

SCHEDULE 12

FORMS OF COLLATERAL WARRANTY FROM SUB-CONTRACTOR

PART A – WARRANTY IN FAVOUR OF THE CLIENT

Sub-Contractor Warranty

between

[SUB-CONTRACTOR]

and

[CLIENT]

and

[CONTRACTOR]

relating to [PROJECT]

BETWEEN:

- (1) [SUB-CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Sub-Contractor”);
- (2) [CLIENT][(registered number [no.]) whose registered office is] [of] [Address] (“the Client” which expression includes its permitted successors in title and assigns); and
- (3) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Contractor”)¹;

BACKGROUND:

- (A) By a Maintenance and Management Contract for TfL Road Tunnels and Pumping Stations dated [date] (“the Contract”) the Client has appointed the Contractor for the provision of the works and/or services as defined in the Contract (“the Service”).
- (B) Pursuant to the Contract the Client may instruct the Contractor to undertake Tasks (as defined in the Contract).
- (C) The Sub-Contractor has been appointed by the Contractor under a sub-contract dated [date] (“the Sub-Contract”) to provide part of the Service as specified in the Sub-Contract (“the Sub-Contract Service”).
- (D) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Client.

OPERATIVE PROVISIONS

1. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Client to the Sub-Contractor receipt of which the Sub-Contractor acknowledges.

2. SUB-CONTRACTOR’S WARRANTIES

2.1 The Sub-Contractor warrants to the Client that it has carried out and will continue to carry out and complete its obligations under the Sub-Contract in accordance with the Sub-Contract.

2.2 The Sub-Contractor further warrants that it has exercised and will continue to exercise all reasonable skill, care and diligence (save where the Sub-Contract imposes a higher standard in which case such higher standard will apply) in relation to the following (so far as the Sub-Contractor is responsible for them):

2.2.1 design of the Sub-Contract Service;

¹ Only required where step-in rights are given in this warranty, otherwise the Contractor is not required to be a party.

2.2.2 the selection of goods, materials, equipment or plant for the Sub-Contract Service; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Sub-Contract Service.

3. **INTELLECTUAL PROPERTY RIGHTS**

3.1 The parties acknowledge that all IPR (as defined in the Contract) in all documents, drawings, models, materials, computer software, any other material or works prepared or developed by or on behalf of the Sub-Contractor in the course of performing its obligations under the Sub-Contract (“the Documents”) will remain vested in the Client and all relevant Background IPR (as defined in the Contract) will remain vested in the Sub-Contractor.

3.2 In respect of the Background IPR, the Sub-Contractor grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Client, with effect from the date of this Deed or in the case of any of the intellectual property not yet in existence with effect from the creation of such intellectual property, an irrevocable, royalty-free, non-exclusive licence to use the relevant intellectual property and to reproduce all Documents for any purpose whatsoever connected with the Service or any relevant Task including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Service. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

4. **INSURANCE**

4.1 The Sub-Contractor by this Deed covenants with the Client that it has effected professional indemnity insurance with reputable insurers authorised to carry on business in the United Kingdom with a limit of indemnity of not less than £[figures] ([words] million pounds) for any one occurrence or series of occurrences arising out of one event in relation to the Sub-Contract Service provided always that:

4.1.1 such insurance shall be in place from the date of commencement of the Sub-Contract Service until no less than 12 years after the expiry of the Service Period or (if later) the date of Task Completion of the last Task to be completed (in each case defined in the Contract); and

4.1.2 if such insurance is not available to the Sub-Contractor (and/or sub-contractors engaged in services of a similar size, nature and complexity as those required by the Sub-Contract) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Sub-Contractor), the Sub-Contractor and the Client will meet and the Sub-Contractor will outline the steps he intends to take to manage such risks. If the steps proposed by the Sub-Contractor are not reasonably acceptable to the Client, the parties shall agree an alternative method of managing such risk.

4.2 The Sub-Contractor will provide the Client with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

5. NOTICES

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. ASSIGNMENT

Without prejudice to the provisions of clause 9, the benefit of and the rights on the part of the Client under this Deed may be assigned without the consent of the Sub-Contractor on two occasions only. The Client will give the Sub-Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Client under this Deed or by reason that the original Client or any intermediate Client escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that the original Client or any intermediate Client has not suffered any or as much loss.

7. OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Client by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including, without limitation, any remedies in negligence.

8. NO APPROVAL

The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Client may make or procure to be made for the Client's benefit or on its behalf.

9. STEP-IN RIGHTS

9.1 Subject to clause 9.7, the Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Sub-Contract, without first giving to the Client not less than twenty-eight days' prior written notice specifying the Sub-

Contractor's grounds for terminating or treating as terminated or repudiated the Sub-Contract or its employment under it or discontinuing or suspending its performance of the Sub-Contract and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:

9.1.1 the Client may give written notice to the Sub-Contractor expressly confirming its intention to comply with clause 9.1.3 and that the Client shall become the client under the Sub-Contract to the exclusion of the Contractor and, upon giving such notice, that will be the case and the Sub-Contract will be and remain in full force and effect notwithstanding any of the grounds in the Sub-Contractor's notice under clause 9.1; and

9.1.2 if the Client has given notice under clause 9.1.1 or under clause 9.3, the Client will then as soon as practicable remedy any outstanding breach by the Contractor; and

9.1.3 if:

9.1.3.1 the Client has given such notice under clause 9.1.1 then from the date of the Sub-Contractor's notice; or

9.1.3.2 the Client has given notice under clause 9.3 then from the date of the Client's notice,

the Client will, by clause 9.1.1, become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract and for the observance and performance of all of the other duties and obligations on the part of the Contractor to be observed and performed under the Sub-Contract accruing due after the service of such Sub-Contractor's notice or Client's notice (as applicable) but the Client will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Sub-Contract.

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Client to the Sub-Contractor the Client will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Client unless and until the Client has given written notice to the Sub-Contractor under either clause 9.1.1 or clause 9.3.

9.3 The Sub-Contractor further covenants with the Client that if requested by the Client by written notice expressly confirming the Client's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Client to the exclusion of the Contractor in respect of the Sub-Contract Service upon the terms and conditions of the Sub-Contract. The Client shall then become the client under the Sub-Contract to the exclusion of the Contractor; and the Sub-Contractor will, if so requested, enter into a novation agreement in order to substitute the Client for the Contractor under the Sub-Contract.

- 9.4 [Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 9 to any other person then if both the Client and any such other person serve notice under clause 9.1 or clause 9.3 or its equivalent the notice served by the Client shall [prevail][not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Client under clause 9.3 as conclusive evidence that the Client is entitled to serve such notice.
- 9.6 The Client may by written notice to the Sub-Contractor appoint another person to exercise its rights under this clause 9 subject to the Client remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 9.7 Notwithstanding the other provisions of this clause 9, if the Sub-Contract has for any reason been terminated prior to receipt by the Sub-Contractor of a notice from the Client served under clause 9.1.1 or clause 9.1.3, the Sub-Contractor shall on receipt of any such notice from the Client enter into a new Sub-Contract with the Client on the same terms as the Sub-Contract to continue the Sub-Contract Service in all respects as if the Sub-Contract had been transferred to the Client in accordance with the provisions of this clause 9.

10. **LIMITATION**

- 10.1 The Sub-Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Client had been a party to the Sub-Contract as joint client provided that the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Client under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.
- 10.2 The Sub-Contractor shall be entitled in any action or proceedings brought by the Client under this Deed to rely on any limitation in the Sub-Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Client if, in lieu of this Deed, the Client had been a party to the Sub-Contract as joint client.
- 10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being 12 years after the date of expiry of the Service Period or (if later) 12 years after the date of Task Completion of the last Task to be completed (in each case as defined in the Contract).

11. **PARTNERSHIP**

[Where the Sub-Contractor is a partnership references in this Deed to “the Sub-Contractor” will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.]

12. **GOVERNING LAW AND JURISDICTION**

12.1 This Deed is governed by and construed in accordance with the law of England. Subject to Clause 12.2, the courts of England have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Deed.

12.2 Any party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.

12.3 Subject to Clause 12.2, each party waives any objection to, and submits to, the jurisdiction of the courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of any other jurisdiction.

13. **THIRD PARTY RIGHTS**

13.1 Save that any member of the TfL Group (as defined in the Call Off Contract) has the right to enforce the terms of this Deed, the parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

13.2 Notwithstanding clause 13.1, the parties to this Deed are entitled to vary or rescind this Deed without the consent of any or all members of the TfL Group.

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

[ALL PARTIES TO EXECUTE AS A DEED]

SCHEDULE 12

FORMS OF COLLATERAL WARRANTY FROM SUB-CONTRACTOR

**PART B – WARRANTY IN FAVOUR OF BENEFICIARIES OTHER
THAN THE CLIENT**

Sub-Contractor Warranty

between

[SUB-CONTRACTOR]

and

[BENEFICIARY]

and

[CONTRACTOR]

relating to [PROJECT]

BETWEEN:

- (1) [SUB-CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Sub-Contractor”);
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] (“the Client” which expression includes its permitted successors in title and assigns);
- (3) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] (“the Contractor”);² and
- (4) [[CLIENT] of [Address] (“the Client”)]³.

BACKGROUND:

- (A) By a Maintenance and Management Contract for TfL Road Tunnels and Pumping Stations dated [date] (“the Contract”) the Client has appointed the Contractor for the provision of the works and/or services as defined in the Contract (“the Service”).
- (B) Pursuant to the Contract the Client may instruct the Contractor to undertake Tasks (as defined in the Contract).
- (D) The Sub-Contractor has been appointed by the Contractor under a sub-contract dated [date] (“the Sub-Contract”) to provide part of the Service as specified in the Sub-Contract (“the Sub-Contract Service”).
- (E) [The Beneficiary is [the/a] [purchaser][tenant] of [description of part of the site] [provider of finance in connection with the [DESCRIBE] [member of the TfL Group (as defined in the Contract)] [developer] or [DESCRIBE AS APPROPRIATE].
- (F) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Sub-Contractor receipt of which the Sub-Contractor acknowledges.

2. SUB-CONTRACTOR’S WARRANTIES

2.1 The Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Sub-Contract in accordance with the Sub-Contract.

² Only required where step-in rights are given.

³ The Client should be a party to this deed for the purposes of clause 3 (Intellectual Property Rights).

2.2 The Sub-Contractor further warrants that it has exercised and will continue to exercise all reasonable skill, care and diligence (save where the Sub-Contract imposes a higher standard in which case such higher standard will apply) in relation to the following (so far as the Sub-Contractor is responsible for them):

2.2.1 design of the Sub-Contract Service;

2.2.2 the selection of goods, materials, equipment or plant for the Sub-Contract Service; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Sub-Contract Service.

3. **INTELLECTUAL PROPERTY RIGHTS**

3.1 The parties acknowledge that all IPR (as defined in the Contract) in all documents, drawings, materials, models, computer software, any other material or works prepared or developed by or on behalf of the Sub-Contractor in the course of performing its obligations under the Sub-Contract (“the Documents”) will remain vested in the Client and all relevant Background IPR (as defined in the Contract) will remain vested in the Sub-Contractor.

3.2 To the extent that it is able to do so, the Client (in respect of the IPR) and the Sub-Contractor (in respect of the Background IPR) grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the intellectual property not yet in existence with effect from the creation of such intellectual property, an irrevocable, royalty-free, non-exclusive licence to use the relevant intellectual property and to reproduce all Documents for any purpose whatsoever connected with the Service or any relevant Task including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Service. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

3.3 The Client will not be liable for any use the Beneficiary may make of the IPR or the Documents.

4. **INSURANCE**

4.1 The Sub-Contractor by this Deed covenants with the Beneficiary that it has effected professional indemnity insurance with reputable insurers authorised to carry on business in the United Kingdom with a limit of indemnity of not less than £[figures] ([words] million pounds) for each and every claim in relation to the Sub-Contract Service provided always that:

4.1.1 such insurance shall be in place from the date of commencement of the Sub-Contract Service until no less than 12 years after the expiry of the Service Period or (if later) the date of Task Completion of the last Task to be completed (in each case defined in the Contract); and

4.1.2 if such insurance is not available to the Sub-Contractor (and/or sub-contractors engaged in services of a similar size, nature and complexity as those required by the Sub-Contract) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Sub-Contractor), the Sub-Contractor and the Beneficiary will meet and the Sub-Contractor will outline the steps he intends to take to manage such risks. If the steps proposed by the Sub-Contractor are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk.

4.2 The Sub-Contractor will provide the Beneficiary with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

5. **NOTICES**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. **ASSIGNMENT**

[Without prejudice to the provisions of clause 9, the][The]⁴ benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Sub-Contractor on two occasions only. The Beneficiary will give the Sub-Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate client escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. **OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including, without limitation, any remedies in negligence.

⁴ Delete the wording in square brackets where step-in rights are not provided.

8. NO APPROVAL

The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

CLAUSE 9 TO BE USED IN FINANCIER WARRANTY

9. STEP-IN RIGHTS

9.1 Subject to clause 9.7, the Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Sub-Contract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Sub-Contractor's grounds for terminating or treating as terminated or repudiated the Sub-Contract or its employment under it or discontinuing or suspending its performance of the Sub-Contract and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:

9.1.1 the Beneficiary may give written notice to the Sub-Contractor expressly confirming its intention to comply with clause 9.1.3 and that the Beneficiary shall become the client under the Sub-Contract to the exclusion of the Contractor and, upon giving such notice, that will be the case and the Sub-Contract will be and remain in full force and effect notwithstanding any of the grounds in the Sub-Contractor's notice under clause 9.1; and

9.1.2 if the Beneficiary has given notice under clause 9.1.1 or under clause 9.3, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Contractor; and

9.1.3 if:

9.1.3.1 the Beneficiary has given such notice under clause 9.1.1 then from the date of the Sub-Contractor's notice; or

9.1.3.2 the Beneficiary has given notice under clause 9.3 then from the date of the Beneficiary's notice,

the Beneficiary will, by clause 9.1.1, become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract and for the observance and performance of all of the other duties and obligations on the part of the Contractor to be observed and performed under the Sub-Contract accruing due after the service of such Sub-Contractor's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Sub-Contract.

- 9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Sub-Contractor the Beneficiary will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Sub-Contractor under either clause 9.1.1 or clause 9.3.
- 9.3 The Sub-Contractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Beneficiary to the exclusion of the Contractor in respect of the Sub-Contract Service upon the terms and conditions of the Sub-Contract. The Beneficiary shall then become the client under the Sub-Contract to the exclusion of the Contractor; and the Sub-Contractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Sub-Contract.
- 9.4 [Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 9 to any other person then if both the Beneficiary and any such other person serve notice under clause 9.1 or clause 9.3 or its equivalent the notice served by the Beneficiary shall [prevail][not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under clause 9.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 9.6 The Beneficiary may by written notice to the Sub-Contractor appoint another person to exercise its rights under this clause 9 subject to the Beneficiary remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 9.7 Notwithstanding the other provisions of this clause 9, if the Sub-Contract has for any reason been terminated prior to receipt by the Sub-Contractor of a notice from the Beneficiary served under clause 9.1.1 or clause 9.1.3, the Sub-Contractor shall on receipt of any such notice from the Beneficiary enter into a new Sub-Contract with the Beneficiary on the same terms as the Sub-Contract to continue the Sub-Contract Service in all respects as if the Sub-Contract had been transferred to the Beneficiary in accordance with the provisions of this clause 9.

10. **LIMITATION**

- 10.1 The Sub-Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Beneficiary had been a party to the Sub-Contract as joint client provided that the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.

- 10.2 The Sub-Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Sub-Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Sub-Contract as joint client.
- 10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being 12 years after the date of expiry of the Service Period or (if later) 12 years after the date of Task Completion of the last Task to be completed (in each case as defined in the Contract).

11. PARTNERSHIP

[Where the Sub-Contractor is a partnership references in this Deed to “the Sub- Contractor” will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.]

12. GOVERNING LAW AND JURISDICTION

- 12.1 This Deed is governed by and construed in accordance with the law of England. Subject to Clause 12.2, the courts of England have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Deed.
- 12.2 Any party may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.
- 12.3 Subject to Clause 12.2, each party waives any objection to, and submits to, the jurisdiction of the courts of England and Wales. Each party agrees that a judgment or order of any such court is binding upon it and may be enforced against it in the courts of any other jurisdiction.

13. THIRD PARTY RIGHTS

- 13.1 [Save that any member of the TfL Group (as defined in the Contract) has the right to enforce the terms of this Deed, the] [The]⁵ parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 13.2 [Notwithstanding clause 13.1, the parties to this Deed are entitled to vary or rescind this Deed without the consent of any or all members of the TfL Group.]⁶

⁵ Delete the wording in the first set of square brackets where the Beneficiary is not a member of the TfL Group.

⁶ Delete the wording in square brackets where the Beneficiary is not a member of the TfL Group.

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

[ALL PARTIES TO EXECUTE AS A DEED]