

London Underground Limited (LUL)

Deep Tube Upgrade Programme (DTUP)

One Person Operation (OPO) CCTV System Contract

Section 2

Implementation Work Terms

Schedule 1B

Schedules 1-11 to Master Conditions of Contract

FOR EXECUTION

Section 2:

Implementation Works Terms

Schedule 1B:

Schedules 1-11 To The Master Conditions of
Contract

THE SCHEDULES

Schedule

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SCHEDULE 1

(Additional Definitions)

The following defined terms apply to this contract:

Access means access to the LUL Network.

Access Plan has the meaning given to it in the Works Information.

Access Procedure means the procedure, processes and constraints governing the Contractor's rights of Access under this contract (including the provisions of the Works Information).

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

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

Associated Company means any division or subsidiary of the *Contractor* or any division or subsidiary of the *Contractor's* parent company or any other company in the same group as the *Contractor*.

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

BIM Protocol means the BIM protocol for use of the Common Data Environment stated and set out in the Works Information

CAMS means the web-based contract administration management system for the Deep Tube Upgrade Programme project as more particularly described in the Works Information.

CDM Regulations means the Construction (Design and Management) Regulations 2015 including any approved code of practice and any guidance requirements issued by the Health and Safety Executive.

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

Common Data Environment means the digital resource used to collate and manage information as described in the BIM Protocol.

Common Works Information is information which either:

- specifies and describes the *works*; or
- states any constraints on how the *Contractor* Provides the Works;

and is either:

- in the documents which the Common Contract Data states it is in; or

- in an instruction given in accordance with these Implementation Works Terms.

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

Consequential Loss means:

- (a) loss of profit, loss of use, loss of contracts, loss of business, loss of customers, loss of good will; and
- (b) any indirect or consequential loss or damage,

in each case excluding any Losses which are defined as being direct Losses pursuant to Clause 21.10 of the General Terms.

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

Construction Products Regulations means the Construction Products Regulations 2013 (SI 2013/1387), the Construction Product Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

Contractor Hardware means hardware which is proprietary to the Contractor (or an Associated Company) and which is or will be used by the Contractor for the purposes of Providing the Works;

Contract Information means, for the purposes of Z2.16, (i) the contract in its entirety (including from time to time agreed changes to the contract) and (ii) data extracted from the invoices submitted pursuant to clause 5 which shall consist of the Contractor's name, the expenditure account code, the expenditure account code description, the SAP document number, the clearing date and the invoice amount.

Contract means the contract entered into between the Parties comprising (i) the General Terms; (ii) these Implementation Works Terms; (iii) the Operational Services Terms; and (iv) any order instructed under the General Terms.

Contractor Termination Event means any one or more of the events listed in the following clauses:

- Clause 29.1(a) to (l) of the General Terms,
- Clauses 91.2, 91.3, 91.3A, 91.7, 91.8, 91.9 and 91.11 of the Implementation Works Terms for any Order, or
- Clauses 30.3, 30.4, 30.5 or 30.6 of the Operational Services Terms.

Controller has the meaning given to it in the GDPR.

Corporate IPRs are those trademarks, trade names and other IPRs listed in Schedule 6 as amended by the *Employer* to (i) add further IPRs to the list of Corporate IPRs or (ii) remove or otherwise amend IPRs from or in the list of Corporate IPRs as a result of changes in the Standards.

Critical Subcontractor means the party to any subcontract for equipment and materials, plant and/or services that fulfils one or more of the following criteria (unless otherwise agreed by the *Project Manager*):

- Value of the subcontract is over £500,000;
- Is on the critical path for delivery;
- Has a limited or constrained supply market;
- Includes highly complex product(s) with subcontract design;
- Has a long lead time; and/or
- Is otherwise stated to be a Critical Subcontractor by the *Project Manager*.

For the avoidance of doubt any subcontractor with design responsibility for the Transmission System for the OPO CCTV System is a Critical Subcontractor.

Data Controller has the meaning given to it in Data Protection Legislation, noting that under the GDPR this would be using the definition of “Controller”.

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the *Contractor* under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach.

Data Processor has the meaning given to it in Data Protection Legislation, noting that under the GDPR this would be using the definition of “Processor”.

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

Data Protection Legislation means:

- (a) the GDPR;
- (b) Directive (EU) 2016.680 (the Law Enforcement Directive);
- (c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data including the Data Protection Act 2018;
- (d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation; and
- (e) the Privacy and Electronic Communications (EC Directive) Regulations 2003.

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

Dispute Resolution Procedure means the procedure for resolving Disputes under this contract, a copy of which is included in Schedule 7.

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

Employer Data means all data, text, drawings, diagrams, images or sounds (together

with any database made up of any of these) which are embodied in any media (including without limitation electronic, magnetic, optical and tangible media) and which are supplied to the *Contractor* by or on behalf of the *Employer* and any IPR relating to the same which are vested in the *Employer*.

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

Engineering Hours has the meaning given to it in the Works Information.

Escrow Agent means NCC Group Escrow Limited or any successor or replacement to all or any of its functions or any other escrow agent as may be notified by the *Employer* to the *Contractor*.

Escrow Agreement means an agreement substantially in the current form published by the Escrow Agent entered into by the *Contractor*, the *Employer* and the Escrow Agent.

Escrow Materials means the material to be placed in escrow by the *Contractor* that includes:

- (a) all Source Code which is or will be used by the *Contractor* (or any Subcontractor) for the purposes of providing the Transmission System for the OPO CCTV System to operate as required by the Works Information including all standalone software or software bundled with or embedded in Equipment or Materials other than Off the Shelf Software;
- (b) the operating systems, applications, programmes and procedures, and tools (including build files, compiler files, linkers, test scripts and configurations (as updated from time to time)) to recreate or recompile all Source Code in each case in executable form unless expressly agreed otherwise by the *Project Manager*; and
- (c) the designs, configurations (as updated from time to time), bills of material, component descriptions, drawings, manufacturing instructions and test procedures required to recreate or manufacture Contractor Hardware and the OPO CCTV System.

European Standards has the meaning given to it in the General Terms.

Final Completion is deemed to have occurred on the date of issue of the Defects Certificate.

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

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

General Terms means the general terms set out in Section 1 of the Contract.

GDPR means the General Data Protection Regulation (Regulation EU 2016/679) on the protection of natural persons with regard to the Processing of Personal Data and on the

free movement of such data.

GLA Act means the Greater London Authority Act 1999.

Good Industry Practice means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert contractor carrying out works similar to the *works* to a customer like the *Employer*, such contractor seeking to comply with its contractual obligations in full and complying with applicable laws.

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

Implementation Works Terms means the Master Conditions of Contract and the Specific Terms.

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

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

Infrastructure Manager has the meaning as ascribed to it in the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

Interfacing Requirements means the interfacing requirements set out in the Works Information

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

Intellectual Property Rights or **IPR** means intellectual property rights including patents, trademarks, service marks, trade names, design rights, copyright (including rights in computer software, modifications to software, source code and databases), moral rights, rights in know-how, rights in domain names and other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world including (but not limited to) items created and stored in the Common Data Environment.

IPR Register means a register of IPR maintained and/or updated in accordance with clause Z2.7.7

Key Person means the employees appointed by the *Contractor* and identified in the Contract Data to perform the following roles as more fully described in the Works Information:

- *Contractor's* Project Manager
- Engineering Manager
- Health and Safety Manager.

LED means the Law Enforcement Directive (Directive EU 2016/680)

Line means any one or more of the Piccadilly Line and the Bakerloo Line (in each case as defined in the General Terms) as the context requires.

London Living Wage means the basic hourly wage current at the date of this contract

(before tax, other deductions and any increase for overtime) as may be revised from time to time by the Mayor or any other body or agency whose directives, decisions, instructions, rulings, laws, or regulations are directly enforceable against the *Employer*.

Losses means any losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, regulatory proceedings, litigation (actual or potential, including seeking advice as to any action and including any adjudication, arbitration or expert award), settlement, judgment interest and penalties whether arising in contract, tort (including negligence or nuisance), breach of statutory duty or otherwise and including losses arising on termination of the whole or any part of these Implementation Works Terms.

LUL means the *Employer*.

LUL Accounting Period means the *Employer's* accounting periods as issued from time to time by the *Employer* each such period being of between 25 and 32 days and one of 13 periods during the *Employer's* Financial Year

LUL Network means the stations and depots (whenever situated), assets, systems, track and other buildings which are used in the maintenance and provision of the underground service.

LUL Standards means the individual LUL standards as specified in section CWI 29 of the Works Information.

Malicious Software means any Software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application Software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence

Management Plans mean any management plans (including any plans relating to key person succession (if Option X23 applies)), the Subcontractor Procurement Plan, the Risk Management Plan and the Quality Plan identified as such in the Works Information.

Master Conditions of Contract means these conditions of contract.

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

Minimum Records means:

- (a) all necessary information for the evaluation of claims or compensation events, whether or not relating to the *Contractor* or to any Subcontractors (or sub-sub-contractors of any tier);
- (b) management accounts, information from management information systems and any other management records;
- (c) accounting records (in hard copy as well as computer readable data);
- (d) contract and subcontract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.);
- (e) original estimates;
- (f) estimating worksheets;
- (g) correspondence;
- (h) compensation event files (including documentation covering negotiated settlements);
- (i) schedules including capital works costs, timetable and progress towards

Completion;

- (j) general ledger entries detailing cash and trade discounts and rebates;
- (k) commitments (agreements and leases) greater than £5,000 (five thousand pounds);
- (l) detailed inspection records;
- (m) such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*;
- (n) accounts and records of the Price for Work Done to Date and all other amounts to be paid to the *Contractor* under this contract, and
- (o) test and commissioning results.

Modern Slavery Statement means the current TfL statement on modern slavery as published on the TfL website and updated from time to time.

Moral Rights means any personal right, wherever existing in the world, protecting an author's intellectual and personal relations to a work (other than ownership rights or interests) and includes those rights contemplated by Articles 6bis and 14ter of the Berne Copyright Convention (Paris Revision, 1971) and the rights of an author under sections 77, 80, 84 and 85 of the Copyright, Designs and Patents Act 1988.

MSA means the manufacture and supply agreement for rolling stock.

Network Rail means Network Rail Infrastructure Limited (company number 02904587).

Network Rail Standards means any standards applicable to work on or near Network Rail assets not limited to those published by Rail Safety and Standards Board Limited or the Railway Group Standards Code.

Obsolete means in respect of any hardware or Software comprised in the OPO CCTV System that such hardware or Software is no longer being manufactured or provided or is no longer generally available for purchase at a reasonable price and within a reasonable delivery schedule or no longer supported by the original manufacturer.

Off the Shelf Software means commercial off the shelf software which is standard, freely commercially available and not developed or modified by the *Contractor* including software imbedded in off the shelf hardware.

Open Source Software means Software which is distributed under licence terms which require the publication of Source Code.

Operational Services Terms means the operational services terms at Section 3 of the Contract.

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

OPO CCTV System means a system specifically designed and used for the capture of Real Time images of the Platform Train Interface for display in Real Time in the train cab, in order that the train operator can mitigate As Low As Reasonably Practicable (ALARP), the risks for safe departure of the train from the platform in all driving modes, in any direction.

OPO CCTV Support Software means all Software used in connection with the operation and proper functioning of the OPO CCTV System but that is not included

within the OPO CCTV System including Software required for data access and analysis, configuration management and update, Software updates and the such like.

Passenger Train means the new passenger rolling stock that will be supplied by the Rolling Stock Manufacturer

Pain Share Cap means a sum equal to 17.5% of the total of the Prices

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

PDP means Project Delivery Partner and Participating PDP and Lead PCP having the meanings described in the Systems Engineering, Integration and Interface Schedule.

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

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

Possession means the possession of an area of the Underground Network or any part thereof required for the provision of the Works.

Principal Contractor means the principal contractor as defined in the CDM Regulations.

Principal Designer means the principal designer as defined in the CDM Regulations.

Processor has the meaning given to it in the GDPR.

Prohibited Act means:

- (a) offering or agreeing to give to any servant, employee, officer or agent of the *Employer* or the TfL Group any grant, gift or consideration of any kind as an inducement or reward:
 - for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this contract or any other contract with the *Employer*; or
 - for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*;
- (b) entering into this contract or any other contract with the *Employer* in connection with which commission has been paid or has been agreed to be paid by the *Contractor* or on his behalf or to his knowledge unless, before the relevant contract or document is entered into, particulars of any such commission and the terms and conditions of any such contract or document for the payment thereof have been disclosed in writing to the *Employer*;
- (c) committing any offence:
 - under the Prevention of Corruption Acts 1889-1916 and/or the Bribery Act 2010;
 - under the Part 3 of the Criminal Finances Act 2017
 - under any law or legislation creating offences in respect of fraudulent acts; or
 - at common law in respect of fraudulent acts

in relation to this contract or any other contract with the *Employer*;

- (d) entering into any form of collusion with other suppliers of works similar to the works or with other actual or potential bidders for this contract; or
- (e) defrauding or attempting to defraud the *Employer*.

Project means the requirement to carry out and complete the *works* as part of the Deep Tube Upgrade Programme.

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.

Recurrent Failure means any Defect in any element comprising part of the OPO CCTV System regardless of whether or not such Defect prevents Revenue Service which occurs:

- (a) in the same element comprised in the OPO CCTV System on more than 3 occasions in the same LUL Accounting Period; or
 - (b) in at least 5% of the same elements comprised in the OPO CCTV System during any period of 13 consecutive LUL Accounting Periods,
- before the recurrent failures date.

Recurrent Failure Certificate is a certificate issued by the *Project Manager* which lists any Recurrent Failures, Related Recurrent Failures or Recurrent Failure Solutions which the *Contractor* has not corrected or any Recurrent Failure Solutions which the *Contractor* has not carried out which:

- the *Contractor* finds by the *recurrent failures date*; or
- the *Project Manager* finds before the *recurrent failures date* and notifies the *Contractor* of in accordance with this Contract.

Recurrent Failure Solution means the solution accepted by the *Project Manager* pursuant to Clause 43.5.

Related Recurrent Failure means a Defect which occurs or is likely to occur in the OPO CCTV System or the works which is the same as or similar to a Recurrent Failure and occurring under any other Order under the General Terms before the recurrent failure date.

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

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

Responsible Procurement Principles mean the seven principles of responsible procurement more particularly described in the GLA Group Responsible Procurement Policy dated June 2017 and as may be further updated from time to time.

Restricted Countries has the meaning given to it in the GDPR.

Rolling Stock Manufacturer means the person appointed by the *Employer* to supply Passenger Trains.

Safety Breach means a material breach of the contract caused by the gross incompetence, wilful default or reckless disregard to safety of the *Contractor* or any Subcontractor (or anyone employed or acting on behalf of the *Contractor* or any Subcontractor) which has materially affected (or which had the potential to materially affect) the safe provision of the *works*, the safe operation of the Underground Network and/or the safety of the *Employer's* Customers, staff or any other person.

Scheduled Closures means the periods of full or partial line closure described in the closures schedule as amended from time to time by the *Project Manager* and notified to the *Contractor*.

Source Code means either or both computer programs or data in human-readable form and in such form that it can be compiled or interpreted into equivalent binary code to produce executable files together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such computer programs or data.

Specific Clauses means the relevant specific clauses applicable to the Order.

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

- First: TfL Standards, LUL Standards or Network Rail Standards;
- Second: European Standards;
- Third: International Standards and associated codes of practice.

Statutory Requirement means any act of parliament, any instrument, rule or order made under any act of parliament and any regulation or by-law of any local authority or of any Statutory Undertaker which has jurisdiction with regard to the *works* or with whose systems the same are or will be connected including any statutory provisions and any decisions of a relevant authority under the statutory provisions which control the right to develop the site in connection with which the *works* are to be provided;

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

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

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

Subject Access Request means a request made by a Data Subject (which has the meaning given to it in the GDPR) to access his or her own Personal Data in accordance with rights granted in Data Protection Legislation.

Supplementary Notes means the notes entitled "Supplementary Notes to the Schedule

of Cost Components" included in this contract.

Systems Engineering, Integration and Interface Schedule means the schedule appended to the contract at Schedule 9 setting out the interface requirements between the *Contractor* and the Rolling Stock Manufacturer.

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

TfL Standards means the individual TfL standards as specified in section CWI 29 of the Works Information.

Transparency Commitment has the meaning given to it in the General Terms.

Third Party Agreements means any agreement entered into by the *Employer* or a member of the TfL Group where the *Contractor* has been provided with a copy or relevant extracts of the same.

Third Party Software means Software which is or will be used by the *Contractor* for the purposes of providing the *works*, including the Software specified as such in the Common Contract Data Part Two and is:

- (a) Software which is proprietary to any third party (other than an Associated Company); or
- (b) Open Source Software.

Traffic Hours has the meaning given to it in the Works Information.

Transmission System means image capture, image processing, image recording and transmission system (including the interface with the train management system).

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**".

Works Information is information which either:

- specifies and describes the *works*; or
- states any constraints on how the *Contractor* Provides the Works,

and is either:

- in the documents which the Contract Data states it is in; or
- in an instruction given in accordance with this contract.

Works Plan means the plan which the *Contractor* is required to provide to the *Employer* pursuant to Clause Z.30.2

SCHEDULE 2

(Form of Vesting Certificate)

[ON HEADED NOTEPAPER OF CONTRACTOR OR SUB-CONTRACTOR]

[ADDRESSEE]
[ADDRESS LINE 1]
[ADDRESS LINE 2]
[POSTCODE]

[DATE]

Dear Sirs,

Vesting Certificate in relation to [Interim [Certificate OR Payment] No.]

In consideration of the payment of £1, receipt of which we acknowledge, we write in relation to the ownership of certain off-site plant, materials, goods and items.

1. This letter relates to the following:
 - 1.1 **The Implementation Works Terms for [] (Contract).**
 - 1.2 **The Contract is to be performed for [INSERT LINE] (Line).**
 - 1.3 **The Contract relates to [DESCRIPTION OF WORKS], as more particularly described in the Contract (Works).**
 - 1.4 **The items listed in the appendix to this letter, as also described in the Contract (Listed Items).**

Prior to their delivery to (or adjacent to) the site of the Works (**Site**), we have applied for payment in relation to the Listed Items in an interim [certificate **OR** payment **OR** application]. We warrant that the Listed Items:

2. Have been manufactured or prepared and are ready for incorporation in the Works and are intended to be incorporated in the Works.
3. Are our absolute and unencumbered property. However, on payment of the interim [certificate **OR** payment] referred to in this letter, under and in accordance with the Contract, they will immediately become your absolute and unencumbered property. At that time, we, our sub-contractors, suppliers, servants and agents and any other third party shall have no property in any part or all of them, no claim to part or all of them and no lien or charge over part or all of them.
4. Are in accordance with the Contract. [In the event that they are not in accordance with the Contract, we acknowledge that you may reject them and instruct us that they shall immediately re-vest in us and be entirely at our risk.]

5. [Are referred to in a bond, which we have executed and delivered to you in accordance with the Contract.]
6. Are, at our cost, insured against loss or damage for their full value under a policy of insurance protecting our interests and your interests, in our and your joint names, in respect of those risks for which the Works are required to be insured pursuant to the Contract for a period no shorter than the period from the date of payment of the interim [certificate **OR** payment] to the date of delivery of the Listed Items to (or adjacent to) the Site. Upon [reasonable] request, we shall provide you, your servants or agents with a copy of the relevant insurance policy and/or allow you, your servants or agents to inspect the original insurance policy that effects such insurance.
7. At the premises where they have been manufactured or assembled or are stored, clearly identify that they are:
 - 7.1 held to your order (or to the order of another person, whom you have notified to us);
 - 7.2 to be delivered to (or adjacent to) the Site; and
we confirm that they:
 - 7.3 are set apart;
 - 7.4 have been clearly and visibly marked, individually or in sets, in a manner agreed between us, in a way that such marks will remain legible until they are delivered to (or adjacent to) the Site; and
 - 7.5 will be stored to your reasonable satisfaction.
8. Will be delivered to (or adjacent to) the Site to suit the agreed programme for the Works. In the event of the termination of the Contract or our employment under the Contract for any reason (including, without limitation, our insolvency or breach of contract), we shall, at our cost, deliver them to (or adjacent to) the Site or to an alternative location for the purposes of storage, as instructed by you. If we fail to promptly perform that delivery, you may enter any premises and, at our cost, collect them and take them to (or adjacent to) the Site or to any [reasonable] location for the purposes of storage.
9. May be inspected at any time, on reasonable notice, by you, your servants or agents.

For the purposes of this letter, you and we have agreed that:

10. A person who is not a party to this letter shall not have any rights under or in connection with it, but you may assign the benefit of this letter to any person to whom you [validly] assign the benefit of the Contract, provided that such assignment takes place at the same time (and to the same person) as the assignment of the benefit of the Contract or at the same time (and to the same person) as a novation of the Contract. Any reference to you in this letter includes your permitted assignees.

11. Any notice sent under this letter shall be sent in accordance with the Contract.
12. In the event of any dispute or difference under this letter, that dispute or difference shall be settled in the same way as a dispute or difference under the Contract and shall be subject to the same governing law and jurisdiction as the Contract.
13. This letter is without prejudice to the terms of the Contract, which shall continue to be binding and of full effect and shall not be amended, waived or affected by this letter.

Please acknowledge receipt and acceptance of this letter by signing, dating and returning the enclosed copy.

Yours faithfully,

.....
[NAME OF SENDER]

We hereby acknowledge receipt and accept the contents of this letter

Signed.....
[NAME OF RECIPIENT]

Date.....

Annex Listed Items

Item	Description	Mark	Value
[]	[]	[]	[]
[]	[]	[]	[]
[]	[]	[]	[]

These Listed Items are held/stored at: [LOCATION].

SCHEDULE 3

(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**") [● (whose registered office is at ●)¹] ("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 an interest in the whole or part of the *works* as a contractor and [intends to enter into] [has entered into] an agreement with the *Employer* in respect of subsequent stages of a project involving the design and installation of depot control and signalling systems on the Underground Network of which the *works* form part.]/[the Beneficiary is a member of the TfL Group and has an interest in the works as ●.]

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 professional designer experienced in carrying out design 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 and all of its obligations under 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

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

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* in connection with the design of the *works* than that owed under Clause 2(a) of this Deed, [the]² [The] *Contractor* further warrants and undertakes to the Beneficiary that:
- (a) the *works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Contract;
 - (b) the *works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Contract and will be of sound manufacture and workmanship;
 - (c) the *works* are integrated with the designs of Others as specified in the Contract;
 - (d) the *works* will on Completion comply with all applicable law and all relevant Standards; and
 - (e) the *works* will be carried out and completed timeously in accordance with the Accepted Programme.
5. The *Contractor* warrants and undertakes to the Beneficiary that it has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Contract and that it has professional indemnity insurance with a limit of indemnity of not less than £[TBC]³ in respect of each and every claim which may be made against the *Contractor* in relation to the *works*. The *Contractor* shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the *Contractor's* insurance claims record.
6. As and when reasonably requested by the Beneficiary, the *Contractor* shall produce for inspection documentary evidence that the insurance referred to in Clause 5 is being properly maintained and that payment has been made of the last premium due in respect of such insurance.
7. [To the extent that the intellectual property rights in any and all documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the *Contractor* in connection with the

² Use shaded text on all forms of warranty where Beneficiary is not a member of the TfL Group. The shaded text should also be used when X15 is selected.

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

works (whether in existence or to be made) ("Documents") have not already vested in the *Employer*, the *Contractor* grants to the Beneficiary an irrevocable, non-exclusive, world-wide non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the *Contractor* incorporated or referred to in them for the following purposes:

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

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall 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 reasonable expense to provide copies of any such material; and
- (b) at the *Contractor's* expense to provide the Beneficiary with a set of all such material on Completion of the *works*.

9. If called upon to do so by the Beneficiary, the *Contractor* shall provide the Beneficiary with such information relating to the *works* as the Beneficiary may reasonably require including without limitation, copies of and extracts from Documents prepared or provided by the *Contractor* for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be

deemed to limit or discharge the obligations of the *Contractor* under the Contract or relieve the *Contractor* from any liability which it has in relation to the *works*.]

10. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the *Contractor* being required and the *Contractor* shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the *Contractor*. For the purposes of this clause, "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries. The *Employer* is a member of the TfL Group.
11. The *Contractor* shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the *Contractor* under this Deed shall cease 12 years following Completion of the whole of the *works* save where legal proceedings have been commenced against the *Contractor* within this time and save in cases of fraud or deliberate concealment of breaches by the *Contractor*.
13. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the *Contractor* including without limitation any remedies in negligence.
14. Not Used
- 15.1 Notwithstanding any other provision of this Deed, the *Contractor* shall owe no greater obligations to the Beneficiary than he owes to the *Employer* under the Contract as if the Beneficiary was named in the Contract as a joint employer with the *Employer*.
- 15.2 The *Contractor* shall be entitled in any actions or proceedings by the Beneficiary to rely on any limitation in the Contract and to raise the equivalent rights in defence of liability as he would have against the *Employer* thereunder (for this purpose not taking into account any right of set-off or counterclaim against the *Employer* under the Contract) and provided that it shall not be a defence that the *Employer* has suffered no loss or has suffered a different loss to that of the Beneficiary.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principle place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.

- 17.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 7 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 17.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
- 17.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
18. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of

[]⁴

In the presence of:

Authorised Signatory

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

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

acting by:

⁴ Insert name of member of TfL Group

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

SCHEDULE 4A

(Form of Warranty from Subcontractor to Employer)

THIS DEED is made on ● 201 ●

BETWEEN:

- (1) ● whose registered office is ●⁵ (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* ● hereto⁶.

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Connected Persons" means of any of the Subcontractor's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (b) "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);
 - (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

⁵ Insert details of the relevant member of the TfL Group.

⁶ A description of the works should be provided in the Annex.

referred to therein or relating thereto and any similar records which the *Employer* may reasonably request.

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

- (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) in any design of the *subcontract works* 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 design 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 and all of his obligations under the Subcontract.
3. The Subcontractor warrants and undertakes to the *Employer* that it has not selected or specified for use, and that it will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. The Subcontractor further warrants and undertakes to the *Employer* that:
- (a) the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;
 - (b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
 - (c) the *subcontract works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Subcontract;
 - (d) he has exercised and will continue to exercise all reasonable skill, care and diligence in the design of the *subcontract works* insofar as they have been or will be designed by or on behalf of the Subcontractor;
 - (e) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards;
 - (f) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (g) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.

5. The Subcontractor warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the *subcontract works*, he has professional indemnity insurance with a limit of indemnity of not less than £[TBC]⁷ in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the *Employer*, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. [To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subcontractor grants to the *Employer* an irrevocable non-exclusive, world-wide, 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;
 - (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*

⁷ The PI figure should be the same as the figure inserted in the Contract Data.

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall be transferable to third parties without the prior consent of the Subcontractor.]

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

winding-up of the *Contractor* (voluntary or otherwise), the Subcontractor shall without allowing any break or intermission to occur in the performance of his duties:

- (a) continue to observe and carry out his obligations under the Subcontract and this Deed;
 - (b) if so required by notice in writing from the *Employer* treat the *Employer* as *Employer* under the Subcontract to the exclusion of the *Contractor* whereupon all rights and obligations of the *Contractor* under the Subcontract shall thereafter be exercisable and performed by the *Employer*; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Subcontract reasonably required by the *Employer*.
- 13.1 The Subcontractor warrants and undertakes to the *Employer* that he will promptly inform the *Employer* of any default by the *Contractor* under the Subcontract and that he will not, without first giving the *Employer* at least 21 days' notice in writing, exercise any right he may have to terminate the Subcontract or to treat the same as having been repudiated by the *Contractor* or to suspend performance of his obligations under the Subcontract.
- 13.2 The Subcontractor's right to terminate the Subcontract or to treat the same as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the *Employer* shall have given notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the *Employer* or its appointee to the exclusion of the *Contractor* in respect of the carrying out and completion of the *subcontract works* upon the terms of the Subcontract.
14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the *Employer* pursuant thereto stating that the *Employer* or its appointee accepts liability for payment of the last payable but unpaid invoice submitted by the Subcontractor. Upon the issue of any such notice by the *Employer*, the Subcontract shall continue in full force and effect as if no right of termination on the part of the Subcontractor had arisen and the Subcontractor shall be liable to the *Employer* or its appointee under the Subcontract in lieu of its liability to the *Contractor*. If any notice given by the *Employer* under Clauses 12 or 13 requires the Subcontractor to accept the instructions of the *Employer's* appointee, the *Employer* shall be liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the *Employer's* appointee. For the avoidance of doubt, other than as set out in this clause 14, neither the *Employer* nor his appointee shall be liable for any failure of the *Contractor* to perform its obligations under the Subcontract 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 (not to be unreasonably withheld or delayed).
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* save that where legal proceedings have been commenced against the Subcontractor within this time and save in cases of fraud or deliberate concealment of breaches by the Subcontractor.
19. The Subcontractor hereby covenants that if required by the *Employer* it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the *subcontract works*. Each such deed of warranty shall be in the same form mutatis mutandis as this Deed (excluding Clauses 12, 13, 14 and this Clause 19) or in such substantially similar form as may reasonably be required by the *Employer*.
- 20.1 Without limitation to Clause 2 above, the Subcontractor hereby warrants to the *Employer* that:
- (a) except as provided under deeds of warranty required pursuant to the Subcontract, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Subcontract, this Deed or the project to which the *subcontract works* relate;
 - (b) he shall treat all information obtained under, arising from or in connection with the Subcontract, this Deed and the project as confidential, and that other than for the purpose of providing the *subcontract works*, it shall not disclose any information or documents concerning the Subcontract to any other person; and
 - (c) he shall not, without the prior written consent of the *Employer*, disclose any information obtained by him concerning the *Employer* or the TfL Group to any other person.
- 20.2 The *Employer* may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the *Employer*.

- 20.3 Clause 20.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subcontractor to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 20.4 The Subcontractor shall procure that the Connected Persons comply with the provisions of this Clause 20 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 20.5 The Subcontractor shall notify the *Employer* promptly if the Subcontractor becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- 20.6 The Subcontractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 20 by the Subcontractor and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 20.
- 20.7 At the *Employer's* request and in any event upon the termination or expiry of the Subcontract, the Subcontractor shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the Subcontractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 21.1 The Subcontractor shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Subcontract as if the *Employer* had jointly appointed the Subcontractor with 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 this purpose not taking into account any right of set-off or counterclaim against the *Contractor* under the

Subcontract) provided that it shall not be a defence that the *Contractor* has suffered no loss or has suffered a different loss to that of the *Employer*.

22. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subcontractor including without limitation any remedies in negligence.
23. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the *Employer* in Clauses 12 and 13 override any obligations of the Subcontractor to the *Contractor* under the Subcontract.
24. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 25.
- 25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 7 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 25.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.
- 25.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
26. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of
[]⁸

⁸ Insert name of member of TfL Group

In the presence of:

Authorised Signatory

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

ANNEX

(subcontract works)

SCHEDULE 4B

(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* ● hereto⁹.
- (C) [The Beneficiary has an interest in the whole or part of the *works* as a contractor and [intends to enter into] [has entered into] an agreement with the *Employer* in respect of subsequent stages of a project involving the design and installation of depot control and signalling systems on the Underground Network of which the *works* form part.]/[the Beneficiary is a member of the TfL Group and has an interest in the works as ●.]

NOW IT IS AGREED:

1. Terms and expressions defined in the Subcontract shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subcontractor in connection with the *subcontract works* (whether in existence or to be made);
 - (b) Not Used

⁹ A description of the works should be provided in the Annex.

- (c) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
 - (d) "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 in the design of the *subcontract works* exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent Subcontractor experienced in carrying out design 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 and all of his obligations under 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 Subcontractor in connection with the design of the *subcontract works* than that owed under Clause 2(a) of this Deed [the]] [The] Subcontractor further warrants and undertakes to the Beneficiary that:
- (a) the *subcontract works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Subcontract;
 - (b) the *subcontract works* and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
 - (c) the *subcontract works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Subcontract;
 - (d) the *subcontract works* will on Completion comply with all applicable law and all relevant Standards; and
 - (e) the *subcontract works* will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.

5. The Subcontractor warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the *subcontract works*, he has professional indemnity insurance with a limit of indemnity of not less than £[TBC]¹⁰ in respect of each and every claim which may be made against the Subcontractor in relation to the *subcontract works*. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the Beneficiary, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
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, world-wide, 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;
 - (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*

¹⁰ The PI figure should be the same as the figure inserted in the Contract Data.

provided always that the *Contractor* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall 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 reasonable expense to provide copies of any such material; and
 - (b) at the Subcontractor's expense to provide the Beneficiary with a set of all such material on Completion of the *subcontract works*.
9. If called upon to do so by the Beneficiary, the Subcontractor shall provide the Beneficiary with such information relating to the *subcontract works* as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary nor the approval by the Beneficiary of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the *subcontract works*.]
10. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
11. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the Subcontractor under this Deed shall cease 12 years following Completion of the whole of the *works* save where legal proceedings have been commenced against the Subcontractor within this time and save in cases of fraud or deliberate concealment of breaches by the Subcontractor.
- 13.1 The Subcontractor shall owe no greater obligations to the Beneficiary than he owes to the *Contractor* under the Subcontract as if the Beneficiary had jointly appointed the Subcontractor with 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 this purpose not taking into account any right of set-off or counterclaim against the *Contractor* under the Subcontract) and provided that it shall not be a defence that the *Contractor* has suffered no loss or has suffered a different loss to that of the Beneficiary.

14. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subcontractor including without limitation any remedies in negligence.
15. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
17.
 - 17.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 7 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
 - 17.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.
 - 17.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
18. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

EXECUTED AND DELIVERED AS A DEED
by affixing the Common Seal of

[]¹¹
In the presence of:

Authorised Signatory

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

¹¹ Insert name of member of TfL Group

ANNEX

(subcontract works)

SCHEDULE 5A

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

THIS DEED is made on ● 201 ●

BETWEEN:

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

WHEREAS:

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

NOW IT IS AGREED:

1. Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:
 - (a) "Connected Persons" means of any of the Subconsultant's employees, directors, consultants, agents, subcontractors, subconsultants, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
 - (b) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);
 - (c) "Minimum Records" means all records relating to the Subconsultant's operations, method statements, costs and expenses, subcontracts, claims

¹ Insert details of relevant member of the TfL Group.

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

- (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 Subconsultant warrants and undertakes to the *Employer* that;
- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Contractor* under the Appointment; and
 - (b) he has complied with and will continue to comply with the terms of and all his obligations under the Appointment.
3. The Subconsultant warrants to the *Employer* that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. The Subconsultant further warrants and undertakes to the *Employer* that:
- (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
 - (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
 - (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;
 - (d) the *design works* will on Completion comply with all applicable law and all relevant Standards;
 - (e) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (f) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.
5. The Subconsultant warrants and undertakes to the *Employer* that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and that he has professional indemnity insurance with a limit of

indemnity of not less than £[TBC]² in respect of each and every claim which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *works* provided that such insurance remains available at commercially reasonable rates and shall notify the *Employer* forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.

6. As and when reasonably requested by the *Employer*, the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. [To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Contractor*, the Subconsultant grants to the *Employer* an irrevocable, non-exclusive, world-wide, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for the following purposes:
 - (a) understanding the *works*;
 - (b) operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the works, any Equipment or Plant and Materials;
 - (c) extending, interfacing with, integrating with, connection into and adjusting the works and/or the works of Others;
 - (d) enabling the *Employer* to carry out the operation, maintenance, repair, renewal and enhancement of the 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 Subconsultant shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall be freely transferable to third parties without the prior consent of the Subconsultant.]

8. The Subconsultant agrees:

² The PI figure should be the same as the figure inserted in the Contract Data.

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

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

further assignment shall be permitted without the consent of the Subconsultant (not to be unreasonably withheld or delayed).

17. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
18. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *works* save that where legal proceedings have been commenced against the Subconsultant within this time and save in cases of fraud or deliberate concealment of breaches by the Subconsultant.
- 19.1 Without limitation to Clause 2 above, the Subconsultant hereby warrants to the *Employer* that:
 - (a) except as provided under deeds of warranty required pursuant to the Appointment, it shall not, without the prior written approval of the *Employer*, at any time for any reason disclose to any person or publish or make any statement concerning the Appointment, this Deed or the 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 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 Subconsultant to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and

- (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 19.4 The Subconsultant shall procure that the Connected Persons comply with the provisions of this Clause 19 and is responsible to the *Employer* for any act or omission of any Connected Person in breach of such obligations.
- 19.5 The Subconsultant shall notify the *Employer* promptly if the Subconsultant becomes aware of any breach of confidence by a Connected Person and shall give the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against that Connected Person or any other person for such breach of confidence.
- 19.6 The Subconsultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 19 by the Subconsultant and that (without prejudice to all other remedies to which the *Employer* may be entitled to as a matter of law) the *Employer* shall be entitled to any form of equitable relief to enforce the provisions of this Clause 19.
- 19.7 At the *Employer's* request and in any event upon the termination or expiry of the Appointment, the Subconsultant shall promptly deliver to the *Employer* or destroy as the *Employer* may direct all documents and other materials in the possession, custody or control of the Subconsultant (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the *Employer* in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 20.1 The Subconsultant shall owe no greater obligations to the *Employer* than he owes to the *Contractor* under the Appointment as if the *Employer* had jointly appointed the Subconsultant with the *Contractor* under the Appointment.
- 20.2 The Subconsultant shall be entitled in any action or proceedings by the *Employer* to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder (for this purpose not taking into account any right of set-off or counterclaim against the *Contractor* under the Subcontract) provided that it shall not be a defence that the *Contractor* has suffered no loss or has suffered a different loss to that of the *Employer*.
21. The rights and benefits conferred upon the *Employer* by this Deed are in addition to any other rights and remedies the *Employer* may have against the Subconsultant including without limitation any remedies in negligence.
22. The *Contractor* agrees that he will not take any steps which would prevent or hinder the *Employer* from exercising his rights under this Deed and confirms that the rights of the

Employer in Clauses 12 and 13 override any obligations of the Subconsultant to the *Contractor* under the Appointment.

23. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 23.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 7 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 23.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 23.3.
- 23.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
24. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of

[]³

In the presence of:

Authorised Signatory

³ Insert name of member of TfL Group

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

SCHEDULE 5B

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

WHEREAS:

(A) The *Contractor* has entered into a contract dated ● (the "**Contract**") with ●⁴ (the "**Employer**") which expression shall include its successors and assigns for the carrying out of certain **[Works and/or Services]** at ● (the "**works**").

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

(C) [The Beneficiary 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 ●]/[The Beneficiary is the Oversight Developer.]/[The Beneficiary is the [funder/purchaser/tenant] of the Oversight Development.]⁵

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:

⁴ Insert details of relevant member of the TfL Group.

⁵ Select appropriate recital depending on whether the Beneficiary is (ii) funder; (iii) purchaser/tenant; (iv) developer, (v) member of the TfL Group or (vi) Oversight Developer or funder/purchaser/tenant of an Oversight Development.

- (a) "Documents" means documents, items of information, data, reports, drawings, specifications, plans, software, designs, inventions and any other materials provided by or on behalf of the Subconsultant in connection with the *design works* (whether in existence or to be made);
 - (b) Not Used
 - (c) "TfL Group" means Transport for London, a statutory body set up by the Greater London Authority Act 1999 and any of its subsidiaries and their subsidiaries.
 - (d) "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 Subconsultant warrants and undertakes to the Beneficiary that;
- (a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Contractor* under the Appointment; and
 - (b) he has complied with and will continue to comply with the terms of and all of his obligations under the Appointment.
3. The Subconsultant warrants to the Beneficiary that he has not selected or specified for use, and that he will not select or specify for use or allow to be used any substance or material which are not in accordance with the Standards, general good building and engineering practice and the requirements of the Works Information.
4. [Provided that nothing in this clause 4 shall impose a greater duty on the *Contractor* than that owed under Clause 2(a) of this Deed [the]] [The] Subconsultant further warrants and undertakes to the Beneficiary that:
- (a) the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
 - (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
 - (c) the *design works* are integrated with the designs of the *Employer*, the *Contractor* and others as specified in the Appointment;

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

⁶ The PI figure should be the same as the figure inserted in the Contract Data.

- (f) executing or completing the *works*; and
- (g) designing, testing and commissioning the *works*

provided always that the Subconsultant shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall be freely transferable to third parties without the prior consent of the Subconsultant.]

8. The Subconsultant agrees:

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

9. If called upon to do so by the Beneficiary, the Subconsultant shall provide the Beneficiary with such information relating to the *design works* as the Beneficiary may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *works* provided that neither the provision of such information nor any inspection of the *works* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or relieve the Subconsultant from any liability which he has in relation to the *design works*.]
10. This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.
11. The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
12. The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *works* save where legal proceedings have been commenced against the Subconsultant within this time and save in cases of fraud or deliberate concealment of breaches by the Subconsultant.

13. The Subconsultant shall owe no greater obligations to the Beneficiary than he owes to the Contractor under the Appointment as if the Beneficiary had jointly appointed the Subconsultant with the *Contractor* under the Appointment.
- 13.1 The Subconsultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Contractor* thereunder (for this purpose not taking into account any right of set-off or counterclaim against the *Contractor* under the Appointment) provided that it shall not be a defence that the *Contractor* has suffered no loss or has suffered a different loss to that of the Beneficiary.
14. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subconsultant including without limitation any remedies in negligence.
15. The *Employer* and *Contractor* agree that they will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.
16. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 16.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 7 paragraphs W2.1 - W2.26 of the Contract which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 16.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 16.3.
- 16.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
17. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

EXECUTED AND DELIVERED AS A DEED

by affixing the Common Seal of

[]⁷

In the presence of:

Authorised Signatory

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

**THE COMMON SEAL of
[THE SUBCONSULTANT]**

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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

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

acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary]

⁷ Insert name of member of TfL Group

SCHEDULE 6

(Corporate IPR)

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

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

2. The New Johnston typeface of design type NJBook98, NJLight98 and NJMedium98 (the ***New Johnston Typeface***) (examples of which are attached in Annex 2).
3. The Underground map attached in Annex 3.
4. The following registered trademarks:

Country	Registration/ Application	Trademark	Class
UK	1527316	BAKERLOO	39
UK	1527393	JUBILEE	39
UK	2153485	MIND THE GAP	16 25 42
UK	1527319	THE CENTRAL LINE	39
UK	1527391	THE CIRCLE LINE	39
UK	1527429	THE DISTRICT LINE	39
UK	1527308	THE METROPOLITAN LINE	39
UK	1527388	THE NORTHERN LINE	39
UK	1527310	THE PICCADILLY LINE	39
UK	1527320	THE TUBE	39
UK	1527321	THE UNDERGROUND	39
UK	1527312	THE VICTORIA LINE	39
UK	2216375	TRAMLINK AND DEVICE	6 16 25 39
UK	1454868	DEVICE ONLY	16
UK	1454869	DEVICE ONLY	35
UK	1454870	DEVICE ONLY	37
UK	1454871	DEVICE ONLY	39
UK	1454872	DEVICE ONLY	42
UK	1457590	LONDON UNDERGROUND	16
UK	2251158	THE TUBE/TUBE	3 9 14 16 18 21
UK	2251513	TFL	6 9 12 16 19 35 36 37 39

Country	Registration/ Application	Trademark	Class
CTM	1580992	ALL ZONES	16 21 25
CTM	448571	LONDON UNDERGROUND	14 16 25 28
CTM	1677277	LOST PROPERTY	3 14 16
CTM	1677814	LOST PROPERTY	18 25 30
CTM	299578	UNDERGROUND	16 25 28

5. The following unregistered trademarks:

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

Annex 1

Examples of the London Underground Roundels



Annex 2

Examples of the New Johnston Typeface

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&*()_+,.?/@'##

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&()_+,.?/@'##*

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
01 23456789!"£\$%^&*()_+,.?/@'##

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
01 23456789!"£\$%^&*()_+,.?/@'##

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&*()_+,.?/@'##

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
0123456789!"£\$%^&*()_+,.?/@'##

Annex 3

London Underground Tube Map

Tube map



MAYOR OF LONDON

Website tfl.gov.uk

24 hour travel information 0843 222 1234*

*You pay no more than 3p per minute if calling from a BT landline. There may be a connection charge. Charges from mobiles or other landline providers may vary.

Travel information at stations Help points

Transport for London



SCHEDULE 7

(Dispute Resolution Procedure)

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

"Adjudicator" means an independent person appointed to act as an adjudicator in accordance with clause W2.2 of this Schedule 7.

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

"days" means a period of time stated in days as calculated in accordance with Section 116 of the Act;

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

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

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

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

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

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

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

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

W2.B.4 If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within 14 days after the date of the response under clause W2.B.2, court proceedings are not commenced unless and until the Dispute has

first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in clauses W2.1-W2.24 and notice has been given in accordance with clause W2.26.

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

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

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

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

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

W2.3 Any person requested or selected to act as the Adjudicator in accordance with clause W2.2:

- is a natural person acting in his personal capacity; and
- is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute

W2.4 The terms of remuneration of the Adjudicator are agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same are settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with clause W2.2.

W2.5 Where the Adjudicator has been selected in accordance with clause W2.2 the referring party refers the Dispute in writing to the Adjudicator by the Referral Notice in accordance with clause W2.6 within 7 days of the date of the Notice of Adjudication. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.

W2.6 The Referral Notice includes:

- the facts relied upon by the referring party in support of its claim(s);
- a statement of the contractual and/or other basis relied upon by the

- referring party in support of its claim(s);
- a calculation of the specific monetary amount (if any) that the referring party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute; and
- is accompanied by copies of, or relevant extracts from, this contract and such other documents on which the referring party relies.

- W2.7 If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the *Employer*, refer the subcontract dispute to the Adjudicator at the same time as the main contract referral. The Adjudicator then decides the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith and in accordance with the general obligation under clause 10.1 any reasonable request by the Adjudicator for additional time to decide the main contract and subcontract disputes.
- W2.8 The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period referred to in clause W2.11, or if that period is extended in accordance with clause W2.12 or by agreement by the parties to the Dispute within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with clause W2.11, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of clause W2.2. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within 3 days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator.
- W2.8A The Nominating Authority and its employees and agents are not liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority is similarly protected from liability.
- W2.9 The referring party sends copies of the Referral Notice and the documents referred to in clause W2.6 to the other Party at the same time as he sends them to the Adjudicator.
- W2.10 The Party not making the referral may send to the Adjudicator within 14 days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.
- W2.11 The Adjudicator reaches his decision and gives notice of the decision to the parties to the Dispute within 28 days of the date of receipt of the Referral Notice mentioned in clause W2.5, or such longer period as is agreed by the parties to the Dispute after the Dispute has been referred to him.
- W2.12 The Adjudicator may extend the period of 28 days referred to in clause W2.11 by up to 14 days, with the consent of the Party by whom the Dispute was referred.
- W2.13 The Adjudicator's decision is binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by

agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to the contract. Any correction of a decision forms part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with W2.22. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the date of the decision or the final date for payment of the notified amount whichever is the later.

W2.14 The Adjudicator:

- acts impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
- considers any relevant information submitted to him by any of the parties to the Dispute and makes available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
- reaches his decision in accordance with the law of the contract;
- may take the initiative in ascertaining the facts and the law in relation to the Dispute;
- may review and revise any action or inaction of the Project Manager related to the Dispute and/or alter a quotation which has been treated as having been accepted; and
- may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute.

W2.15 The Adjudicator decides in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:

- convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
- submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;
- require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- otherwise take such action and adopt such procedures as do not conflict with any of the provisions of the contract and are reasonable and proper for the just, expeditious and economical determination of the Dispute;

- inspect any part of the Underground Network.
- W2.16 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator is similarly protected from liability.
- W2.17 All meetings are private and save as required by law the Adjudicator and the Parties keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
- W2.18 Notice of the Adjudicator's decision (stating that it is given under clause W2) is in writing and includes a summary of the Adjudicator's findings and a statement of the reasons for his decision.
- W2.19 The Parties to a contract to which the Dispute relates continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this option W2.
- W2.20 In any case where the Adjudicator is appointed as a replacement pursuant to clause W2.8, the parties to the Dispute each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.
- W2.21 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in W2.22 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they notify the Adjudicator who allocates costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- W2.22 Subject to any agreement of the Parties, the Adjudicator allocates payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- W2.23 All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator are either delivered by hand, sent

by facsimile or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator are also sent by first class post not later than the business day next following the date of the original facsimile transmission.

- W2.24 All information of whatever nature provided to the Adjudicator by any party to the Dispute is copied to the other parties simultaneously.
- W2.25 Any court or the Adjudicator takes into account any failure to comply with clause 10.1 when making any award (including an award of costs and/or expenses).
- W2.26 If any Party to a Dispute is dissatisfied with the Adjudicator's decision, then any party may, within three (3) months after the date on which it received notice of such decision, commence court proceedings for the final determination of the Dispute. Court proceedings may not be commenced unless commenced within three (3) months after receipt of the Adjudicator's decision.

SCHEDULE 8

LIQUIDATED DAMAGES FOR DISRUPTION

1. In this Schedule, the following terms have the following meanings:
 - (a) **"LCH"** or **"Lost Customer Hours"** means the total additional journey time measured in hours, applying planned or unplanned NACHs as appropriate, experienced by Customers as a result of a planned or unplanned Service Disruption;
 - (b) **"NACHs"** or **"Nominally Accumulated Customer Hours"** means the system of weights used to estimate the cumulative additional perceived journey time encountered by Customers as a result of planned or unplanned Service Disruptions, as the case may be, as the same is set out in the NACHs Tables 2014 contained in the Works Information.
 - (c) **"Service Disruption"** means any disruption to customer services on the Underground Network comprising an interruption to train services or station services including train service disruptions, speed restrictions, full line suspensions, full or partial station closures, platform closures, escalator failures (either partial or total failures, that add to each passengers' overall journey time) and lift downtimes.
2. In the event of a Service Disruption resulting from a failure on the part of the *Contractor* to comply with its obligations under this contract the *Contractor* shall pay on demand and/or the *Employer* may deduct as liquidated damages such sums as may be calculated in accordance with this Schedule 8. The duration of any Service Disruption is measured using a network-based database known as CuPID (Contract Performance Information Database).
3. The amount to which the *Employer* is entitled in respect of any Service Disruption shall be calculated by multiplying (a) the relevant Lost Customer Hours attributable to the applicable Service Disruption by (b) X
where:
 - (i) "X" equals no more than £3.55 (three pounds fifty-five pence sterling) indexed as provided for in paragraph 4; and
 - (ii) the applicable NACHs table is the unplanned NACHs Tables 2016 for the first seven (7) days of such Service Disruption and the planned NACHS Tables 2014 for any subsequent days of the same Service Disruption.
4. The value of 'X' (as defined in paragraph 3) is revised as at 1 April in each year according to the following calculation:

$$X_{cy} = \frac{r_n}{r_o} \times X$$

where:

X_{cy} = value of X for the year commencing on the applicable 1 April;

r_n = RPIX published for the month of August immediately preceding the

applicable 1 April; and

r o = RPIX published for February 2018.

5. These liquidated damages are a genuine pre-estimate of the *Employer's* loss in the event of a Service Disruption and are in addition to any delay damages payable by the *Contractor* pursuant to Option X7. They are not intended to relieve the *Contractor* from any of its obligations or liabilities under the contract including liability for costs in respect of the rectification of Defects caused by the *Contractor*.

SCHEDULE 9

(Systems Engineering, Integration and Interface Schedule)

Definitions

“**IHA**” means Interface Hazard Analysis specified in paragraph 2.3(e).

“**IMP**” means interface Management Plan specified in paragraph 3.2(b).

“**Interface**” means any physical, functional or contractual boundary, either:

(a) internal to the DTUP; or

(b) between PDPs and other projects, programmes, systems or third parties that affect any aspects of the Works or the DTUP,

and shall imply an impact by one (or more) of the parties or systems involved on one (or more) of the others.

“**Interface Control Document**” or “**ICD**” has the meaning given to such term in paragraph 2.2(i).

“**Interface Manager**” has the meaning given to such term in paragraph 2.1(c) of schedule 9.

“**Interface Matrix**” means the preliminary interface register prepared, managed and updated by the *Employer* listing the Interfaces identified.

“**Interface Register**” the register created and managed by the *Employer* in their role as Prime System Integrator.

“**Lead PDP**” means the PDP in the lead role for an interface with the responsibilities set out in paragraph 2.2.

“**Participating PDP**” means the PDP in the participating role for an interface with the responsibilities set out in paragraph 2.2.

“**PDP**” means “Project Delivery Partner” or “PDP” means an organisation (whether external to or internal within the Employer’s organisation who is contracted to deliver any or all projects associated with the DTUP), including the *Contractor*.

“**Prime System Integrator**” is responsibility for co-ordinating the overall safety and operability of the assets introduced as part of the Deep Tube Upgrade Programme and their integration with legacy assets and systems.

“**SLR**” System Level Review means the review of the maturity of the interfaces undertaken by the Employer in accordance with paragraph 4.

“**SEMP**” Systems Engineering Management Plan means the plan produced by the Contractor as specified in paragraph 3.2(a).

1. GENERAL PRINCIPLES OF SYSTEMS INTEGRATION

The general principles of systems integration shall be as follows:

- 1.1 The Deep Tube Upgrade Programme shall be delivered by one or more PDPs.
- 1.2 The *Contractor* shall work with the *Employer* and other relevant PDPs to meet the requirements of this Agreement.
- 1.3 The *Employer* shall be the prime system integrator for the Deep Tube Upgrade Programme (“**Prime System Integrator**”). As Prime System Integrator, the *Employer* shall:

- (a) manage the phasing, migration, integration, and acceptance of the end state railway, and its handover to operations and maintenance;
 - (b) lead the integration of the Deep Tube Upgrade Programme as a 'system';
 - (c) create and manage the Interface Register;
 - (d) review the progress of Interface development to ensure timely and satisfactory resolution and provide support to PDPs as necessary; and
 - (e) have the final say and acceptance for the 'system'.
- 1.4 Issues will be raised and resolved openly and collectively by both the Employer and PDPs.
- 1.5 The *Contractor* shall ensure that the OPO CCTV System integrates with the other parts of the DTUP System in accordance with the Technical Specification.
- 1.6 The *Contractor* shall communicate and liaise with other PDPs to ensure that there is a dialogue and information exchange between the PDPs in relation to the different DTUP Systems.
- 1.7 The role and responsibilities of the *Contractor* in relation to each Interface are described in paragraph 2.2.
- 1.8 The *Contractor* shall inform the *Employer* as soon as it becomes aware of any problems in relation to systems integration and as soon as reasonably practicable after making the *Employer* aware, work with other PDPs to propose a resolution to the problem.
- 1.9 Changes that the *Contractor* believes are necessary to make to the Technical Requirements arising out of paragraph 1.8 above shall be proposed by the *Contractor* in accordance with paragraph 2.
- 1.10 If there is a conflict or gap in relation to how the DTUP Systems are integrating, and the PDPs in relation to those systems cannot agree a resolution in accordance with paragraph 1.6, the *Employer* shall have the final decision as to how to proceed.

2. INTERFACE MANAGEMENT

2.1 General

- (a) The *Employer* shall procure that PDPs collaborate to define the Interfaces within their scope of supply with the other relevant PDPs, with oversight from the Employer.
- (b) The *Employer* shall appoint a competent and experienced interface manager ("**Employer Interface Manager**"). The Employer Interface Manager shall act as the single point of contact on the design and management of Interfaces for the Employer.
- (c) The *Contractor* shall, and the *Employer* shall procure that each PDP shall, appoint a competent and experienced interface manager ("**Interface Manager**"). The Interface Manager shall, on behalf of the relevant PDP, act as the single point of contact on the design and management of relevant Interfaces with the *Employer*, the *Employer* Interface Manager, other relevant PDPs and Interface

Managers.

- (d) The *Contractor's* Interface Manager shall be responsible for:
 - (i) ensuring Interfaces in relation to the Works are identified, managed and resolved in accordance with the *Employer's* DTUP Interface Management Plan;
 - (ii) assisting with *Employer* to maintain the relevant Interfaces within the Interface Register; and
 - (iii) monitoring the production and agreement of all relevant ICDs.
- (e) The *Contractor* shall prepare an interface management plan to describe how they will manage Interfaces in accordance with the *Employer's* DTUP Interface Management Plan ("**Interface Management Plan**").
- (f) The *Contractor* shall produce a description of all of the Interfaces relating to the OPO CCTV System including, but not limited to:
 - (i) those described in Appendix 1 to this schedule 9;
 - (ii) the relevant Interfaces listed in the Interface Register;
 - (iii) those with Infrastructure Managers;
 - (iv) those with other users of the LUL Network;
 - (v) those with neighbours of the LUL Network and neighbouring railways; and
 - (vi) those with other PDPs,

and the *Contractor* shall submit the Interface descriptions to the *Employer* for Acceptance within two (2) months of the Commencement Date;

2.2 Appointment, Roles and Responsibilities of PDPs

- (a) To facilitate the management and progression of the Interfaces, the *Employer* shall assign a lead PDP to each Interface as determined initially by the Interface Matrix in Appendix 1 to this schedule 9 (each a "**Lead PDP**"), and later as determined by the Interface Register.
- (b) Where the *Contractor* is a Participating PDP, and the *Employer* is unable to assign a Lead PDP, the Employer shall act as the Lead PDP for that Interface.
- (c) When the *Contractor* is Lead PDP and the *Employer* is unable to assign a Participating PDP, the Employer shall act as the Participating PDP for that Interface.
- (d) The role and responsibilities where the *Contractor* is Lead PDP shall be as follows:
 - (i) to jointly identify, plan, co-ordinate, agree, finalise and document the necessary Interface requirements (including the Interface Control

- Document) with relevant Participating PDPs and other interfacing parties (including authorities or agencies that are necessary in the course of Interface design);
- (ii) to ensure information requested by parties (including Participating PDPs) is received in the correct format and within the agreed timescale;
 - (iii) to manage and own the required Interface document submissions (including ICDs, as necessary) and to submit these to the *Employer* for Acceptance;
 - (iv) to prepare and submit all Interface design meeting minutes, Interface design progress reports and Interface design issues to the *Employer* for Acceptance;
 - (v) to provide all required training and information in relation to the operation and maintenance (including fault and failure diagnosis and rectification) of the Interface; and
 - (vi) to assess the safety of the system resulting from the Interface.
- (e) Where the *Contractor* is Lead PDP, the *Contractor's* Interface Manager shall be responsible for:
- (i) agreeing required deliverables with the *Employer* and other PDPs to define and manage an Interface; and
 - (ii) ensuring information requested by the *Employer* or other PDPs is received in the correct format and within the agreed timescale.
- (f) For each Interface, the Lead PDP and the Participating PDP shall co-ordinate to identify, define and delineate the individual supply scope and Interface responsibilities of each PDP, and the Employer shall procure that PDPs other than the Contractor comply with this obligation.
- (g) The roles and responsibilities where the *Contractor* is a Participating PDP shall, as a minimum, be as follows:
- (i) to provide the necessary information, material, technical expertise and resources required for the Interface design works as may be requested by the Employer or Lead PDP;
 - (ii) to identify, agree and establish all necessary Interfaces and the requirements for such Interfaces jointly with the Lead PDP;
 - (iii) to provide the necessary information, material, technical expertise and resources to enable the Lead PDP to provide all required training and information in relation to the operation and maintenance (including fault and failure diagnosis and rectification) of the Interface;
 - (iv) to collaborate fully with the Lead PDP in finalising the Interface resolution, including joint production of the ICDs and other agreed Interface deliverables (which may include Interface design documents and progress reports); and

- (v) to assess the safety of the system resulting from the Interface.
- (h) Interface Documentation and Submission for Acceptance:
 - (i) where the *Contractor* is the Lead PDP it shall, in collaboration with the Participating PDPs, prepare a suite of design documents (including the ICD in accordance with paragraph 2.2(i) below) that describe the Interface and include a clear delineation of scope;
 - (ii) the specific deliverables will be agreed between the relevant PDPs and submitted to the Employer for Acceptance. The deliverables shall include (but not be limited to) schematic drawings, mounting arrangements, power/electrical details, port/pin configurations, materials, detailed requirements and other deliverables as the *Employer* shall in its absolute discretion deem necessary;
 - (iii) where the *Contractor* is the Lead PDP, it shall prepare Interface documentation for the Concept Design Submission and such documentation shall be updated for the Preliminary Design Submission and Final Design Submission; and
 - (iv) the proposed Interface designs shall be submitted by the *Contractor* to the Employer for Acceptance as part of the Design Submissions and shall be designed in accordance with the requirements for Integration Testing.
- (i) Interface Control Documents:
 - (i) For the purposes of this Agreement, **"Interface Control Document"** or **"ICD"** means the document created to describe the interaction between two technical elements of the DTUP, to be delivered by two PDPs. The ICD will delineate the responsibilities of the PDPs, and will describe a formal agreement between the parties for the resolution of an Interface. The ICD will provide a detailed record of each Interface and therefore create a governing foundation for PDPs to mutually manage their respective designs. The ICD shall contain information including, but not limited to, the following:
 - (A) identification of the Interface;
 - (B) reason for the existence of the Interface;
 - (C) a description and identification of mechanical, electrical, electronic, hardware and software interfaces within the interfacing systems;
 - (D) a description of design review, testing, installation and commissioning activities;
 - (E) requirements on the Interface;
 - (F) actions required to resolve the Interface;
 - (G) interaction between the user and the 'interfaced system' or individual systems;

- (H) capacity and performance constraints on the Interface;
 - (I) standards and compliance;
 - (J) safety requirements;
 - (K) design implications;
 - (L) construction and installation implications; and
 - (M) operations and maintenance implications.
- (ii) where the Contractor is Lead PDP, the Contractor shall (A) produce the relevant ICDs; and (B) once signed off as agreed between the relevant PDPs, submit such ICDs to the Employer for Acceptance, (within three (3) months of the Commencement Date);
 - (iii) where the Contractor is a Participating PDP, it shall not be required to produce the ICD, and the Employer shall procure that the relevant Lead PDP shall produce the ICD with the assistance of the Contractor; and
 - (iv) where a Lead PDP has not been appointed, and the Employer is acting as Lead PDP for the relevant Interface pursuant to paragraph 2.2(b), the Employer shall produce the relevant ICD within three (3) months of the Commencement Date, with the assistance of the Contractor.

2.3 Interface Design

- (a) The Contractor shall ensure that:
 - (i) each relevant Interface is clearly defined in terms of the requirements of this schedule 9;
 - (ii) all assumptions made within the relevant Interface are documented;
 - (iii) copies of all Interface agreements, records and relevant ICDs are transmitted to the *Employer* Interface Manager; and
 - (iv) when it is Lead PDP, once an ICD has been signed off by the relevant PDPs as agreed, it is submitted to the *Employer* for Acceptance.
- (b) The *Contractor* shall submit details of each relevant Interface to the *Employer* for inclusion on the Interface Register (with records of agreements from Interface meeting minutes) or, where appropriate, ICDs, in a way that:
 - (i) clearly states and describes the input data required, including the required level of detail, from the relevant PDPs and/or external parties; and
 - (ii) prioritises the Interface issues with respect to the time (deadline) by which this information is required.
- (c) The *Contractor* shall work in a collaborative manner with each PDP identified within each Interface.
- (d) Where the *Contractor* is Lead PDP it shall:

- (i) create the Interface requirements;
 - (ii) develop and discuss the Interface requirements and their parameters in a collaborative manner with the Participating PDP, and record the outcome appropriately; and
 - (iii) document the review and agreement of Interfaces along with the other affected parties, and include a clear scope delineation between PDPs.
- (e) Where the *Contractor* is Lead PDP, it shall demonstrate to the Employer that all risks associated with the relevant Interfaces have been reduced to a level ALARP in the engineering safety case. The *Contractor* shall carry out, and report on, an Interface hazard analysis ("**IHA**") to set out how the engineering safety implications at Interfaces will be adequately addressed and managed. The *Contractor* shall ensure that the IHA involves all relevant PDPs, third parties and the *Employer*.

2.4 Interface Meetings

- (a) In order to progress Interfaces and to ensure Interfaces work, the Lead PDP shall organise and chair regular Interface meetings with the Participating PDP throughout the design, manufacture, test and installation stages.
- (b) At Interface meetings, PDP representatives and any additional technical and/or operational specialists that have been invited to attend, will be required to finalise the Interface design documents for joint review, agreement, sign off and submission to the *Employer* for Acceptance.
- (c) Within one week of each Interface meeting, where the *Contractor* is the Lead PDP it shall submit any updated design documents to the *Employer* for Acceptance.
- (d) Each time there is an Interface meeting, the *Contractor* shall provide the *Employer* with reasonable notice (having regard to the nature and location of the meeting) of the date upon which such Interface meeting is due to take place and the *Employer* and/or its nominee shall be entitled to attend.

3. **SYSTEMS INTEGRATION DELIVERABLES**

3.1 The Systems Engineering Management Plan and supporting plans detail how the *Employer* will facilitate the integration of the projects (supported by PDPs) including the approach to managing Interfaces between PDPs, the *Employer* and external parties. Appendix 1 to this schedule 9 sets out the top level indicative interface matrix ("**Interface Matrix**") indicating the primary level of responsibility for PDPs.

3.2 The *Contractor* shall produce the following plans that detail how the Contractor shall manage its engineering process:

- (a) Systems Engineering Management Plan ("**SEMP**")

The *Contractor* shall document in the SEMP the strategies for how the Contractor will align with the methods and tools detailed within the DTUP SEMP attached as Appendix 2. It shall be in an agreed form as at the date of this

Agreement. The *Contractor* shall, no later than two (2) months after the Commencement Date, submit the SEMP to the Employer for Acceptance.

(b) Interface Management Plan ("**IMP**")

The *Contractor* shall detail in the IMP how the *Contractor* will manage the Interfaces included as part of this schedule 9. The *Contractor* shall, no later than two (2) months after the Commencement Date, submit the IMP to the Employer for Acceptance.

4. **DESIGN COORDINATION**

4.1 System level reviews ("**SLRs**") will be held before each Assurance Stage to confirm that Interfaces are at the requisite level of maturity. The focus of SLRs shall be on systems integration and design coordination, and SLRs shall, subject to paragraph 4.4 below, require input and attendance from the *Employer*, *Contractor* and other PDPs.

4.2 Requirements, Interfaces, architectures, risks, assumptions, issues, dependencies, design integration and co-ordination evidence will form the agenda of the meetings and the review criteria will be based around the assurance principles of "People", "Process" and "Product". Each of these will be assessed in accordance with the following criteria:

- (a) People – appropriate individuals have been involved in the process of producing and reviewing the system design element;
- (b) Process – the system design elements have been produced in accordance with the corresponding management plans or appropriate standard / guidance. There is evidence of technical and quality reviews and comments have been addressed; and
- (c) Product – the maturity of the system design element meets the criteria for the respective project stage including questions such as:
 - (i) Are we building the right product?
 - (ii) Are we building the product right?

4.3 The SLRs will provide a forum for both *Employer* and PDPs to identify any outstanding issues, risks, assumptions and dependencies between PDPs and to understand and query change and impact analysis.

4.4 As Prime System Integrator, the *Employer* will be responsible for organising and chairing SLRs. To facilitate a collaborative environment, the *Employer* shall invite representatives from key PDPs, including the *Contractor*, who will be invited to attend each SLR, including those SLRs related to other aspects of the DTUP in which the PDP is not directly contributing to the delivery (so attendance will not be mandated where an SLR does not directly impact or require involvement from the PDP, but this shall be at the *Employer's* absolute discretion). Where the *Contractor* is Lead PDP it shall, and the *Employer* shall procure that the other PDPs shall, appoint competent and experienced individuals with the authority to represent the PDP in all matters pertaining to the SLR including commercial, technical and delivery.

4.5 At least four (4) weeks before the date of the SLR the *Employer* will send to the

SLR attendees, including the *Contractor*, the agenda for the SLR.

Appendix 1
Indicative Interface Matrix

DTUP Interface ID	System A	System B	Lead Project Delivery Partner	Participating PDP	Summary of the Interface
IFC-1448	OPO CCTV System	Train	<i>Contractor</i>	Rolling Stock Manufacturer	Interface governing the installation of OPO Train Borne Equipment and the Train.
IFC-2324	Operational Control System (OCS)	OPO CCTV System	<i>Employer</i>	<i>Contractor</i>	Interface between the OCS and OPO CCTV System to govern how CCTV images are requested by, and transmitted to the OCS as well as health and status information relating to the OPO CCTV System.
IFC-997	T&D Network Services	OPO CCTV System	<i>Employer</i>	<i>Contractor</i>	Interface governing the interaction between the OPO CCTV System and T&D Network Services to provide the connectivity between the OPO CCTV System and the OCS. The functional definition of this interface will be captured through IFC-2324.
IFC-2286	OPO CCTV System	4LM OPO CCTV System	<i>Contractor</i>	<i>Employer</i>	Interface governing how the OPO CCTV System will co-exist with the current 4LM OPO CCTV System.

IFC-1951	OTC Train borne	OTC Wayside equipment	Rolling Stock Manufacturer	<i>Contractor</i>	Interface governing the installation and acceptance testing of all OTC-Infrastructure borne equipment to be provided by the Rolling Stock supplier, and installed by the OPO CCTV supplier.
IFC1262	Stopping markers	Train	<i>Employer</i>	<i>Contractor</i>	Interface between the positioning of the stopping markers and the Train Operator's position within the Train to ensure accurate train stopping in manual operation.

APPENDIX 2

DTUP Systems Engineering Management Plan

Refer to document titled: DTUP-2344.2.2-LUL-RPT-00001-5.0 - DTUP System Engineering Management Plan

SCHEDULE 10

(Work Related Road Risk)

1.1 In this schedule the following expressions shall have the corresponding meanings:

"Approved Progressive Training" means an ongoing programme of Drivers' training to ensure they have the appropriate knowledge, skills and attitude to operate safely on urban roads. This includes the training specific for the urban environment (including on-road experience from a cyclist's perspective), which is required to be completed at least once every 5 years;

"Car-derived Vans" means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

"Category N2 HGV" means a vehicle designed and constructed for the carriage of goods having a MAM exceeding 3,500 kilograms but not exceeding 12,000 kilograms;

"Category N3 HGV" means a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms;

"CLOCS Standard" means the Construction Logistics and Community Safety standard, which aims to eliminate risk of a collision between heavy goods vehicles servicing the construction sector and vulnerable road users by ensuring effective practice in the management of operations, vehicles, drivers and construction sites; further information can be found at: www.clocs.org.uk;

"Collision Report" means a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;

"Delivery and Servicing Vehicle" means an HGV, a Van or a Car-derived Van;

"Direct Vision Standard" or "DVS" means Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a driver has from a Category N3 HGV cab in relation to another road users. Further information can be found at: www.tfl.gov.uk;

"Driver" means any employee of the *Contractor* (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the *Contractor* while delivering the *works*;

"DVLA" means Driver and Vehicle Licensing Agency;

"FORS" means the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It is free to join and offers impartial,

independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;

"FORS Standard" means the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk;

"Gold Accreditation" means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;

"HGV" means a vehicle with a MAM exceeding 3,500 kilograms;

"MAM" means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;

"Silver Accreditation" means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk; and

"Van" means a vehicle with a MAM not exceeding 3,500 kilograms.

- 1.2 Where the *Contractor* operates Delivery and Servicing Vehicles to Provide the Works, it shall within ninety (90) days of the *starting date*:
 - (a) (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the *Employer*, is an acceptable substitute to FORS (the "Alternative Scheme"); and
 - (b) (unless already accredited) have attained the standard of Silver Accreditation (or higher) or the equivalent within the Alternative Scheme.
- 1.3 The *Contractor* shall maintain the standard of Silver Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the *Contractor* has attained Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.
- 1.4 The *Contractor* shall ensure that every HGV, which it uses to Provide the Works, shall be fitted with safety features consistent with the FORS Silver Accreditation.
- 1.5 Where applicable, (for contracts exceeding a value of £1,000,000 (one million)) the
 - (a) The *Contractor* shall comply with the CLOCS Standard
 - (b) The *Contractor* shall ensure that the conditions at all sites and locations where

- (i) the *works* are being delivered, or
- (ii) in connection with the performance of *works*, any waste is being disposed of or supplies are being delivered to or from,

1.6 are appropriate for each Category N3 HGV being used in the provision of the *Works*. Where applicable, (for contracts exceeding a value of £1,000,000 (one million) where the duration will exceed 12 months and a significant amount of the work will be conducted within the GLA boundaries):

- (a) The *Contractor* shall comply with the Heavy Goods Vehicle Direct Vision Standard (DVS) Plan in Schedule 11 to these Implementation Works Terms; and
- (b) the *Contractor* shall ensure that;
 - (i) from and including 1 October 2018, all Category N3 HGV's used in the provision of the *works* achieve a minimum of a one (1) star Direct Vision Standard rating;
 - (ii) from and including 1 April 2020, all Category N3 HGV's used in the provision of the *works* achieve a minimum of three (3) star Direct Vision Standard rating; and
 - (iii) so far as reasonably practicable, the conditions at all sites and locations within the control of the *Contractor* where the *works* are being delivered or in connection with the performance of the *works*, any waste is being disposed of or supplies are being delivered to or from, are appropriate for each Category N2 HGV and Category N3 HGV being used in the provision of the *works*. The *Contractor* shall not incur any costs or make any changes to the site(s) without the prior written consent of the *Employer*.

1.7 The *Contractor* shall ensure that where it operates Delivery and Servicing Vehicles to Provide the Works, each of its Drivers attend Approved Progressive Training throughout the duration of the contract.

1.8 The *Contractor* shall ensure that where it operates Delivery and Servicing Vehicles to Provide the Works:

- (a) it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and
- (b) within fifteen (15) days of the relevant *starting date*, provide to the *Employer* a Collision Report. The *Contractor* shall provide to the *Employer* an updated Collision Report within five (5) Working Days of a written request from the *Employer* at any time.

- 1.9 Where the *Contractor* operates Delivery and Servicing Vehicles to Provide the Works, within ninety (90) days of the relevant *starting date*, the *Contractor* shall make a written report to the *Employer* detailing its compliance with clauses 1.1 - 1.8 (the "WRRR Self-certification Report"). The *Contractor* shall provide updates of the WRRR Self-certification Report to the *Employer* on each six month anniversary of its submission of the initial WRRR Self-certification Report.
- 1.10 The *Contractor* shall ensure that each of its Subcontractors who operate Category N2 HGV's, Category N3 HGV's, Vans and/or Car-derived Vans to Provide the Works shall comply with the corresponding provisions of these Implementation Works Terms:
- (a) Clauses 1.2, 1.3, 1.7, 1.8 and 1.9;
 - (b) for Category N2 HGV's – Clauses 1.4;
 - (c) for Category N3 HGV's – clauses 1.4, 1.5 and where applicable 1.6;
- as if those Subcontractors were a party to this contract.
- 1.11 Without limiting the effect of any other clause of these Implementation Works Terms relating to termination, if the *Contractor* fails to comply with clauses 1.2, 1.3, 1.4, 1.5 (where applicable), 1.6 (where applicable), 1.7, 1.8 and 1.9 :
- (a) the *Contractor* has committed a material breach of these Implementation Works Terms; and
 - (b) the *Employer* may refuse the *Contractor*, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the *Employer* for any purpose (including but not limited to deliveries).

SCHEDULE 11

(Heavy Goods Vehicle Direct Vision Standard Schedule)

1 Introduction

1.1 In this schedule, the following terms shall have the corresponding meanings:

"Agreed DVS Plan" means the Initial DVS Plan as updated and approved in accordance with the terms of this Schedule;

"Category N3 HGV" means a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms;

"Direct Vision Standard" or "DVS" means Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time, that measures how much direct vision a driver has from a Category N3 HGV cab in relation to other road users. Further information can be found at: www.tfl.gov.uk;

"Initial DVS Plan" means the initial plan set out at Appendix 1 which sets out and proposes how the *Contractor* shall ensure that:

(a) from and including 26 October 2019, all Category N3 HGVs used in the delivery of the contract achieve a minimum of a one (1) star Direct Vision Standard rating;

(b) from and including 26 October 2023 all Category N3 HGVs used in the provision of the [Services] achieve a minimum of three (3) star Direct Vision Standard rating;

"MAM" means the Maximum Authorised Mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road.

2 DVS Plan

2.1 The *Contractor* shall comply with the Initial DVS Plan from the *starting date*. Within fourteen (14) days of the *starting date* the *Employer* shall either:

2.1.1 confirm that the Initial DVS Plan is approved, in which case such plan shall become the Agreed DVS Plan; or

2.1.2 provide the *Contractor* with any comments on and/or amendments to the Initial DVS Plan.

2.2 Within twenty eight (28) days (for the purpose of paragraph 2.1.2) or 15 Business Days (for the purpose of paragraph 2.3.2) of receipt of any comments and/or amendments from the *Employer* in accordance with paragraph 2.1.2 or paragraph 2.3.2 (as applicable), the *Contractor* shall:

2.2.1 develop the InitialDVS Plan to reflect such comments and/or amendments; and

2.2.2 submit an updated Initial DVS Plan to the *Employer* for approval.

2.3 Within fourteen (14) days of receipt of the updated Initial DVS Plan, the *Employer* shall confirm that either the updated Initial DVS Plan:

2.3.1 is approved, in which case it shall become the Agreed DVS Plan; or

2.3.2 not approved and provide its further comments and/or amendments to the *Contractor* and the *Contractor* shall revise and re-submit the updated Initial DVS Plan for approval in accordance with paragraph 2.2.

The process set out in this paragraph 2.3 shall be repeated until the updated Initial DVS Plan is approved by the *Employer*.

2.4 Where the *Employer*, acting reasonably, has not approved the updated Initial DVS Plan, the *Contractor* may refer that decision to the Dispute Resolution Procedure.

2.5 Without limiting any other provision of this Contract, the *Contractor* shall, at no additional cost to the *Employer*, and as part of the *works*:

2.5.1 implement, observe and comply with the Agreed DVS Plan; and

2.5.2 review and amend the Agreed DVS Plan (as necessary) on each 12 month anniversary of the *starting date* (or insert other more appropriate milestone if HGVs will not be used in the initial stages of the contract) or earlier if requested by the *Employer*, to reflect:

2.5.2.1 any changes to the nature of the *works* or Operational Services; and

2.5.2.2 any comments and/or amendments made or proposed by the *Employer*.

3 DVS Co-ordinator

3.1 The *Contractor* shall nominate an employee with the necessary experience, competency and authority to:

3.1.1 be responsible for implementation and compliance with the Agreed DVS Plan; and

3.1.2 act as the *Contractor's* authorised representative on all matters concerning the Agreed DVS Plan ("**DVS Co-ordinator**").

4 Self Certification and Reporting

On each 12 month anniversary of the *starting date* (or insert other more appropriate milestone if HGVs will not be used in the initial stages of the contract), the *Contractor* shall submit a report to the *Employer* which sets out the *Contractor's* progress in respect of implementation of the Agreed DVS Plan and confirms (with supporting evidence) that the *Contractor* has complied with the Agreed DVS Plan.

5 DVS Infractions

- 5.1 Without limiting the effect of any other provision of this contract relating to termination, if the Contractor fails to comply with the terms of this Schedule:
- 5.1.1 the *Contractor* shall be deemed to have committed a material breach of this contract;
and
 - 5.1.2 the *Employer* may refuse the *Contractor*, its [employees, agents/sub-contractors] and each Category N3 HGV entry onto any property that is owned, occupied or managed by or on behalf of the *Employer* for any purpose (including but not limited to deliveries).

Appendix 1 to Schedule 11

The Initial DVS Plan submitted as part of the contract mobilisation and will be developed to form the Agreed DVS Plan.