



Specialist Consultant

Date.....22/07/2019.....

Project Director



ANNEX ONE

SCHEDULE 9

(Form of Warranty from *Consultant* to Financier or Purchaser/Tenant/Developer)

THIS DEED is made on ● 201●

BETWEEN:

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

WHEREAS:

- (A) By a call off contract dated ● (the "**Contract**"), Transport for London whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL ("the *Employer*", which expression shall include its successors in title and assigns) appointed the *Consultant* to design, carry out and complete certain design services(the "**services**")
- (B) [The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *services*]. [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 *services* it will [purchase] / [take a lease of] the whole or part of the Main Contract Works or the Works]. [The Beneficiary has an interest in the whole or part of the *services* as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* in respect of [●].]

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 *Consultant* warrants and undertakes to the Beneficiary that:
 - a) it has exercised and will continue to exercise all the skill, care and diligence normally used by professionals providing services similar to the *services*, including in respect of design all reasonable skill, care and diligence as may



be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out design of a similar scope, nature, timescale and complexity and relating to a similar site or at a similar location to the Works; and

- b) it has complied with and will continue to comply with the terms of the Contract.

3.

3.1 The *Consultant* warrants and undertakes to the Beneficiary that to the extent the *Consultant* either is obliged to specify or approve products or materials for use or does so specify or approve, the *Consultant* does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be 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" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
- b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or
- c) any publications of the Building Research Establishment related to the specification of products or materials.

3.2 If in the performance of his duties under the Contract, the *Consultant* becomes aware that he or any person has specified, approved or used any such products or materials, the *Consultant* immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the *Consultant* to inspect or check the work of Others which is not required by the Contract

4. The *Consultant* further warrants and undertakes to the Beneficiary that:

- (a) subject to clause 2(a), the *services* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;



- (b) subject to clause 2(a), the *services* 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) his designs are integrated with the designs of Others
 - (d) the *services* will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards; and
 - (e) the *services* will be carried out and completed timeously in accordance with the Accepted Programme.
- 5 The *Consultant* 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 of not less than £5 million in respect of each and every claim and in the aggregate which may be made against the *Consultant* in relation to the Works. The *Consultant* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* 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 *Consultant's* insurance claims record.
- 6 As and when reasonably requested by the Beneficiary, the *Consultant* 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 designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the *Consultant* in connection with the *services* (whether in existence or to be made) ("Documents") have not already vested in the *Employer*, the *Consultant* 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 *Consultant* incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement or demolition of the Works provided always that the *Consultant* 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 *Consultant* .

8 The *Consultant* 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 *Consultant's* expense to provide the Beneficiary with a set of all such material on Completion of the *services*.

9 If called upon to do so by the Beneficiary, the *Consultant* shall provide the Beneficiary with such information relating to the *services* as the Beneficiary may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Consultant* for the purposes of the *services* provided that neither the provision of such information nor any inspection of the *services* 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 *Consultant* under the Contract or relieve the *Consultant* from any liability which it has in relation to the *services*.

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 *Consultant* being required and the *Consultant* 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 *Consultant*. For the purposes of this clause, "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any



“member of the TfL Group” refers to TfL or any such subsidiary. The *Employer* is a member of the TfL Group.

- 11 The *Consultant* 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 *Consultant* under this Deed shall cease 12 years following Completion of the whole of the *services*.
- 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 *Consultant* including without limitation any remedies in negligence.
- 14.1 The *Consultant* shall owe no greater obligations to the Beneficiary than he owes to the *Employer* under the Contract as if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer, provided that the *Consultant* shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the *Consultant* from the *Employer*.
- 14.2 The *Consultant* shall be entitled in any actions or proceedings brought 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 (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer.
- 15 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.
- 16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement 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**

[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 CONSULTANT] acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary



(Form of Warranty from Subconsultant to *Employer* (Schedule 11A))

THIS DEED is made on ● 201 ●

BETWEEN:

(1) ● whose registered office is situate at ● ("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 "***Consultant***").

WHEREAS:

(A) The *Consultant* has entered into a call off contract dated ● (the "***Contract***") with the *Employer* for the carrying out of certain [***Services***] at ● (the "***services***").

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

NOW IT IS AGREED:

1 The following definitions shall apply in this Deed:

(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) "Documents" means designs, drawings, models, [Model(s), Federated Model(s) (as such terms are defined in the IMM Protocol forming part of the Contract),] plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the Subconsultant in connection with the design works (whether in existence or to be made);

(c) Not used.

(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) Not used.



(f) "Prohibited Act" means:

- I. offering or agreeing to give to any servant, employee, officer or agent of the Employer or the Consultant 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 Consultant 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 Consultant;
 - II. entering into the Appointment or any other contract with the Employer or the Consultant 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 Consultant;
 - III. committing any offence under the Prevention of Corruption Acts 1889-1916, 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 Consultant; or
 - IV. defrauding or attempting to defraud the Employer or the Consultant;
- (g) Not used.
- (h) "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary;
- (i) Not used.

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 Consultant under the Appointment; and
- (b) he has complied with and will continue to comply with the terms of the Appointment.



3

3.1 The Subconsultant warrants and undertakes to the Employer that to the extent the Subconsultant either is obliged to specify or approve products or materials for use or does so specify or approve, the Subconsultant does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be 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" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or
- (b) relevant International Standards, British Standards or European standards or Codes of Practice and general good building and engineering practice, or
- (c) any publications of the Building Research Establishment related to the specification of products or materials.

3.2 If in the performance of his duties under the Appointment, the Subconsultant becomes aware that he or any person has specified, approved or used any such products or materials, the Subconsultant immediately notifies the Employer in writing. This clause does not create any additional duty for the Subconsultant to inspect or check the work of others which is not required by the Appointment.

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

- (a) subject to clause 2(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 Consultant and others;
- (d) the design works will on Completion comply with the Statutory Requirements, all applicable law and all relevant Standards;
- (e) he shall not commit a Prohibited Act; 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 £5 million in respect of each and every claim and in the aggregate 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 services 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 Consultant, 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 all purposes relating to the services including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement and demolition of 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 services provided that neither the provision of such information nor any inspection of the services 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 services 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 and 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 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 Consultant thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the Consultant (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 Consultant whereupon all rights and obligations of the Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant. 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 *Consultant* has agreed to be a party to this Deed for the purposes of acknowledging that the Consultant shall not be in breach of the Contract by complying with the obligations imposed on the Consultant 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 Consultant being required and the Consultant 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 services.
- 19.1 The Subconsultant shall owe no greater obligations to the Employer than he owes to the Consultant under the Appointment as if, in lieu of this Deed, the Employer had been a party to the Appointment as joint employer, provided that the Subconsultant shall not be entitled to set-off or deduct from any sums payable to the Employer under this Deed any sums due or claimed as due by the Subconsultant from the Consultant.
- 19.2 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 Consultant thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Employer had been a party to the Appointment as joint employer.
- 20 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 Consultant including without limitation any remedies in negligence.
- 21 The Consultant 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 Consultant under the Appointment.
- 22 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. The Subconsultant 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 *design 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.
- 24.1 Without limitation to Clause 2 above, the Subconsultant hereby warrants to the Employer that:
 - (a) 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 Works (as defined in the Contract);