

**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.

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 officers)  
duly authorised officers )  
 )  
 ) (duly authorised officer)

Date: \_\_\_\_\_

THE COMMON SEAL of  
LONDON UNDERGROUND LIMITED  
was affixed to THIS DEED  
in the presence of:

Signature of Authorised Signatory .....  
.....

Date: \_\_\_\_\_

SCHEDULE 4A

(Form of Warranty from *Contractor*)

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 "**Contractor**").

**WHEREAS:**

- (A) By a contract dated ● (the "**Contract**") London Underground Limited (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 *Contractor* to design, carry out and complete certain [**Works and/or Services**] at ● (the "**works**").
- B) [The Beneficiary has entered into a contract with the *Employer* under the private finance initiative for ●.]/[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*.] [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 ●.]<sup>1</sup>

**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

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<sup>1</sup> Select appropriate recital depending on whether the Beneficiary is (i) a PFI Contractor; (ii) funder; (iii) purchaser/tenant; (iv) developer or (v) member of the TfL Group.

- (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]<sup>2</sup> [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) *works* will on Completion be Available,
  - (e) the *works* will on Completion comply with all applicable law and all relevant Standards; and
  - (f) 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 of not less than [REDACTED] in respect of each and every claim without aggregation or if aggregated including unlimited reinstatements of the aggregate limit 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

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<sup>2</sup> Use shaded text on all forms of warranty where Beneficiary is not a PFI contractor or a member of the TfL Group.

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 Documentation 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 Documentation 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 Documentation 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 person providing finance to the Beneficiary for the purpose specified in Recital (B), or]<sup>3</sup> [to any member of the TfL Group without limitation and otherwise]<sup>4</sup> 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.]<sup>5</sup>
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* (or in the event that the employment of the *Contractor* under the Contract is terminated prior to such Completion, 12 years after such termination).
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. [The *Contractor* shall not be liable to the Beneficiary under this Deed for any delay to Completion of the *works*.]<sup>6</sup>

<sup>3</sup> Use shaded text if a PFI Contractor is the Beneficiary.

<sup>4</sup> Delete shaded text where the Beneficiary is not a member of the TfL Group.

<sup>5</sup> Delete shaded text where the Beneficiary is not a member of the TfL Group.

<sup>6</sup> Consider for use on PFI Contractor form of warranty. On other forms insert "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.
- 15.3 The *Contractor* shall have no liability under this Deed for any delay in carrying out the *works*.
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. Service shall take effect, if given by hand, on the date of delivery. In the case of any notice sent by registered post it shall be deemed to have been received 48 hours after being posted, excluding Saturdays, Sundays and statutory holidays.
- 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 VERSION

**[EXECUTED AND DELIVERED AS  
A DEED for and on behalf of  
THE BENEFICIARY] BY**

●  
being duly authorised 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 4B

### (Form of Collateral Warranty to Battersea Project Holding Company and others)

THIS DEED is made on • 201•

#### BETWEEN:

- (1) [Battersea Project Holding Company Limited a company registered under the laws of Jersey(Company registration number 110930)] [Battersea Project Phase 3 Company Limited a company registered under the laws of Jersey (Company registration number 111903)] [Battersea Project Phase 4 Company Limited a company registered under the laws of Jersey (Company registration number 113793)] whose registered office is situated at St Paul's Gate, New Street, St Helier, Jersey, JE4 8ZB (the "**Beneficiary**"); and
- (2) • whose registered office is situated at • (the "**Contractor**").

#### WHEREAS:

- (A) [Battersea Project Holding Company Limited (Jersey company registration no. 110930), whose registered office is St Paul's Gate, New Street, St Helier JE4 8ZB (the "**Developer**")]  
[The Beneficiary] is procuring the design, carrying out and completion of the construction of a mixed use scheme on the site of the former Battersea Power Station (the "**BPS Development**").
- (B) Transport for London of Windsor House, 42-50 Victoria Street, London, SW1H 0TL (the "**Employer**") is procuring the design, carrying out and completion of the construction of the extension to the London Underground Northern Line from Kennington Station to, and including, a new underground railway station (including crossover structures) at the site of the former Battersea Power Station (the "**New Station**"), together with an intermediate station at Nine Elms (the "**Northern Line Extension Project**").
- (C) The BPS Development includes a development over the New Station (the "**Over Station Development**"). The Employer, [the Developer] [the Beneficiary] and the Landowners (as defined in the LWA hereinafter mentioned) [(including the Beneficiary)] have entered into a land and works agreement dated • (the "**LWA**", as the same may be amended, updated, restated or replaced from time to time), which, inter alia, addresses the interfaces between the BPS Development and the Northern Line Extension Project, including between the Station and the Over Station Development.
- (D) By a building contract dated • (the "**Contract**" as the same may be amended, updated, restated or replaced from time to time) the Employer has appointed the *Contractor* to design, carry out and complete the NLE Relevant Works (as defined in the LWA) (the "**works**"), which form part of the Northern Line Extension Project.
- (E) [The Beneficiary and one other Landowner (as defined in the LWA) each holds a Phase Lease (as defined in the LWA) of certain premises that include a part of the Over Station Development.]

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- (F) The [Beneficiary and that other Landowner] [relevant Landowners] (as defined in the LWA) [has granted] [will grant] to the Employer a lease of certain premises that include the New Station.
- (G) The *Contractor* has agreed to enter into this Deed in favour of the Beneficiary.

**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, in the design of the *works*, 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. Without prejudice to Clause 2 of this Deed, the *Contractor*:
  - (a) acknowledges that it has been provided with and has reviewed a copy of the LWA; and
  - (b) warrants and undertakes to the Beneficiary that it has carried out and shall continue to carry out its obligations under the Contract in such a manner so as not to put the *Employer* in breach of its obligations under the LWA.
4. 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 of not less than [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* (or, in the event that the employment of the *Contractor* under the Contract is terminated prior to such Completion, 12 years from such termination) 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. As and when reasonably requested by the Beneficiary, the *Contractor* shall produce for inspection documentary evidence that the insurance referred to in this Clause 4 is being properly maintained and that payment has been made of the last premium due in respect of such insurance.
5. The *Contractor* hereby grants to the Beneficiary an irrevocable, royalty-free and non-exclusivelicence to use, reproduce, modify and/or enhance any Intellectual Property Rights

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in the designs, drawings, calculations, specifications, reports, surveys and other documentation and information to be provided by or on behalf of the *Contractor* under the Contract (and the designs contained in them) (the "**Documentation**") for all purposes required by schedule 1 of the LWA including, without limitation: (i) carrying out any Construction of the Phase 3 Works, Phase 4 Works and the NLE Relevant Works (as, in each case, defined in the LWA), and (ii) the repair, maintenance, replacement, renewal, extension, modification, letting, sale, financing or refinancing of the Over Station Development, provided always that the *Contractor* shall not be liable for the consequences of any use of the Documentation as aforesaid for any other purpose. Such licence shall include the right for the Beneficiary to grant sub-licences (other than in respect of proprietary software which is not specifically prepared for the *works*) and shall be freely transferable to third parties without the prior consent of the *Contractor*. For the purposes of this Clause 5 "**Intellectual Property Rights**" means patents, trademarks, servicemarks, trade names, registered designs, design rights, database rights, copyright (including rights in software), applications for the grant of any of the foregoing rights moral rights, rights in know-how, rights in domain names and any other intellectual and industrial property rights, in each case whether registered or unregistered or capable of registration and subsisting anywhere in the world, and all rights or forms of protection having equivalent or similar effect anywhere in the world.

6. 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*.
7. The Beneficiary shall be entitled to assign, transfer and/or charge the benefit to the Beneficiary of this Deed and/or any of its present or future rights, interests and/or benefits under this Deed on two occasions only without the consent of the *Contractor* provided that (i) any assignment by way of security (or back on redemption of security), and (ii) any assignment, transfer or charge to a parent undertaking or subsidiary undertaking (as each term is defined in section 1162 of the Companies Act 2006) of the Beneficiary, shall not count towards the limit of two consent-free assignments.
8. The *Contractor* shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 7 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.
9. The liability of the *Contractor* under this Deed shall cease 12 years following Completion of the whole of the *works* (or, in the event that the employment of the *Contractor* under the Contract is terminated prior to such Completion, 12 years after such termination).
10. 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.

11. The *Contractor* shall:

- (a) owe no greater obligations to the Beneficiary than he would have owed to the Beneficiary under the Contract if the Beneficiary had been named as "employer" under the Contract in place of the *Employer*; (b) 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* (other than any rights of set-off or counterclaim) thereunder; and
- (c) have no liability under this Deed for any delay in carrying out or completing the *works*. provided that, notwithstanding any other provision of this Deed, the *Contractor* shall not be entitled to contend in defence of proceedings under or in connection with this Deed or otherwise that the Beneficiary is precluded from recovering (in whole or in part) any loss incurred by the Beneficiary resulting from any breach of this Deed and/or the Contract (nor shall the Beneficiary's right to recovery be reduced or affected) by virtue of the fact that the Employer has suffered no loss or a different loss from the Beneficiary as a consequence of any such breach. The *Contractor* further acknowledges and agrees that, notwithstanding any other provision of this Deed and/or the Limitation Act 1980, the Beneficiary shall be entitled to bring claims against the *Contractor* for breach of this deed at any point on or prior to the date falling 12 years after Completion of the whole of the *works* (or, in the event that the employment of the *Contractor* under the Contract is terminated prior to such Completion, 12 years after such termination).

12. 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. Service shall take effect, if given by hand, on the date of delivery. In the case of any notice sent by registered post it shall be deemed to have been received 48 hours after being posted, excluding Saturdays, Sundays and statutory holidays.

13. 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.

14. 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 for and on behalf of  
THE BENEFICIARY] BY**

●  
being duly authorised 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 5A

### (Form of Warranty from Subcontractor to *Employer*)

THIS DEED is made on ● 201●

#### BETWEEN:

- (1) London Underground Limited whose registered office is Windsor House, 42 – 50 Victoria Street, London SW1H 0TL (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 ● hereto<sup>7</sup>.

#### 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, sub-consultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
  - (b) "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);

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<sup>7</sup> A description of the works should be provided in the Annex.

- (c) "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.
- (d) "PFI Contractor(s)" means any and all of those contractors who have or will enter into contracts with the *Employer* under the private finance initiative;
- (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.

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- (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.
  - (h) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
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 [REDACTED] in respect of each and every claim and in the aggregate per annum 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 Underground Network;

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8 [REDACTED]

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- (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 Subcontractor 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

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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

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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* (or in the event that the employment of the Subcontractor under the Subcontract is terminated prior to such Completion, 12 years after such termination).
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* and/or the PFI Contractor(s). 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.

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

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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 for these purposes not taking into account any set-off or counterclaim against the *Contractor* under the Subcontract.
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. Service shall take effect, if given by hand, on the date of delivery. In the case of any notice sent by registered post it shall be deemed to have been received 48 hours after being posted, excluding Saturdays, Sundays and statutory holidays.

- 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.

**THE COMMON/CORPORATE SEAL of  
LONDON UNDERGROUND LIMITED**  
was affixed to **THIS DEED**  
in the presence of:

Signature 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 .....

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**ANNEX**

***(subcontract works)***

## SCHEDULE 5B

### (Form of Warranty from Subcontractor to Beneficiary)

THIS DEED is made on ● 201●

#### 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* ● hereto<sup>9</sup>.

(C) [The Beneficiary has entered into a contract with the *Employer* under the private finance initiative for ●.]/[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 ●]<sup>10</sup>

#### 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:

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<sup>9</sup> A description of the works should be provided in the Annex.

<sup>10</sup> Select appropriate description.

- (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) ["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;]<sup>11</sup>
  - (c) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
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]]<sup>12</sup> [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;

<sup>11</sup> Delete shaded text where the Beneficiary is not a member of the TfL Group.

<sup>12</sup> Use shaded text on all forms of warranty where Beneficiary is not a PFI Contractor.

- (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 [£●]<sup>13</sup> million in respect of each and every claim and in the aggregate per annum 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.
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;

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- (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 Subcontractor 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 person providing finance to the Beneficiary for the purpose specified in Recital (C), or]<sup>14</sup> [to any member of the TfL Group without limitation and otherwise]<sup>15</sup> 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.

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<sup>14</sup> Only use shaded text if Beneficiary is a PFI Contractor.

<sup>15</sup> Delete shaded text where the Beneficiary is not a member of the TfL Group.

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* (or, in the event that the employment of the Subcontractor under the Subcontract is terminated prior to such Completion, 12 years after such termination).
- 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 for these purposes not taking into account any set-off or counterclaim against the *Contractor* under the Subcontract.
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. Service shall take effect, if given by hand, on the date of delivery. In the case of any notice sent by registered post it shall be deemed to have been received 48 hours after being posted, excluding Saturdays, Sundays and statutory holidays.
- 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.

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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.

**THE COMMON/CORPORATE SEAL of  
[THE BENEFICIARY]**  
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 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 ● 201●

#### BETWEEN:

- (1) London Underground Limited whose registered office is at Windsor House, 42 – 50 Victoria Street, London SW1H 0TL ("the **Employer**" which expression shall include its successors and assigns);
- (2) ● whose registered office is situate at ● (the "**Sub-consultant**"); 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 Sub-consultant 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 Sub-consultant's employees, directors, consultants, agents, subcontractors, Sub-consultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
  - (b) "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 Sub-consultant in connection with the *design works* (whether in existence or to be made);

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- (c) "Minimum Records" means all records relating to the Sub-consultant'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.
- (d) "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 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 Sub-consultant 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*.
- (e) "Safety Breach" means a material breach of the Appointment caused by the gross incompetence, wilful default or reckless disregard to safety of the Sub-consultant (or anyone employed or acting on behalf of the Sub-consultant) 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.

- (f) "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.
  - (g) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
2. The Sub-consultant 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 Sub-consultant 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. Provided that nothing in this clause 4 shall impose a greater duty on the Sub-consultant than that owned under Clause 2(a) of this Deed, the Sub-consultant 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 Sub-consultant;
  - (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 Sub-consultant 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 [£●]<sup>1</sup> million in respect of each and every claim [without aggregation or if aggregated including unlimited reinstatements of the aggregate limit] / [and in the aggregate per annum<sup>2</sup>] which may be made against the Sub-consultant in relation to the *design works*. The Sub-consultant 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 Sub-consultant's insurance claims record.
6. As and when reasonably requested by the *Employer*, the Sub-consultant shall produce for inspection documentary evidence in the form of current insurance certificates 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 Sub-consultant 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 Sub-consultant 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;

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<sup>1</sup> Insert correct level of cover which depends on whether the warrantor is the lead designer or another Subcontractor (see clause 84.5 of the *conditions of contract*)

<sup>2</sup> Insert correct level of cover which depends on whether the warrantor is the lead designer or another Subcontractor (see clause 84.5 of the *conditions of contract*)

- (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 Sub-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 freely transferable to third parties without the prior consent of the Sub-consultant.

8. The Sub-consultant 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 Sub-consultant'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 Sub-consultant 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 Sub-consultant 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 Sub-consultant under the Appointment or relieve the Sub-consultant from any liability which he has in relation to the *design works*.

10. The Sub-consultant 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 Sub-consultant is responsible under the Appointment. The Sub-consultant 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 Sub-consultant including, without limitation the

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Minimum Records. The Sub-consultant 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 Sub-consultant acknowledges and agrees that the *Employer* may audit and check any and all records as are necessary in order to monitor compliance with the Sub-consultant'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 Sub-consultant 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 Sub-consultant 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 Sub-consultant 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 Sub-consultant'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 Sub-consultant requiring the Sub-consultant 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 Sub-consultant. 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 Sub-consultant had arisen and the Sub-consultant 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 Sub-consultant to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the Sub-consultant as guarantor for the payment of all sums from time to time due to the Sub-consultant 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 shall not be in breach of the Appointment by complying with the obligations imposed on the Sub-consultant by Clauses 12 or 13.Sub-consultant
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 Sub-consultant being required and the Sub-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 Sub-consultant.
17. The Sub-consultant 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 Sub-consultant under this Deed shall cease 12 years following Completion of the whole of the *works* (or, in the event that the employment of the Sub-consultant under the Appointment is terminated prior to such Completion, 12 years after such termination).
- 19.1 Without limitation to Clause 2 above, the Sub-consultant 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 project to which the *design works* relate;
  - (b) 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

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purpose of providing the *design works*, it shall not disclose any information or documents concerning the Appointment 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.

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 Sub-consultant 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 Sub-consultant 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 Sub-consultant shall notify the *Employer* promptly if the Sub-consultant 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 Sub-consultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 19 by the Sub-consultant 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 Sub-consultant shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control

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of the Sub-consultant (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. The Sub-consultant may keep one secure copy of such information for the purpose of ensuring compliance with the terms of this clause 19.

- 20.1 The Sub-consultant shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Appointment.
- 20.2 The Sub-consultant 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 for these purposes not taking into account any set-off or counterclaim against the *Contractor* under the Appointment.
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 Sub-consultant 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 Sub-consultant 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. Service shall take effect, if given by hand, on the date of delivery. In the case of any notice sent by registered post it shall be deemed to have been received 48 hours after being posted, excluding Saturdays, Sundays and statutory holidays.
- 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.

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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.

**THE COMMON/CORPORATE SEAL of  
LONDON UNDERGROUND LIMITED**

was affixed to **THIS DEED**  
in the presence of:

Signature of Authorised Signatory .....

Print name of Authorised Signatory .....

**THE COMMON SEAL of  
[THE SUB-CONSULTANT]**  
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 .....

**EXECUTED VERSION**

Schedule 6B  
(Form of Warranty from Subcontractor to Beneficiary (where Subcontractor is providing consulting services))

THIS DEED is made on ● 201●

**BETWEEN:**

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

**WHEREAS:**

- (A) The *Contractor* has entered into a contract dated ● (the "**Contract**") with London Underground Limited (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 Sub-consultant 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 has entered into a contract with the *Employer* under the private finance initiative for ●.]/[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 ●]<sup>3</sup>

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<sup>3</sup> Select appropriate description.

**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 Sub-consultant in connection with the *design works* (whether in existence or to be made);
  - (b) ["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;]<sup>4</sup>
  - (c) "Underground Network" means the stations and depots (wherever situate), assets, systems, track and other buildings, which are used in the maintenance and provision of the underground service known as the "London Underground".
2. The Sub-consultant 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 Sub-consultant 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 Sub-consultant than that owed under Clause 2(a) of this Deed the Sub-consultant 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;

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<sup>4</sup> Delete shaded text where the Beneficiary is not a member of the TfL Group.

- (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 Sub-consultant;
  - (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 Sub-consultant 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 [£●]<sup>5</sup> million in respect of each and every claim [without aggregation or if aggregated including unlimited reinstatements of the aggregate limit] / [and in the aggregate per annum<sup>6</sup>] which may be made against the Sub-consultant in relation to the *design works*. The Sub-consultant 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 Sub-consultant's insurance claims record.
6. As and when reasonably requested by the Beneficiary, the Sub-consultant shall produce for inspection documentary evidence in the form of current insurance certificates 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 Sub-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

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<sup>5</sup>Insert correct level of cover which depends on whether the warrantor is the lead designer or another Subcontractor (see clause 84.5 of the *conditions of contract*)

<sup>6</sup> Insert correct level of cover which depends on whether the warrantor is the lead designer or another Subcontractor (see clause 84.5 of the *conditions of contract*)

inventions of the Sub-consultant 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 Sub-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 freely transferable to third parties without the prior consent of the Sub-consultant.

8. The Sub-consultant agrees:

- (a) on request at any time during normal business hours and upon reasonable written notice 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 Sub-consultant'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 Sub-consultant 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 Sub-consultant 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

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or discharge the obligations of the Sub-consultant under the Appointment or relieve the Sub-consultant from any liability which he has in relation to the *design works*.

10. This Deed may be assigned by the Beneficiary [to any person providing finance to the Beneficiary for the purpose specified in Recital (C), or]<sup>7</sup> [to any member of the TfL Group without limitation and otherwise]<sup>8</sup> to any other person on two occasions without the consent of the Sub-consultant being required and the Sub-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 Sub-consultant.
11. The Sub-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 Sub-consultant under this Deed shall cease 12 years following Completion of the whole of the *works* (or, in the event that the employment of the Sub-consultant under the Appointment is terminated prior to such Completion, 12 years after such termination).
13. The Sub-consultant shall owe no greater obligations to the Beneficiary than he owes to the Contractor under the Appointment.
- 13.1 The Sub-consultant 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 for these purposes not taking into account set-off or counterclaim against the *Contractor* under the Appointment.
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 Sub-consultant 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. Service shall take effect, if given by hand, on the date of delivery. In the case of any notice sent by

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<sup>7</sup> Only use shaded text if Beneficiary is a PFI Contractor.

<sup>8</sup> Delete shaded text where the Beneficiary is not a member of the TfL Group.

registered post it shall be deemed to have been received 48 hours after being posted, excluding Saturdays, Sundays and statutory holidays.

- 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.