of the 30 day notice period, NCC Group will give the Licensee a period of 30 days to pay the Owner's invoice. If the Owner's invoice has not been paid by the expiry of the 30 day optional payment period given to the Licensee, NCC Group shall have the right to terminate this Agreement immediately on written notice. Any amounts owed by the Owner but paid by the Licensee will be recoverable by the Licensee direct from the Owner as a debt and, if requested, NCC Group shall provide appropriate documentation to assist in such recovery.
- 13.3 Notwithstanding any other provision of this clause 13, NCC Group may terminate this Agreement by giving 30 days written notice to the Owner and the Licensee.
- 13.4 The Licensee may terminate this Agreement at any time by giving not less than 60 days' prior written notice to NCC Group.
- 13.5 If NCC Group discovers that a Release Event has occurred and the Licensee has not exercised its right to claim for release of the Material under clause 6.2, NCC Group shall have the right to terminate this Agreement upon 30 days written notice to the Owner and the Licensee. The Licensee shall have the option of applying for release in accordance with clause 6 during this notice period, but if it fails to do so, upon the expiry of this notice period, this Agreement shall automatically terminate.
- 13.6 If the Intellectual Property Rights in the Material have been assigned to a third party and the proviso in clause 6.1.6 applies such that there has been no Release Event under that clause, NCC Group shall be entitled to terminate this Agreement immediately by written notice to the Owner and the Licensee.
- 13.7 If the Licence Agreement has expired or has been lawfully terminated, then the Licensee shall give notice to NCC Group within 14 days thereof to terminate this Agreement, failing which, the Owner shall be entitled to give written notice to NCC Group to terminate this Agreement. Upon receipt of such a notice from the Owner, NCC Group shall notify the Licensee of the Owner's notice to terminate. Unless within 30 days of NCC Group giving such notice to the Licensee, NCC Group receives a counter-notice signed by a duly authorised officer of the Licensee either (i) disputing the termination of the Licence Agreement; or (ii) requesting release pursuant to clause 6, then the Licensee shall be deemed to have consented to such termination and this Agreement shall immediately automatically terminate. If the Licensee does provide NCC Group with a counter-notice, then NCC Group shall notify the Owner and this Agreement shall not terminate but shall continue in full force and effect.
- 13.8 Subject to clause 13.7, the Owner may only terminate this Agreement with the written consent of the Licensee and then only on not less than 60 days' prior written notice to NCC Group.
- 13.9 For 30 days from the date of termination of this Agreement pursuant to clauses 13.2 to 13.8 inclusive NCC Group will make the Material available for collection by the Owner or its agents from the premises of NCC Group during office hours. After such 30 day period NCC Group will destroy the Material.
- 13.10 This Agreement shall automatically immediately terminate upon release of the Material to the Licensee in accordance with clause 6. Following termination of the Agreement pursuant to this clause 13.10, NCC Group will destroy the remaining Material (if any).

- 13.11 If this Agreement is superseded and replaced by a new agreement with NCC Group in respect of the Material, this Agreement shall, upon the coming into force of the new agreement, automatically terminate. The relevant party or parties shall request NCC Group to either transfer the Material to the new agreement or ask the owner under the new agreement to deposit new material. If new material is deposited, upon its receipt, NCC Group shall, unless otherwise instructed in writing by the Owner, destroy the Material.
- 13.12 The provisions of clauses 1, 3.2, 3.3, 5, 8, 9, 10.1, 11, 12, 13.12 to 13.14 (inclusive) and 14 shall continue in full force after termination of this Agreement.
- 13.13 On and after termination of this Agreement, the Owner and/or the Licensee (as appropriate) shall remain liable to NCC Group for payment in full of any fees and interest which have become due but which have not been paid as at the date of termination.
- 13.14 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.
- 13.15 The Licensee may by written notice to NCC Group unilaterally revoke any termination notice served by it at any time prior to the expiry of such termination notice.

14 General

- 14.1 A party shall notify the other parties to this Agreement, within 30 days of its occurrence, of any of the following:
- 14.1.1 any change of name of the individual contact(s) for this Agreement, such notice to include the new contact name, email address, correspondence address and telephone number;
- 14.1.2 a change of its name or registered office; and
- 14.1.3 any material change in its circumstances that may affect the validity or operation of this Agreement.
- 14.2 Within 14 days of any assignment or transfer by the Owner of any part of its Intellectual Property Rights in the Material, the Owner shall notify:
- 14.2.1 NCC Group and the Licensee of such assignment and the identity of the Assignee; and
- 14.2.2 the Assignee of the provisions of clause 6.1.6.
- 14.3 Each party warrants that it has full capacity and authority to enter into and to perform this Agreement, and that in entering into this Agreement and performing its obligations under it, it is not and will not at any time be in breach of any of its express or implied obligations to any third party.
- 14.4 The formation, existence, construction, performance, validity and all other aspects of this Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 14.5 This Agreement, together with the Order Form, the Deposit Form and the Verification Terms (where applicable) represent the whole agreement relating to the escrow arrangements between NCC Group and the other parties in relation to the Package and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings. In the event of any conflict between any of these documents, the following order of precedence shall apply: (i) the Verification Terms (where applicable); then (ii) this Agreement; then (iii) the Deposit Form; (iv) the Order Form; then (v) any other document incorporated by reference. No party has entered into this Agreement in reliance upon and will have no remedy in respect of any representation, misrepresentation or statement which is not set out in those documents. Nothing in this clause shall limit or exclude the liability of any party for fraud or fraudulent misrepresentation.
- 14.6 Unless the provisions of this Agreement otherwise provide, any notice or other communication required or permitted to be given or made in writing hereunder shall be validly given or made if delivered by hand or courier or if despatched by first class recorded delivery (airmail if overseas) addressed to the address specified for the parties in this Agreement (or such other address as may be notified to the parties from time to time) or if sent by electronic mail to an email address as notified by the parties from time to time and shall be deemed to have been received:
- (i) if delivered by hand or courier, at the time of delivery;
- (ii) if sent by first class recorded delivery (airmail if overseas), 2 Business Days after posting (6 Business Days if sent by airmail); or
- (iii) if sent by electronic mail on a Business Day before 4.30pm (UK time), on that day or, in any other case, on the next Business Day.
- 14.7 No party shall assign, transfer or subcontract this Agreement or any rights or obligations hereunder without the prior written consent of the other parties, except where: (i) a party merges, is acquired or has substantially all of its assets acquired and the new entity or acquirer agrees to assume all of their obligations and liabilities under this Agreement; or (ii) NCC Group sub-contracts or assigns its rights or obligations to its Affiliates or a third party approved by NCC Group. NCC Group shall ensure that any such Affiliate or aforementioned third party is bound by the same confidentiality obligations as are contained in clause 8 and shall be responsible and liable for the acts and omissions of such Affiliate or such third party to the same extent as if such acts or omissions were by NCC Group.
- 14.8 This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.
- 14.9 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall, to

- the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect.
- 14.10 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 14.11 The parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage, or any prohibition or restriction by any governments or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as practicable. If such circumstances continue for more than six months, any of the other parties shall be entitled to terminate this Agreement by giving one month's notice in writing.
- 14.12 No waiver by any party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and, subject to clause 6.6, no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.
- 14.13 NCC Group's Affiliates shall be entitled to enforce clause 11 of this Agreement subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of this Agreement. Save as provided in this clause 14.13, this Agreement is not intended to create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this Agreement and the rights of any third party under the said act are hereby expressly excluded.
- 14.14 Each of the Owner and the Licensee warrant to NCC Group that as at the date of this Agreement it is not subject to any sanction, embargo or equivalent measure imposed by the laws of any jurisdiction or any union of jurisdictions (as "**Sanctions**") whether by virtue of such Sanctions being imposed on it individually or by virtue of it being resident in a certain jurisdiction or operating in a certain sector. If, during the term of this Agreement, the Owner or the Licensee becomes subject to any Sanction it will immediately notify NCC Group in writing.
- 14.15 The Owner and the Licensee (to the extent that the Licensee is reasonably aware, to the best of its knowledge) warrant to NCC Group that the Materials (including, without limitation, the receipt by NCC Group of the Materials or the taking of any action by NCC Group in relation to the Materials that is contemplated by this Agreement including the receipt, holding, testing and/or releasing of the Materials (together the "NCC Actions")) are not, and to the best of their knowledge and belief are not expected to become, subject to any import, re-import, export or re-export controls, laws or regulations in any country that the Materials may be exported from, held in or delivered or released into under this Agreement ("Export Control Laws"). If at any time during the term of this Agreement, the Materials or the NCC Actions become subject to Export Control Laws the Owner and the Licensee shall immediately notify NCC Group, providing all relevant details. Without prejudice to clause 14.11, NCC Group shall have no obligation to undertake any NCC Actions in relation to the Materials if to do so would put it in breach (or potential breach) of Export Control Laws and shall not be required to obtain any licence or other permission under Export Control Laws.
- 14.16 The Owner and the Licensee warrant to NCC Group that in providing or disclosing any Personal Data in connection with this Agreement it has provided or disclosed such Personal Data in accordance with all applicable Data Protection Legislation and that it has collected and transferred such Personal Data to NCC Group in accordance with the Data Protection Legislation. In particular, each of the Owner and the Licensee warrants and represents that it has obtained any relevant consent to such collection and transfer and the processing of the Personal Data by NCC Group in the execution of this Agreement. Each of the Owner and Licensee shall indemnify NCC Group in respect of all direct, indirect and consequential losses, damages, costs, claims, proceedings, expenses and liabilities (including reasonable legal fees, other professional costs and costs of enforcement) incurred by NCC Group and its Affiliates arising out of or in connection with a breach of this clause 14.16.
- 14.17 NCC Group is responsible for complying with all laws that are generally applicable to an escrow agent operating in England. If however, the content of the Materials is such that additional laws or regulations are imposed on NCC Group by virtue of it receiving, holding, testing or releasing such Materials specifically then the Owner and and the Licensee (to the extent that the Licensee is reasonably aware, to the best of its knowledge) shall be responsible for notifying NCC Group of all such additional laws and regulations.
- 14.18 NCC Group is committed to ensuring that there is no modern slavery or human trafficking in its supply chains or in any part of its business and its Anti Slavery and Human Trafficking Statement and Anti Slavery Policy are available upon request.
- 14.19 Without prejudice to clause 14.11, if any of NCC Group's obligations under this Agreement becomes illegal, prohibited or otherwise unlawful then NCC Group shall be relieved of such obligation unless and until such obligation becomes permitted.
- 14.20 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

Signed for and on behalf of [Owner name]

Name: |

Position: | (Authorised Signatory)

Signed for and on behalf of [Licensee name]

Name: |

Position: | (Authorised Signatory)

Signed for and on behalf of NCC GROUP ESCROW LIMITED

Name: |

Position: | (Authorised Signatory)

Schedule 1

The Package

The software package known as [Software name] or any other name(s) as may be given to it by the Owner from time to time.

Schedule 2

NCC Group's Fees

	DESCRIPTION	OWNER	LICENSEE
1	Annual Fee (payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
2	Scheduled Update Fee (2 nd and subsequent scheduled deposits in any one year, payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
3	Unscheduled Update Fee (per unscheduled deposit)	100%	Nil
4	Virtual Machine Fee (per deposit). If ordered in advance the Virtual Machine Deposit must be received within a year of order, otherwise a new fee will be payable.	100%	Nil
5	Deposit Refresh Fee (plus NCC Group's reasonable expenses)	100%	Nil
6	Release Fee (plus NCC Group's reasonable expenses)	Nil	100%

Additional fees will be payable to NCC Group by the Owner (unless otherwise agreed between the parties) for the following where applicable:

- Storage Fee for deposits in excess of 1 cubic foot (physical deposits) or uploads of more than 100 GB content size (electronic deposits);
- Any variation, novation or replacement of this Agreement at the request of the Owner or the Licensee;
- Media Check Fee for deposits consisting of more than 5 physical media items or 100 GB content size; and/or
- Media Check Fee for Media Checks which cannot be completed within NCC Group's reasonable timescale, for example due to the receipt of physical deposits on hardware other than CD/DVD/Blu Ray/USB Hard Drive or the requirement for non-specific applications or software or niche and non-mainstream skillsets to complete the test.

SCHEDULE 12

LEGAL OPINION

TO: [insert recipient details]¹

Dear Sirs

I am the legal adviser to [] and I am giving this legal opinion in connection with the making by [] of the Document (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the “**Document**”) dated [] made between the [] (the “**Guarantor**”), [] (the “**Contractor**”) and [insert recipient name] (the “**Company**”). Terms defined in or for the purpose of the Document have the same meanings in this opinion.
 2. Having considered the Document and any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of [] I am pleased to advise that in my opinion:
 - (a) the Guarantor was incorporated in [] on [] for an indefinite period as [a limited company] and is a separate legal entity, is subject to suit in its own name, and, to the best of my knowledge, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
 - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) in [] has been taken to enable the Guarantor to:
 - (i) sign and deliver the Document and perform the obligations undertaken by it thereunder;
 - (ii) guarantee the Company in respect of the obligations to the Guarantor under the Documents;
- and implementation by the Guarantor of the foregoing will not cause:
- (iii) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute or regulation or, to the best of my knowledge, agreement or otherwise) to be exceeded;
 - (iv) any law or order to be contravened;

¹ Insert details of the relevant member of the TFL Group.

- (v) any default under, or give rise to an obligation to create any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us to which the Guarantor is a party or by which it or any of its assets is bound;
 - (c) the Document has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Document, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid and legally binding on and enforceable against the Guarantor under the laws of [] and in the courts of [];
 - (e) it is not necessary or advisable under the laws of [] in order to ensure the validity, enforceability and priority of the obligations of the Guarantor or the rights of the Company under the Document that the Document be filed, registered, recorded or notarised in any public office or elsewhere or that any other instrument relating thereto be signed, delivered, filed, registered or recorded, that any tax or duty be paid or that any other action whatsoever be taken;
 - (f) the obligations of the Guarantor under the Document rank at least equally and rateably (pari passu) in point of priority and security with all other unsecured obligations of the Guarantor;
 - (g) there is no withholding in respect of duties, taxes or charges to be deducted from any payment, whether of principal, interest, fees or otherwise, to be made by the Guarantor pursuant to the Document, and the arrangements contemplated by the Document do not give rise to any charge whatsoever to taxes in [];
 - (h) there are no registration, stamp or other taxes or duties of any kind payable in [] in connection with the signature, performance or enforcement by legal proceedings of the Document;
 - (i) the Company will not violate any law or regulation in [] nor become liable to tax in [] by reason of entering into the Document or performing its obligations thereunder. It is not necessary to establish a place of business in [] in order to enforce any provisions of the Document;
 - (j) to the best of my knowledge, information and belief and after having made due enquiry the choice of English law to govern the Document will be upheld as a valid choice of law in any action in the [] Courts;
 - (k) the consent to the jurisdiction by the Guarantor contained in the Document is valid and binding on the Guarantor and not subject to revocation;
 - (l) to the best of my knowledge, information and belief and after having made due enquiry any judgment for a definite sum given by the High Court of Justice in England against the Guarantor would be recognised and accepted by the [] Courts without re-trial or examination of the merits of the case.
3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of [] and accordingly express no legal opinion herein based upon any law other than the laws of [].

Signed []

.....

Name and position

SCHEDULE 13

(Processing Statement)

1. The Employer Personal Data to be Processed by the *Contractor* (if any) concerns the following categories of Data Subject:
 - **The *Employer's* staff;**
 - **Interfacing *Other's* staff;**
 - **Members of the public; and**
 - **Any other Data Subject required for the delivery of the *works*.**
2. The Employer Personal Data to be Processed includes the following types of Personal Data and/or Sensitive Personal Data:
 - **Name;**
 - **Email address;**
 - **Telephone number;**
 - **Home Address; and**
 - **Any other information which relates to a Data Subject.**
3. The Employer Personal Data is to be Processed for the following purpose(s):
 - **Delivery of the *works***
4. The Employer Personal Data is to be Processed in the following Restricted Countries:
 - **United Kingdom**



**DLR Rolling Stock Replacement Programme; Beckton
Depot Northern Sidings; NEC3 ECC Option C**

Section 2

Works Information

2.000

**Works Information:
Beckton Depot Northern Sidings Contract**

All listed documents are available via:
 Asite Workspace 'DLR.065.204.NS - Northern Sidings (EDMS)';
 Document Folder '04.00 Contracts & Commercial Management';
 Document Subfolder '04.05.01 Contract documents';
 Document References as per the below table.

Document Description	Asite Document Reference
Works Information	
WI100: Description of the Works	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI200 Constraints on how the Contractors provides the Works	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI300 Contractors Design	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI400 Completion	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI500: Programme Requirements	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI600: Quality Assurance	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI700: Inspection & Testing	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI800: Management of the works	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI900: Working with the Employer and Others	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI1000: Services and Miscellaneous	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI1100: Health Safety and Environmental Requirements	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI1200 Subcontracting & Procurement	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI1300: Title	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI1500: Accounts and Records	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings
WI2000 Employers Works Specification	65204NS-DLR-MAC-TD350-REQ-CP-0001 V5.0 Works Information Northern Sidings



**DLR Rolling Stock Replacement Programme; Beckton
Depot Northern Sidings; NEC3 ECC Option C**

Section 3

Appendices

3.000

**Appendices:
Beckton Depot Northern Sidings Contract**

All listed documents are available via:
Asite Workspace 'DLR.065.204.NS - Northern Sidings (EDMS)';
Document Folder '04.00 Contracts & Commercial Management';
Document Subfolder '04.05.01 Contract documents';
Document References as per the below table.

Appendices	Document Description	Asite Document Reference
	Appendices (incl. Site Information)	
A1.1	GQRA Interpretive Report	A1.1 65204-AEC-EST-TD350-REP-EN-9001 P02 GQRA Interpretive Report
A1.2	Requirements Verification & Validation (V&V) Matrix	A1.2 65204-AEC-MAC-TD350-REQ-IM-3001 V&V Matrix P02
A1.3	Interface Control Agreement Northern Sidings and Substation	A1.3 65204-AEC-MAC-TD350-REP-RS-9004 Interface Control Agreement Northern Sidings and Substation Packages P01
A1.4	Interface Control Agreement Northern Sidings and SCADA	A1.4 65204-AEC-MAC-TD350-REP-RS-9007 Interface Control Agreement Northern Sidings and SCADA P01
A2	Site Boundary Plan	A2 - 65204NS-DLR-FAE-TD350-DR-G-0001 v3.0 Site Boundary Plan Northern Sidings
A3.1	S106 - Deed of Agreement for DLR Depot	A3.1 - 65204-DLR-MAC-TD350-CER-LG-0003 - S106 - Deed of Agreement for DLR Depot, Armada Way dated 20 June 2019
A3.2	Planning Decision Notice Discharge Pre-commencement Conditions	A3.2 - 65204-DLR-MAC-TD350-CER-LG-0001 - Planning Decision Notice Discharge Pre-commencement Conditions V2.0
A3.3	Beckton Depot Upgrade Planning Conditions - Final 20 06 2019	A3.3 - 65204EW-DLR-MAC-TD350-REQ-CP-0004 Beckton Depot Upgrade Planning Conditions - Final V2.0
A4.1	HSE Report Template	A4.1 - HSE Report Template
A4.2	Environmental Key Performance Indicators	A4.2 - Phase 1 - Environmental KPIs Template 22.05.2019 Rev1.0
A4.3	Work Related Road Risk	A4.3 - 65204NS-DLR-MAC-TD350_1-REQ-CP-0001 Work Related Road Risk V1.0
A4.4	Health Safety and Environment Pre-Construction Information - (Including Appendices 10.1 - 10.8)	A4.4 H&S PreConstruction Information
A4.5	TfL HSE Policy January 2019	A4.5 - P133 Rev-Jan19 TfL HSE Policy
A4.6	Fire Strategy (Depot-wide for the Works)	A4.6 - 65204-AEC-FRS-TD350-STR-FE-9001 Beckton Depot Fire Strategy P02
A4.7	NOT USED	NOT USED
A4.8	NOT USED	NOT USED
A4.9	NOT USED	NOT USED
A4.10	Contractor's Technical Assurance Plan	A4.10 65204-AEC-MAC-TD350-PLN-ZZ-9002 Consultant's Overarching Technical Assurance Plan P02
A5	National Grid 572 Beckton Agreement for Lease HoTs	A5 - National Grid 572_Beckton_AgreementForLease_HoTs_TfL_La nd 240919
A6	Build Technical Assurance Plan	A6 65204NS-DLR-TRK-TD350_Z-PLN-CM-0001 - C01 Build Technical Assurance Plan
A7	BREEAM Evidence Tracker	A7 60590864 BREEAM Evidence Tracker Doc Ref Rev01
A8	Reporting Cycles	A8 Reporting Cycle Rev 2020.21.pdf
A9	Technical Scope of Works	A9 65204N-DLR-MAC-TD350_1-REQ-RQ-00001 Northern Sidings Technical Scope of Works
A10	London City Airport Crane Permit Application	A10 LCY COTE London City Airport Crane Permit Application Rev1.0
B1.1.1	Detailed Design (Civil) Submission A	B1.1.1 65204-AEC-BAS-TD350-REP-CE-3001 Detailed Design (Civil) Submission A C03
B1.1.2	Package Specification (Civil)	B1.1.2 65204-AEC-BAS-TD350-REP-CE-3002 Specification (Civil) C01
B1.1.3	Northern Sidings Package – Submission C	B1.1.3 65204-AEC-BAS-TD350-REP-CE-3004 Detailed Design (Civil) Submission C C01
B1.1.4	Detailed Design (Civil) Submission B	B1.1.4 65204-AEC-BAS-TD350-REP-CE-3003 Detailed Design (Civil) Submission B C02
B1.1.5	Northern Sidings Package – Submission D	B1.1.5 65204-AEC-BAS-TD350-REP-CE-3005_Northern Sidings - Submission D - Civils Design Report C01
B1.2.1	Detailed Design Drainage (including stage works drainage)	B1.2.1 65204-AEC-DRG-TD350-REP-D-3001 Drainage Design C01
B1.2.2	Series 500 Drainage Spec	B1.2.2 65204-AEC-DRG-TD350-REP-D-3002 500 Drainage Specification C01
B1.2.3	Northern Sidings – Hazard Analysis Report	B1.2.3 65204-AEC-MAC-TD350-REP-HS-3002_Northern Sidings – Hazard Analysis Report P01
B1.2.4	Drainage Strategy	B1.2.4 65204-AEC-DRG-TD350-REP-UT-9002 Drainage Strategy P01
B1.3.1	Geotechnical Design Report	B1.3.1 65204-AEC-EST-TD350-REP-GE-1001 Geotechnical Design Report C01
B1.3.2	Series 600 Earthworks Specification	B1.3.2 65204-AEC-EST-TD350-REP-GE-3003 Series 600 Earthworks C02

B1.3.3	Depot Wide – Remediation Strategy	B1.3.3 65204-AEC-EST-TD350-REP-EN-9002 Site Wide Remediation P02
B1.3.4	Ground Investigation Factual Report	B1.3.4 65204-AEC-EST-TD350-REP-GE-3001 Ground Investigation Factual Report C01
B1.4	Depot Wide – Southern Test Track ATO Signalling Interface Control Document	B1.4 65204-AEC-MAC-TD350-REP-RS-9001 (C02) – Depot Wide – Southern Test Track ATO Signalling Interface Control Document
B1.5	Migration Plan (incl. Construction Staging Plan)	B1.5 65204-AEC-MAC-TD350-PLN-ZZ-9003 Migration Plan P02
B1.6	Construction Strategy	B1.6 65204-AEC-MAC-TD350-REP-CL-0001 Construction Strategy C01
B1.7.1	Telecomms Detailed Design Report	B1.7.1 65204-AEC-COM-TD350-REP-RS-3001 Telecomms Detailed Design Report C01
B1.7.2	Southern Sidings – Telecommunications Construction Specification	B1.7.2 65204-AEC-COM-TD350-REP-RS-2002 Southern Sidings – Telecommunications Construction Specification C01
B1.7.3	Southern Sidings - Telecommunications Detailed Design Report	B1.7.3 65204-AEC-COM-TD350-REP-RS-2001 Southern Sidings - Telecommunications Detailed Design Report P02
B1.8	M&E LV Detailed Design Report	B1.8 65204-AEC-ELC-TD350-REP-E-3007 M&E LV Detailed Design C01
B1.9.1	Traction Power Detailed Design Report	B1.9.1 65204-AEC-ELC-TD350-REP-E-3001 Traction Power Detailed Design C01
B1.9.2	BEDU Human Factors Integration	B1.9.2 65204-AEC-MAC-TD350-PLN-ZZ-9006 BEDU Human Factors Integration P01
B1.10	Point Heating Detailed Design Report	B1.10 65204-AEC-ELC-TD350-REP-E-3005 Point Heating Detailed Design C01
B1.11.1	Signalling Power Detailed Design Report	B1.11.1 65204-AEC-ELC-TD350-REP-E-3006 Signalling Power C01
B1.11.2	E&P Signalling Power Survey & Option Selection Report	B1.11.2 65204-AEC-ELC-TD350-REP-E-9001E&P Signalling Power Survey & Option Selection Report P01
B1.12.1	Permanent Way Detailed Design Report	B1.12.1 65204-AEC-TRK-TD350-REP-RE-3001 Permanent Way Detailed Design C01
B1.12.2	Track Construction Specification	B1.12.2 65204-AEC-TRK-TD350-REP-RE-3002 Track Construction Specification C01
B1.12.3	Interface Control Agreement	B1.12.3 65204-AEC-MAC-TD350-REP-RS-9003 65204-AEC-MAC-TD350-REP-RS-9003 NS Interface Control Agreement NS MFB P01
B1.12.4	Verification and Validation Report	B1.12.4 65204-AEC-MAC-TD350-REP-ZZ-3003 Verification and Validation Report – P01
B1.12.5	Control Tables	B1.12.5 65204-AEC-SIG-TD350-REP-RS-3004 Control Tables C01
B1.13.1	Northern Sidings Test Track HAZID	B1.13.1 65204-AEC-MAC-TD350-REP-HS-3004 Test Track HAZID Ver1
B1.13.2	Signalling Testing Report	B1.13.2 65204-AEC-SIG-TD350-REP-RS-9009 Northern Sidings – Signalling Testing Report C01
B1.13.3	Signalling Detailed Design Report	B1.13.3 65204-AEC-SIG-TD350-REP-RS-3001 SIGNALLING DETAILED DESIGN C01
B1.13.4	Signal Plan	B1.13.4 65204-AEC-SIG-TD350-REP-RS-3002 Signal Plan C01
B1.13.5	Signalling Migration and Commissioning Plan	B1.13.5 65204-AEC-SIG-TD350-REP-RS-9007 Signal Migration Commission C01
B1.13.6	Signalling Stage C2P	B1.13.6 65204-AEC-SIG-TD350-REP-RS-3005 Northern Sidings - Signalling Stageworks C2p C01
B1.13.7	Northern Sidings – Signalling Stage C1W	B1.13.7 65204-AEC-SIG-TD350-REP-RS-3009 Northern Sidings – Signalling Stage C1w C01
B1.13.8	Northern Sidings – Signalling Stage C6p	B1.13.8 65204-AEC-SIG-TD350-REP-RS-3007_Northern Sidings - Signalling Stageworks C6p C01
B1.13.9	Northern Sidings – Signalling Stage C4p	B1.13.9 65204-AEC-SIG-TD350-REP-RS-3006_Northern Sidings – Signalling Stageworks C4p C01
B1.13.10	Principle Contractor deliverables	B1.13.10 Principal Contractors Deliverables
B1.13.11	Northern Sidings – Vital Lock of Test Track Interface Report	B1.13.11 65204-AEC-SIG-TD350-REP-RS-3010_Northern Sidings – Vital Lock of Test Track Interface Report P01
B1.13.12	Signalling Hardware and Software Report	B1.13.12 65204-AEC-SIG-TD350-REP-RS-3008 Signalling Hardware and C01
B1.13.13	Signalling Equipment O&M Manuals	B1.13.13 65204-AEC-SIG-TD350-REP-RS-9002 Signalling Equipment O&M P02
B1.13.14	Settlement Design Impact	B1.13.14 65204-AEC-EST-TD350-REP-GE-3002 Settlement Design Impact P02
B1.13.15	Highways Works Specification	B1.13.15 65204-AEC-MAC-TD350-REP-D-3001 Highways Works Specification C02
B1.13.16	Highways Detailed Design Report	B1.13.16 65204-AEC-MAC-TD350-REP-D-3002 Northern Sidings Highways Detailed Design Report C02
B1.13.17	Interface Control Agreement - NS and Northern Test Track ATO System	B1.13.17 65204-AEC-MAC-TD350-REP-RS-9002_Interface Control Agreement - NS and Northern Test Track ATO System P01
B1.13.18	Beckton Depot Post Contract BIM Execution Plan	B1.13.18 65204-AEC-MAC-TD350-PLN-IM-9001 Beckton Depot Post Contract BIM Execution Plan P03
B1.13.19	Depot Wide – Interface Identification Document	B1.13.19 65204-AEC-MAC-TD350-REP-ZZ-9002 Depot Wide – Interface Identification Document P01

B2.1	Generic Quantitative Risk Assessment Interpretive Report	B2.1 - 65204-AEC-EST-TD350-REP-EN-9001 GQRA Interpretative Report P02
B2.2	Not Used	NOT USED
B2.3	Employer/Maintainer's Handover/Handback Plan	B2.3 Northern Sidings Handover Handback Plan
B2.4	Utilities Diversion Plan	B2.4 65204-AEC-MAC-TD350-PLN-UT-9001 Utilities Diversion Plan P02
B2.5	Pre Construction Readiness Checklist	B2.5 - 65204EW-DLR-MAC-TD350-LST-CL-0001 Pre-Construction Readiness Checklist V1.0
B2.6	Not Used	NOT USED
B2.7	Non intrusive Detailed Design Survey	B2.7 65204-AEC-EST-TD350-MST-GE-3002 Non Intrusive Detailed Design Survey-P02
B2.8	Signalling FMECA Report	B2.8 65204-AEC-SIG-TD350-REP-RS-9006_Ver2 Signalling FMECA
B2.9	Signalling Mainline Control Table Interface to Beckton Depot	B2.9 65204-AEC-SIG-TD350-DR-RS-2025 Signalling Mainline Control Table Interface to Beckton Depot C01
B2.9.1	Northern Sidings Signalling Control Tables	B2.9.1- 65204-AEC-SIG-TD350-REP-RS-3004 Control Tables C01
B2.10	Hoarding/Fencing Strategy	B2.10 65204-AEC-FAE-TD350-REP-CE-9001 Hoarding Fencing Strategy P02
B2.11	Earthing, Bonding and Stray Current Plan	B2.11 65204-AEC-ELC-TD350-PLN-E-9001 Earthing, bonding and stray current P02
B2.12	Beckton Depot Upgrade Quality Plan	B2.12 65204-AEC-MAC-TD350-PLN-ZZ-9005 Beckton Depot Upgrade Quality Plan P02
B2.13	GQRA Interpretive Report	B2.13 65204-AEC-EST-TD350-REP-EN-9001 GQRA Interpretive Report P02
B2.14	FMECA Report	B2.14 65204-AEC-SIG-TD350-REP-RS-9006 FMECA P01
B2.15	Welfare Facilities Scope of Works	B2.15 65204NS-DLR-PRM-TD350-REQ-CL-00001 Northern Sidings Welfare Facilities Scope of Works Rev01
B3.1	Signalling Drawings	B3.1 65204-AEC-SIG-TD350-REP-RS-3003 Signalling Drawings C01
B3.2	ETE Electrical Trackside Equipment	B3.2 65204-AEC-ELC-TD350-REP-E-3008 ETE Electrical Trackside Equipment Stageworks Report P01
B3.3	Beckton Depot Enabling Works Redline - Civils	B3.3 80050-AG-BAS-TD350-RLD-0001-Beckton Depot Enabling Works Redline - Civils -Rev 01
B3.4	Beckton Depot Enabling Works - Redline Drawings- Fencing	B3.4 80050-AG-BAS-TD350-RLD-0003-Beckton Depot Enabling Works Redline - Retaining Blocks -Rev 01 Ver1
B3.5	Beckton Depot Enabling Works Redline - Retaining Blocks	B3.5 80050-AG-DRG-TD350-RLD-0004-Beckton Depot Enabling Works Redline Drawings - Drainage - Rev 01 (1)
B3.6	Beckton Depot Enabling Works Redline Drawings - Drainage	B3.6 80050-AG-SFS-TD350-RLD-0002-Beckton Depot Enabling Works - Redline Drawings- Fencing-Rev 01
B4.1	Health and Safety File	B4.1 65204-AEC-MAC-TD350-REP-HS-3001 Health and Safety File P02
B4.2	Buried Services and Utilities Investigation Report	B4.2 65204-AEC-MAC-TD350-PLN-UT-9002 Buried Service & Utilities Investigation Report
B4.3	Project Execution Plan	B4.3 65204-AEC-MAC-TD350-PLN-ZZ-9001 Project Execution Plan P02
B4.4	Not Used	NOT USED
C1.1	Noise and Vibration Engineering Standard	C1.1 DLR-ENG-STD-ES101 Noise and Vibration Engineering Standard Issue B
C1.2	EMC Standard	C1.2 DLR-ENG-STD-ES102 EMC Standard Issue B
C1.3	BIM Standard	C1.3 DLR-ENG-STD-ES104 BIM Standard Issue 2.0
C1.4	Infrastructure Permanent Way Engineering Standard	C1.4 DLR-ENG-STD-ES401 Permanent Way Engineering Standard Issue D
C1.5	Civil Structural Architectural Landscape Works	C1.5 DLR-ENG-STD-ES501 Civil Structural Architectural Landscape Works Engineering Standard Issue B
C1.6	Design of Underground Structures Engineering Standard	C1.6 DLR-ENG-STD-ES504 Design of Underground Structures Engineering Standard Issue A
C1.7	Basis of Bridge Design and Assessment Standard	C1.7 DLR-ENG-STD-ES505 Basis of Bridge Design and Assessment Standard Issue E
C1.8	Earthing Bonding and Corrosion Protection Engineering Standard	C1.8 DLR-ENG-STD-ES604 Earthing Bonding and Corrosion Protection Engineering Standard Issue A
C1.9	Code of Practice Engineering Standard for Materials, Equipment & Workmanship for use on DLR Passenger Rolling Stock	C1.9 DLR-ENG-STD-ES701 Code Of Practice Engineering for Passenger RS Standard Issue C
C1.10	General Dimensions of Wheelsets for use on DLR Vehicles Standard	C1.10 CORE-DLR-RSK-ENG_0-DR-K-0008 General Dimensions of Wheelsets for use on DLR Vehicles Standard Issue P02
C1.11	Vehicle & Structure Gauges - Centre & End Throw Details Standard	C1.11 CORE-DLR-RSK-ENG_0-DR-K-0254 Vehicle & Structure Gauges - Centre & End Throw Details Standard Issue P01.1
C1.12	Vehicle & Structure Gauges - Platform location and Minimum Dimensions Standard	C1.12 CORE-DLR-RSK-ENG_0-DR-K-0258 Vehicle & Structure Gauges - Platform location and Minimum Dimensions Standard Issue P01.1
C1.13	B92 and B2007 Stock Collector Shoe Spacing Standard	C1.13 DLR-ENG-DWG-RS092 B92 and B2007 Stock Collector Shoe Spacing Standard Issue C

C1.14	Flange lubrication for DLR5 tyre profile critical limits Standard	C1.14 DLR-ENG-DWG-RS200 Flange lubrication for DLR5 tyre profile critical limits Standard Issue A
C1.15	Flange Lubrication for DLR5 Tyre Profile Lubrication Gauge Standard	C1.15 DLR-ENG-DWG-RS201 Flange Lubrication for DLR5 Tyre Profile Lubrication Gauge Standard Issue A
C1.16	Communications System Engineering Standard	C1.16 DLR-ENG-STD-ES201 Communications System Engineering Standard Issue A
C1.17	Vehicle & Structure Gauges - Static Vehicle Dimensions Standard	C1.17 DLR-ENG-DWG-RS253 Vehicle & Structure Gauges - Static Vehicle Dimensions Standard 4.0 Issue C
C1.18	Vehicle & Structure Gauges - Centre & End Throws on Vertical Curves Standard	C1.18 DLR-ENG-DWG-RS255 Vehicle & Structure Gauges - Centre & End Throws on Vertical Curves Standard Issue B
C1.19	Vehicle & Structure Gauges - Lateral cant Allowances Standard	C1.19 DLR-ENG-DWG-RS256 Vehicle & Structure Gauges - Lateral cant Allowances Standard Issue C
C1.20	Vehicle & Structure Gauges - Detail of Conductor Rail area Standard	C1.20 DLR-ENG-DWG-RS257 Vehicle & Structure Gauges - Detail of Conductor Rail area Standard Issue C
C1.21	Vehicle & Structure Gauges - Swept Envelope Standard	C1.21 DLR-ENG-DWG-RS259 Vehicle & Structure Gauges - Swept Envelope Standard Issue B
C1.22	Vehicle & Structure Gauges - Structure Gauge for Open Track Standard	C1.22 DLR-ENG-DWG-RS260 Vehicle & Structure Gauges - Structure Gauge for Open Track Standard Issue B
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C4.2	Design Management Plan	C4.2 - 1499901-DLR-RSTK-TR600_Z-1E-K-0016 Design Management Plan Rev 1.1
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E2.5	Handback Certificate	E2.5 - DLR-IMS-WoRM-CER-00003 Handback Certificate
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E2.19	Closure Request Form	E2.19 - DLR-IMS-WoRM-REQ-00001 Closure Request Form
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