SCHEDULE 6

FORM OF PERFORMANCE BOND

PERFORMANCE BOND

Between

[BANK]

and

[CLIENT]

Relating to the

Maintenance and Management Contract for TfL Road Tunnels and Pumping Stations

(Letterhead of Bank)

To: [*insert name and address of the Client*]

Date:

Dear Sir/Madam

IN CONSIDERATION of you entering into a TfL Road Tunnels Apparatus and Pump Station Management Contract ("**the Contract**") with [*insert name of Contractor*] ("**the Contractor**"), we [*insert name of Bank*] ("**the Bank**") hereby undertake upon first demand in writing made by you upon us from time to time or at any time to pay on each occasion the sum demanded by you on the terms and conditions set out in this letter (**"this Bond"**).

PROVIDED THAT:

1. This Bond shall come into force on the date of this Bond.

2. Any demand under this Bond shall be substantially in the form of either Annex 1 or Annex 3 to this Bond as required by the circumstances in which such demand is made, and as between you and us the facts set out in that demand shall (a) be deemed to be true and (b) shall be accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due to you under this Bond.

3. Any demand in the form of Annex 1 shall be accompanied by a copy of a letter from you sent to the Contractor by first class recorded delivery post 14 or more days before the date of the demand, substantially in the form of Annex 2 of this Bond.

4. Our liability under this Bond shall be limited so as not to exceed the aggregate sum of £[FIGURE] and we shall have no liability under this Bond in respect of any demand dated after [DATE OR PERIOD].

5. Our obligations under this Bond shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:

   (a) any alteration or variation to the terms of the Contract made by agreement between you and the Contractor including, without limitation, any alteration in the extent or nature or sequence or method or timing of the works or services to be carried out under the Contract or any novation of the Contract (in whole or in part); or

   (b) any defence, counterclaim, withholding, set off or other deduction available to the Contractor under the Contract or otherwise; or

   (c) any time being given to the Contractor or any other indulgence, waiver, concession, forbearance or forgiveness to the Contractor whether express or by conduct or any other thing done, omitted or neglected to be done under the Contract; or

   (d) any other bond, security or guarantee now or subsequently held by you for all or any part of the obligations of the Contractor under the Contract; or

   (e) the release or waiver of any such bond, security or guarantee referred to in paragraph 5(d) above; or

   (f) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Contractor; or

   (g) the termination of the Contract for any reason; or

(h) any other event which would or might operate to discharge a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish your liability under this Bond; or

(i) the winding-up, bankruptcy, administration, receivership or insolvency of the Contractor; or

(j) any legal limitation, disability, incapacity, discharge by operation of law, change in the constitution, name or style of the Contractor or any other person relating to the Contractor (whether or not known to you); or

(k) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Contractor.

6. Any payment under this Bond shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.

7. This Bond is irrevocable.

8. Terms defined in the Contract and not otherwise defined in this Bond shall have the same meaning in this Bond.

9.

(a) This Bond, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. Subject to paragraph 9(b) below, the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Bond.

(b) You and we may seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction.

(c) Subject to paragraph 9(b) above, you and we waive any objection to, and submit to, the jurisdiction of the courts of England and Wales. You and we agree that a judgment or order of any such court is binding upon the relevant party and may be enforced against it in the courts of any other jurisdiction.

10. You will be entitled to assign the benefit of this Bond in whole or in part but we may not assign the benefit and/or delegate the burden of this Bond in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.

11. If any provision (in whole or in part) of this Bond is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Bond and shall be ineffective, without, so far as is possible, modifying any other provision of this Bond and this shall not affect any other provisions of this Bond which shall remain in full force and effect.

12. Any demand or other notice made by you under this Bond shall be duly made if sent by first class recorded delivery post to us.

[For non-UK resident banks with only a branch or office in the UK :

10. For the purposes of this Bond we hereby appoint ..... of ..... (to be a London address) to accept service of process on our behalf, and service on the said ..... at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by *[Bank]* acting by a Director and the Secretary or by two Directors	))))	_____ Director _____ Director/Secretary

The common seal of *[Bank]* was affixed to this Deed in the presence of	))))	_____ Director _____ Director/Secretary

Annex 1

Form of Demand from the Client to [the Bank]

Dear Sirs

TfL Road Tunnels Apparatus and Pump Station Management Contract between [Client] and [Contractor] dated [ ] ("the Contract")

We refer to the Bond given by you to us dated [ ]. We enclose a copy of a letter from us to [*insert name of Contractor*] ("**the Contractor**") which was sent to the Contractor by first class recorded post on [ ] which is more than 14 days before the date of this demand.

The Contractor has not taken steps which we consider adequate to remedy the breaches.

[INSERT DATE OR PERIOD] has not been reached.

We hereby demand from you the sum of £[ ] under your Bond. Please make payment by your cheque in sterling payable to [*insert name of Client*].

Yours faithfully

On behalf of [*insert name of Client*]

Annex 2

Form of letter from the Client to the Contractor

To be sent by first class recorded delivery post

Dear Sirs

TfL Road Tunnels Apparatus and Pump Station Management Contract between [Client] and [Contractor] dated [ ] ("the Contract")

As explained in [previous letters to you/our letter dated ..... to you] you are in breach of your obligations under the Contract and you have neither remedied nor implemented sufficient steps to remedy, those breaches.

This letter therefore notifies you that unless within 14 days from the date of this letter you take steps which we consider adequate to remedy the breaches we shall be entitled without further notice to you to call for payment under the Bond given on your behalf by [*name of Bank*] dated [DATE].

Yours faithfully

On behalf of [*insert name of Client*]

Annex 3

Alternative form of demand from the Client to [the Bank]

Dear Sirs

TfL Road Tunnels Apparatus and Pump Station Management Contract between [Client] and [Contractor] dated [ ] ("the Contract")

We refer to the Bond given by you to us dated [ ].

An event has occurred of a type described in Clause 90 of the Contract which entitles us (inter alia) to terminate the Contract in accordance with that Clause.

[INSERT DATE OR PERIOD] has not been reached.

We hereby demand payment from you of the sum of £[ ] under your Bond. Please make payment by your cheque in sterling payable to [*insert name of Client*].

Yours faithfully

On behalf of [*insert name of Client*]