

“Enhanced Capital Allowances Scheme” means the government’s enhanced capital allowance scheme for energy-efficient and water-efficient technologies as updated and amended from time to time.

“Energy Technology Criteria List” means the government-managed list of technology classes and criteria for energy-efficient plant and machinery, as updated and amended from time to time, which forms part of the government’s Enhanced Capital Allowances Scheme.

“Energy Technology Product List” means the government-managed list of energy-efficient plant and machinery, as updated and amended from time to time, which forms part of the government’s Enhanced Capital Allowances Scheme.

“Water Technology Criteria List” means the government-managed list of technology classes and criteria for water-efficient plant and machinery, as updated and amended from time to time, which forms part of the government’s Enhanced Capital Allowances Scheme.

“Water Technology Product List” means the government-managed list of water-efficient plant and machinery, as updated and amended from time to time, which forms part of the government’s Enhanced Capital Allowances Scheme.

WI 1155.1 Energy use and operational reduction

- (1) Where the *Contractor* is responsible for the design;
 - The *Contractor* conducts an Energy Demand Assessment that includes an:
 - a) identification of all significant sources of consumption
 - b) estimate of the annual energy costs associated with design decisions
 - c) annual reduction in energy use will be specified and savings calculated
 - The *Contractor* assesses the feasibility of renewable energy options as per current Mayor’s London Plan and energy-efficient options as per the Enhanced Capital Allowances Scheme
- (2) In Providing the Works, where any Plant and Materials are of a technology class listed in the Energy Technology Criteria List, the *Contractor* provides Plant and Materials which are listed on the Energy Technology Product List, meet the criteria in the Energy Technology Criteria List, are eligible for a Certificate of Energy Efficiency, or equivalent.

Where Plant and Materials are listed on the Energy Technology Product List, meet the criteria in the Energy Technology Criteria List or are eligible for a Certificate of Energy Efficiency, the *Contractor* provides to the *Employer* the information required by WI1500 (Accounts and Records).

WI 1155.2 Reduction in water main consumption

- (1) Where the *Contractor* is responsible for the design;
 - The *Contractor* estimates the annual water consumption of the proposed asset and proposes the use of water efficient fittings and technology, as standard, in order to reduce water consumption..
 - As part of water consumption estimates, the *Contractor* identifies all significant sources of consumption, including:
 - a) water use by cooling, heating and hot water systems
 - b) bathroom facilities
 - c) catering facilities and any other processes that require water use
 - The *Contractor* assesses the feasibility of water-efficient options as per current Mayor’s London Plan and the Enhanced Capital Allowances

Scheme.

- (2) In Providing the Works, where any Plant and Materials are of a technology class listed in the Water Technology Criteria List, the *Contractor* provides Plant and Materials which are listed on the Water Technology Product List, meet the criteria in the Water Technology Criteria List, are eligible for a Certificate of Environmental Benefit, or equivalent.

Where Plant and Materials are listed on the Water Technology Product List, meet the criteria in the Water Technology Criteria List or are eligible for a Certificate of Environmental Benefit, the *Contractor* provides to the *Employer* the information required by WI 1500 (Accounts and Records).

WI 1155.4 Control of Vehicle Emissions

- (1) All *Contractor* and Subcontractor vehicles are procured or leased in accordance with the following principles:

- Consider CO₂, air quality and noise impacts as part of the decision making process when procuring and leasing vehicles.
- Adopt a technology neutral approach in the procurement and leasing of vehicles.

- (2) All vehicles used for this Contract meet or exceed the following CO₂ limits and European emission standards (Euro Standards) at the commencement of the Contract:

- Cars - maximum certified CO₂ emissions of 105 g/km and a minimum of Euro V emission standards
- Vans equal to or less than 1205 kg kerb weight – maximum certified CO₂ emissions of 115 g/km CO₂ and a minimum of Euro V emission standards
- Vans between 1205 and 1660 kg kerb weight – maximum certified CO₂ emissions of 155 g/km CO₂ and a minimum of Euro V emission standards
- Vans greater than 1660 kg kerb weight – maximum certified CO₂ emissions of 215 g/km CO₂ and a minimum of Euro V emission standards.
- Heavy duty vehicles greater than 3500 kg kerb weight – Euro V emission standards.

- (3) Non-road Mobile Machinery (NRMM)

All *Contractor's* non-road mobile machinery (NRMM) meet or exceed the following applicable emission standards (based on the following engine emission standards set in EU Directive 97/68/EC (as amended)) at the commencement of the contract:

- NRMM of net power between 19 and 36 kW – Stage IIIA
- NRMM of net power between 37 and 55 kW – Stage IIIA
- NRMM of net power between 56 and 560 kW – Stage IIIB

In addition, all *Contractor's* NRMM must (where applicable) meet or exceed the following more stringent requirements of paragraphs 7.6 and 7.7 of the “*The control of dust and emissions during construction and demolition – Supplementary Planning Guidance (SPG) Greater London Company (2014)*” (<https://nrmm.london/sites/default/files/upload-docs/DustandEmissionsSPG8July2014.pdf>):

- NRMM of net power between 37 kW and 560 kW used on any site within the Central Activity Zone or Canary Whart – Stage IIB

From 1 September 2020, all *Contractor's* NRMM must meet or exceed the following emissions standards:

- NRMM used on any site within Greater London – Stage IIB

- NRMM used on any site within the Central Activity Zone or Canary Wharf – Stage IV

(4) Failure to meet applicable emission standards

All *Contractor's* NRMM must meet or exceed the applicable emission standards (as detailed above) unless it can be demonstrated that the machinery is not available or that a comprehensive retrofit to meet PM₁₀ and NO_x emission standards is not feasible. In this situation, the *Contractor* must make all reasonable efforts to use the least polluting equipment available (i.e. the next best applicable emission standard as set out in the relevant stage of EU Directive 97/68/EC (as amended) including retrofitting technologies to reduce particulate emissions).

Where any *Contractor's* NRMM cannot meet the applicable emissions requirements, the *Contractor* must:

- comply with the Greater London Company's NRMM Exemption policy (which can be found at nrmm.london) for NRMM of net power of 37 and 560 kW, or
- seek exemption from the *Project Manager* for NRMM of net power between 19 and 36 kW.

(5) Requirements for all Contractor's NRMM

The Contractor must also:

- Maintain an inventory of all on-site NRMM using the GLA's **nrmm.london** database.
- Regularly service all machinery and keep records on site.

- (6) If any vehicles used on this contract are due for replacement during the period of the contract, the *Contractor* ensures that the replacement vehicle/engine meets or exceeds the European emission standards and CO₂ limits (if applicable) for that year in which it is introduced into the fleet. Standards and the years in which they apply are shown in the tables below. If vehicles/engines to meet the requirements are not available by the specified deadline, then the *Employer* will consider acceptance of an alternative standard proposed by the *Contractor* until such time as those vehicles become available.

European Emission Standards for Road Vehicles

Vehicle	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Cars	Euro 5	Euro 5	Euro 6				
Vans ≤ 1205kg kerb weight	Euro 5	Euro 5	Euro 6				
Vans 1205-1660kg kerb weight	Euro 5	Euro 5	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6
Vans >1660kg kerb weight	Euro 5	Euro 5	Euro 5	Euro 6	Euro 6	Euro 6	Euro 6
Heavy Duty Vehicles >3500kg	Euro 6						

Certified CO₂ Limits (g/km)

Vehicle	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Cars	100	95	90	85	80	75	70
Vans ≤ 1205kg kerb weight	110	105	100	95	90	85	80
Vans 1205-1660kg kerb weight	150	145	140	135	130	125	120
Vans >1660kg kerb weight	210	205	200	195	190	185	180

Source: Relevant EU Directives as presented on www.dieselnet.com

- (7) In line with Mayoral environmental strategies and the *Employer's* commitments to reduce carbon dioxide emissions, the *Contractor* is encouraged to include zero or ultra low carbon vehicles in their fleet such as electric or plug-in hybrid or biomethane vehicles where possible.
- (8) Any necessary recharging/refuelling infrastructure required for low carbon vehicles to be supplied by the *Contractor on Employer premises* would only be permitted subject to the *Employer's* written acceptance and by separate agreement on maintenance, installation and running costs. Where the *Contractor* operates such vehicles, operating experience and data will be shared with the *Employer* on request.
- (9) The *Employer* expects the *Contractor* to select vehicles which meet the highest environmental criteria and will be eligible for a 100% discount from the Congestion Charge. The *Employer* does not accept any claims for reimbursement of Congestion Charges.
- (10) All vehicles used under this contract are operated in such a way to ensure that environmental impacts are reduced as far as reasonably practicable.
- (11) The *Contractor*;
 - Ensures vehicles are regularly serviced
 - Ensures all faults or problems are repaired/addressed as soon as practicable
 Monitors and records vehicle fuel and mileage
- (12) The *Contractor* reports the following information on a quarterly basis. The *Employer* reserves the right to include additional monitoring requirements throughout the Contract period if required.
 - Vehicle make and model
 - Vehicle servicing frequency
 - Vehicle fuel (fuel type and litres used)
 - Vehicle mileage
- (13) All driving staff undertake a fuel efficient driver training course within three months of the *starting date*. This also applies to all new driving staff employed throughout the duration of the contract. The training course consists of theoretical training and practical implementation skills and is a minimum duration of one hour.

The *Contractor* ensures that Subcontractors also undertake fuel efficient driver training. The *Contractor* provides the driver training records to the *Employer* as instructed by the *Project Manager*.

Ethical Sourcing

- 1.1 The Contractor will work with the TfL to identify and mitigate the risk of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain.
- 1.2 The Contractor will, within 90 days of the commencement date, produce a Modern Slavery in the Supply Chain Due Diligence Report identifying the main risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain, highlighting the main products and countries involved and the steps to be taken to mitigate the risks in the short, medium and long term.
- 1.3 The Contractor will update the Modern Slavery in the Supply Chain Due Diligence Report annually for the duration of the contract. More regular updates will be provided when risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain are assessed as imminent either by the Contractor or the Company.
- 1.4 The Contractor agrees that TfL will assess the Modern Slavery Due Diligence Report and the annual progress to prevent and mitigate risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain.
- 1.5 The Contractor will share its Modern Slavery and Human Trafficking Statement, if required by the Modern Slavery Act to produce such statement, with the Company. If not required to report, the Company encourages the supplier to voluntarily produce a Modern Slavery and share it with.

SCHEDULE 17
PROJECT PLAN (INDICATIVE)

SCHEDULE 18

DESIGN DEVELOPMENT AND APPROVALS

1. The Contractor is to prepare a Concept Design Statement for each element of the Works and submit the same to the Company with a request for approval in principle by the Company. Following receipt of such approval, the Contractor is to proceed to develop the Detailed Design and to complete the Detailed Design and carry out the Works in accordance with the relevant approved Concept Design Statement, the Document Submissions Programme and the Programme.
2. The Contractor shall prepare a Document Submissions Programme and shall submit it to the Company with a request for approval by the Company no later than the date of award of this Contract. Following such approval, the Contractor shall submit Works Documents to the Company for approval in accordance with the approved Document Submissions Programme.
3. The Contractor shall not make any variation of or modification to the details approved by the Company under the terms of this **Schedule 18** without first obtaining the written approval of the Company.
4. Any decision of the Company to withhold confirmation, consent, grant approval or acceptance, or impose conditions under the terms of this **Schedule 18** or any direction, comment, approval or consent given by the Company or enquiry, decision or inspection made by the Company under the terms of this Schedule shall not in any way reduce or eliminate the Contractor's liability, obligations, covenants and conditions under this Contract.
5. The Parties agree that within twenty (20) Business Days of submission to the Company of the Concept Design Statement and within twenty (20) Business Days of submission to the Company of the Document Submissions Programme or any Works Documents, (or in each case such other period as shall be agreed between the Contractor and the Company), together, in each case, with a request for approval pursuant to this paragraph 6, the Company shall:
 - 5.1 confirm no objection to the information or documentation submitted; or
 - 5.2 specify (with reasons) any objections and may (but shall not be obliged to) suggest what changes might be required so that the Company can approve the information or documentation submitted in which event the Contractor shall revise and resubmit the information or documentation and the provisions of this paragraph 6 shall apply to the revised information or documentation, save that the period for responding to the submission shall be ten (10) Business Days following re-submission; or
 - 5.3 request further information (which may entail a meeting) relating to the relevant submission; or
 - 5.4 request additional time to consider the submission (including (but not limited to) where the consent or input of any third party is required in relation to such submission).
6. Where a submission is made by on or behalf of the Contractor in accordance with paragraph 5 above which contains substantial omissions such that it is not possible properly to evaluate the content of the submission the Company shall alert the Contractor to that fact and on the next re-submission of that submission the deadline for response by the Company shall be twenty (20) Business Days, not ten (10) Business Days.

SCHEDULE 19
SECURITY DOCUMENTATION

Form of Parent Company Guarantee

(Letterhead of Parent Company)

To: London Bus Services Limited, 55 Broadway, London, SW1H 0BD

Date:

Dear Sir/Madam

We, [*insert name of Guarantor*] ("**the Guarantor**"), understand that you have agreed to enter into Contract No [*insert contract number*] ("**the Contractor**") with [*insert name of Contractor*] ("**the Contractor**") in respect of [the provision of a Hydrogen Refuelling Facility for the supply of hydrogen to buses owned by or leased to the Company and other members of the TfL Group], on the condition that the obligations of the Contractor under the Contract be guaranteed by a Guarantor.

We are [*recite the relationship of the Guarantor to the Contractor*], and we warrant to you that this description of our relationship with/to the Contractor is true and accurate in all material respects.

WE HEREBY AGREE AND UNDERTAKE with you as follows:-

- (a) We unconditionally guarantee on demand:
- (i) the proper, complete and punctual performance by the Contractor of any and all its obligations, undertakings and responsibilities under the Contract (as extended, modified, varied or replaced from time to time) and we shall forthwith make good any default thereunder on the part of the Contractor; and
 - (ii) the due and punctual payment by the Contractor of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable to you under or arising out of the Contract (as extended, modified, varied or replaced from time to time) in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Contractor,

when and as the same shall become due for performance or payment (as the case may be).

Without prejudice to the generality of this clause, we expressly confirm that we intend that the guarantee in this clause will extend from time to time to any amendment, variation, novation, supplement, increase, extension or addition to, restatement (however fundamental and whether or not more onerous) or replacement of this Contract.

- (b) As a separate and primary obligation we unconditionally guarantee to you that in the case of default by the Contractor in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in paragraph (a) above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Contractor were the primary obligor. Any payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.
- (c) This Guarantee shall be a continuing security and shall remain in full force and effect until all obligations to be performed or observed by the Contractor under or arising out of the Contract have been duly and completely performed and observed and the Contractor shall have ceased to be under any actual or contingent liability to you thereunder.
- (d) Any demand or other notice made by you under this Guarantee shall be duly made if sent by first class recorded delivery post to us.
- (e) You shall be entitled to enforce this Guarantee without first notifying the Contractor of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Contractor or any other person or taking any action to

enforce any other security, bond or guarantee held by you or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Contractor or any person.

- (f) If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to you, such sum shall still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.

PROVIDED THAT:

1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Contract if we had been named as the Contractor in the Contract.
2. Our obligations hereunder are those of primary obligor and 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 increase in the Contractor's obligations under the Contract or any alteration in the extent or nature or sequence or method or timing of the works and/or services to be carried out under the Contract) or any novation of the Contract (in whole or in part); or
 - (b) 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
 - (c) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Contractor under the Contract; or
 - (d) the release or waiver of any such bond, security or guarantee referred to in paragraph 2(c) above; or
 - (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Contractor; or
 - (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Contractor; or
 - (g) any legal limitation, disability or incapacity relating to the Contractor or discharge by operation of law or any change in the constitution, name or style of the Contractor or any other person (whether or not known to you); or
 - (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Contractor under the Contract; or
 - (i) the termination or partial termination of the Contract or the cessation of any works and/or services for any reason or the making of any variation to the works and/or services in accordance with the Contract; or
 - (j) any claim or enforcement of payment from the Contractor or any other person;
 - (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.
3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Contractor in respect of any payment made by or sum recovered from

us pursuant to or in connection with this Guarantee or prove in any liquidation of the Contractor in competition with you for any sums or liabilities owing or incurred to us by the Contractor in respect of any such payment by or recovery from us or take or hold any security from the Contractor in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you.

4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provision of this Guarantee.
5. This Guarantee is irrevocable.
6. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.

[For non-UK resident Guarantors only:

7. For the purposes of this Guarantee 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.]
8. You will be entitled to assign the benefit of this Guarantee in whole or in part but we may not assign the benefit and/or delegate the burden of this Guarantee 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.
9. If any provision (in whole or in part) of this Guarantee 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 Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

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

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

OR

The common seal of) _____
[*Parent Company*]) Director
was affixed in the presence of:)
Director/Secretary

To:

London Bus Services Limited, 55 Broadway, London, SW1H 0BD

Oslo, [date]
#[●]
Responsible partner:
Geir Evenshaug

LEGAL OPINION – PARENT COMPANY GUARANTEE

1. INTRODUCTION

We, Advokatfirmaet Schjødt AS, have acted as legal advisers to NEL ASA, a Norwegian public limited company with organisation number 979 938 799 (the "**Guarantor**") on matters of Norwegian law in connection with the issue of a Deed of Guarantee dated [] 2019 and made between the Guarantor and London Bus Services Limited (the "**Company**"). Terms defined in or for the purpose of the Guarantee have the same meanings in this opinion.

2. DOCUMENTATION

2.1 We have examined photocopies of the following documents (the documents listed in this Clause 2.1 are hereinafter jointly referred to as the "**Documents**");

- (a) a copy of the executed Guarantee;
- (b) a Norwegian company certificate ("*firmaattest*") for the Guarantor dated 10 April 2019;
- (c) articles of association ("*vedtekter*") for the Guarantor dated 1 April 2019; and
- (d) a copy of the minutes of a meeting of the board of directors of the Guarantor held on [●];

the documents referred to in (b) to (d), inclusive, jointly referred to as the "**Corporate Documents**".

3. ASSUMPTIONS

The opinions set out in this letter relate only to Norwegian law as in force at the date hereof and are based on the following assumptions:

- 3.1 the genuineness of all signatures, stamps and seals, the completeness and conformity to the originals of all documents supplied to us as certified, photostatic, e-mailed or faxed copies and the authenticity of the originals of such documents;
- 3.2 that the Contract:
- (a) is duly authorised by and duly and validly executed by all parties to the Contract; and
 - (b) constitute legal, valid, binding and enforceable rights and obligations of the parties thereto and that the performance thereof is within the capacity and power of such parties.
- 3.3 due compliance with all matters (including, without limitation, the obtaining of consents, authorisations and approvals and the making of filings, recordings, notices and registrations) required in connection with the Documents in jurisdictions other than Norway and that such compliance remains in full force and effect and will continue to be effective where required for the legality, validity and enforceability under any laws (other than Norwegian law) of the Documents;
- 3.4 that the guarantee contained in the Guarantee may be reasonably be regarded as being in the financial interest of the Guarantor and the Guarantor's group of companies;
- 3.5 that the Documents are and remain up-to-date;
- 3.6 the correct procedure was carried out for the meetings referred to in Clause 2.1 above, all relevant interests of directors were declared, the resolutions were duly passed at the relevant meeting and the resolutions have not been amended or rescinded and are in full force and effect at the date hereof;
- 3.7 the absence of any other agreements or arrangements between any of the parties to the Guarantee or between any of the parties to the Guarantee and any third party which modify or supersede any of the terms of the Guarantee;
- 3.8 that there is nothing under any law or regulation (other than the laws of Norway) which would or might affect the opinions expressed below;
- 3.9 that all facts stated in each Document were correct when stated and continue to be correct and that all facts which can be inferred from the face of each Document are correct; and
- 3.10 that all material facts and documents relevant to us giving this opinion have been disclosed to us.

We have taken no steps to verify these assumptions.

4. OPINION AS TO NORWEGIAN LAW

With reference to the Guarantee you have asked for our opinion as to Norwegian law as set forth below. On the basis of the Documents and the assumptions set out in paragraph 3 above, and subject to the reservations set out below; we are of the opinion that:

- 4.1 The Guarantor is incorporated in Norway as a public limited liability company and validly exists under the laws of Norway as a separate legal entity possessing the capacity to sue or be sued in its own name. To the best of our knowledge based on the online register of the Norwegian Register of Bankruptcies as of [*] Norwegian time today, no opening of bankruptcy or public debt negotiations against the Guarantor has been registered;
- 4.2 The Guarantor has the necessary power and authority, and all necessary corporate and other action (including, without limitation, approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) has been taken to enable the Guarantor to enter into the Guarantee and to perform the obligations of the Guarantor and the transactions contemplated thereby;
- 4.3 The entry into and performance of the Guarantee and the transactions contemplated thereby will not cause:
- (a) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute, regulation, agreement or otherwise) to be exceeded; or
 - (b) any law or order or constitutional document in respect of the Guarantor to be contravened.
- 4.4 The Guarantee has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Guarantee, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid, legally binding on and enforceable against the Guarantor under the laws of Norway and in the courts of Norway.
- 4.5 The signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts.
- 4.6 All authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other requirements of governmental, judicial and public bodies and authorities of or in Norway required in connection with the entry into, performance, validity and enforceability of the Guarantee and the transactions contemplated thereby have been obtained or effected and are in full force and effect.
- 4.7 The obligations of the Guarantor under the Guarantee rank at least equally and ratably (*pari passu*) in point of priority and security with any and all other unsecured obligations of the Guarantor, except for any claims with preference pursuant to law.
- 4.8 All amounts payable by the Guarantor under the Guarantee may be made free and clear of, and without deduction for, or on account of, any taxes imposed, assessed or levied by Norway or any authority of or in Norway.
- 4.9 There are no registration, stamp or other taxes or duties of any kind payable in Norway in connection with the Guarantor including its signature, performance or enforcement by legal proceedings, except for standard court fees with respect to any legal proceedings concerning the Guarantee.

- 4.10 The Company will not violate any law or regulation in Norway nor become liable to tax in Norway solely by reason of entering into the Guarantee or performing its obligations thereunder. It is not necessary to establish a place of business in Norway solely in order to enforce any provisions of the Guarantee.
- 4.11 The choice of English law to govern the Guarantee will be upheld as a valid choice of law in any action in respect of the Guarantee in the Norwegian courts.
- 4.12 The consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation.
- 4.13 Any judgment obtained in the courts of England against the Guarantor would be recognised and accepted by Norwegian courts without re-trial or re-examination of the merits of the case, subject to section 19-16 of the Norwegian Act on Civil Procedure concerning the implementation in Norwegian law of the 2007 Lugano convention and the terms of the convention of 12 June 1961 between the United Kingdom and Norway concerning the recognition and enforcement of judgment in civil cases, and any such judgment not violating Norwegian mandatory laws or the principle of *ordre public* in Norway..
- 4.14 Neither the Guarantor nor any of its assets enjoys any right or immunity from set-off, suit or execution in respect of its obligations under the Guarantee.

5. RESERVATIONS

The opinions set forth above are subject to the reservations set out below.

- 5.1 We express no opinion as to factual matters.
- 5.2 The principle of corporate benefit also exists in Norway and may, *inter alia*, impose a restriction on the Guarantor's ability to offer a guarantee and we express no opinion on the topic of corporate benefit to the Guarantor under the Guarantee.
- 5.3 Notwithstanding any provision to the contrary, any extension (in time, amount or otherwise) of the liability of the Guarantor pursuant to the Guarantee may be violating Norwegian mandatory laws or the principle of *ordre public* in Norway..
- 5.4 The validity and enforceability of rights and obligations under the Guarantor will be subject to any Norwegian laws from time to time in effect relating to bankruptcy, liquidation, insolvency, reorganisation, administration, moratorium or dissolution and any other laws or legal procedures affecting creditors' rights in general, and to any provision generally applicable under Norwegian law with regard to the invalidation or revision of contracts and/or unfair contract terms.
- 5.5 Enforcement may take place only in a manner authorised by Norwegian law.
- 5.6 We express no opinion on the effect, if any, of Norwegian international law on the Guarantee in case of bankruptcy in respect of the Guarantor.
- 5.7 Where a party to a document is vested with discretion or may determine a matter in its opinion, Norwegian law may require that such discretion is exercised reasonably or that such opinion is based upon reasonable grounds.

- 5.8 Any provision of a document to the effect that certifications or determinations of any party thereto will be conclusive and binding will under Norwegian law not necessarily prevent judicial enquiry into the merits of any claim by an aggrieved party.
- 5.9 The concept of trusts is not recognized in Norway, and we do not opine on the effect of any trust or similar provisions in the Guarantee.
- 5.10 Norwegian courts may refuse to enforce terms (or judgements based on terms) which are deemed incompatible with the principles of Norwegian law irrespective of such terms being contained in documents governed by laws other than those of Norway. Under Norwegian law, contract parties will in general be subject to principles of fair, reasonable and loyal dealing.
- 5.11 Norwegian courts may award judgment in currencies other than Norwegian Kroner, but the debtor is nevertheless in relation to such judgment entitled to make payment in Norwegian Kroner at the rate of exchange prevailing at the date of such payment.
- 5.12 Enforcement of rights may be or become limited by prescription, lapse of time or barred under the Norwegian Limitation Act, and claims under a document may become subject to set-off, counterclaim or other defences and we express no opinion as to whether any provision in the Guarantee:
- (a) conferring a right of set-off or similar right, or
 - (b) waiving a right of set-off or similar right,
- would be effective against an administrator, a liquidator or a creditor.
- 5.13 Where used, the term "enforceable" means that a document is of a type and form enforced by the Norwegian courts. It does not mean that each obligation will be enforced in accordance with its terms.
- 5.14 The power of a Norwegian court to order specific performance of an obligation or to order any other non-monetary remedy is discretionary and, accordingly, a Norwegian court might make an award of damages where specific performance of an obligation or any other non-monetary remedy was sought if damages were considered by the court to be an adequate remedy.
- 5.15 Norwegian courts may reject the right to take or stay proceedings in Norway if and to the extent proceedings which have led or may lead to a judgment, which is enforceable in Norway, have already been commenced in, or are pending before, another court of competent jurisdiction within or outside Norway.
- 5.16 Any provision which purportedly entitles any party to claim twice in respect of the same claim is under Norwegian law likely to be void.
- 5.17 Any provision purporting to require a party to indemnify another person against the costs or expenses of proceedings in the Norwegian courts is subject to the discretion of the court to decide whether and to what extent a party to such proceedings should be awarded costs and expenses incurred by it in connection therewith.

- 5.18 Any provision purporting that no failure or delay in exercising any rights or remedies shall operate as a waiver of such rights or remedies may not be effective under Norwegian law.
- 5.19 Any question as to whether or not any provision of any agreement or instrument which is illegal, invalid, not binding, unenforceable or void may be severed from the other provisions thereof in order to save those other provisions would be determined by a Norwegian court in its discretion.
- 5.20 Subject to certain exceptions an agreement may be varied, amended or discharged, or any provision thereof waived, by oral agreement between the parties or by a course of dealing, notwithstanding any provision to the contrary.
- 5.21 In the event of ambiguity in the express terms of a document, Norwegian courts may give effect to evidence extraneous to that document in interpreting that document and/or in establishing the parties' mutual intent of the provision(s) in dispute.
- 5.22 The appointment by a Norwegian entity of an attorney-in-fact, representative, delegate or agent pursuant to board resolutions, signed powers of attorney, contracts or otherwise will always be subject to the principle that certain matters are of such nature and/or such importance that they need to be considered and resolved by its board of directors (or, as the case may be, its shareholders in a general meeting), in which case they cannot be delegated under a power of attorney. Also, under Norwegian law, a power of attorney may be revoked or withdrawn by the grantor at any time and will not be binding on the insolvency of the party.

6. MISCELLANEOUS

- 6.1 Other than as specified in this opinion we express no opinion as to any matter, agreement or instrument. We have not been responsible for investigation or verification of statements of fact (including statements as to foreign law) or the reasonableness of any statements of opinion contained in the Guarantee.
- 6.2 This opinion is given solely in connection with the Guarantee.
- 6.3 This Legal Opinion may not be disclosed to any other person or entity than the Company, save that this letter may be disclosed without such consent:
- (a) to the extent required by any order of any court of competent jurisdiction or any competent judicial, governmental, regulatory or supervisory body;
 - (b) to the extent required by the rules of any listing authority, stock exchange or any regulatory or supervisory body with which you are legally bound to comply;
 - (c) to your affiliates and its directors, officers and employees;
 - (d) to any person to whom disclosure is required by law or court to be made in connection with any actual or potential dispute or claim; and
 - (e) to the extent required by the laws or regulations of any country with jurisdiction over your affairs;

provided that in each case,

- (i) such disclosure is made for information purposes only and not for the purposes of reliance; and
- (ii) we do not assume any duty or liability to any person to whom such disclosure is made and no such person to whom this letter is disclosed may rely on it without our prior written consent.

6.4 This opinion shall be governed by and construed in accordance with the laws of Norway. The courts of Norway shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this opinion; the venue to be Oslo.

6.5 We shall not be liable for indirect or consequential losses arising in connection with this opinion or any advice given by us in connection with this opinion or the matter or assignment to which this opinion relates. Our liability, if any, in respect of this opinion or related advice as aforesaid shall always be limited to documented and direct financial loss and shall be limited to the aggregated amount of GBP 2,200,000.

6.6 This opinion is given by Advokatfirmaet Schjødt AS. Neither the person executing this opinion on behalf of Advokatfirmaet Schjødt AS nor any director, officer, employee or other partner of Advokatfirmaet Schjødt AS shall have personal liability in respect of this opinion or any related advice as aforesaid .

Yours faithfully
ADVOKATFIRMAET SCHJØDT AS

.....
Geir Evenshaug
Partner

Form of Performance Bond

Performance Bond

between

[CONTRACTOR]

and

[SURETY]

and

London Bus Services Limited

relating to TfL_scp_001600

Hydrogen Refuelling Station

PARTIES:

- (1) Nel Hydrogen A/S, a company registered in Denmark Number 26933048 whose registered office is at Vejlevej 5, 7400 Herning ("the Contractor"); and
- (2) [SURETY] [(registered number [no.]) whose registered office is] [of] [Address] ("the Surety"); and
- (3) **London Bus Services Limited** of 55 Broadway, London, United Kingdom, SW1H 0BD ("the Company", which expression shall include its successors and assigns).

BACKGROUND:

- (A) By a contract ("the Contract") entered into between the Company and the Contractor, particulars of which are set out in Schedule 1 to the Bond ("the Schedule"), the Contractor has agreed with the Company to execute works ("the Works") upon and subject to the terms and conditions set out within the Contract.
- (B) The Surety has agreed with the Company at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Bond subject to the limitation set out in clause 2.

IT IS AGREED AS FOLLOWS:

1. GUARANTEE

The Surety guarantees to the Company that in the event of a breach of the Contract (which for the avoidance of doubt, but without limitation, will include the occurrence of any of the events of insolvency listed in clause 91 of the Contract, ("an Insolvency Event")) the Surety shall subject to the provisions of this Bond satisfy and discharge the damages sustained or debts incurred by the Company as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract taking into account all sums due or to become due to the Contractor.

2. BOND AMOUNT

The maximum aggregate liability of the Surety and the Contractor under this Bond shall not exceed the sum set out in the Schedule ("the Amount") but subject to such limitation and to clause 4 the liability of the Surety shall be co-extensive with the liability of the Contractor under the Contract and for such purposes the terms and conditions of the Contract shall be deemed to be incorporated.

3. NO DISCHARGE OF LIABILITY

3.1 The Surety shall not be discharged or released by:

- 3.1.1 any fact, event or rule of law which, but for this clause 3 might operate to release in whole or in part the Surety from its obligations under this Bond including (without limitation) any alteration, variation or waiver of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Company under or in respect of the Contract or the Works on the part of the Company shall in any way release reduce or affect the liability of the Surety under this Bond;

3.1.2 any fact event or rule of law which results in any total or partial invalidity, illegality or unenforceability of the Contract which the Contractor could have avoided by the use of its reasonable endeavours or could by using its reasonable endeavours have drawn to the attention of the Company prior to the date of the Contract (in which case for the purposes of this Bond the Contract will be deemed valid, legal and enforceable as if such reasonable endeavours had been exercised and appropriate steps been taken to avoid or mitigate the invalidity, illegality or unenforceability);
or

3.3 a legal limitation, disability or incapacity of the Contractor.

4. **EXPIRY**

Whether or not this Bond shall be returned to the Surety the obligations of the Surety under this Bond shall be released and discharged absolutely upon the Expiry Date (as defined in the Schedule) save in respect of any breach of the Contract or an Insolvency Event which has occurred and in respect of which a claim in writing has been made upon the Surety before the Expiry Date.

5. **CONTRACTOR'S UNDERTAKING**

The Contractor, having requested the execution of this Bond by the Surety, undertakes to the Surety (without limitation of any other rights and remedies of the Company or the Surety against the Contractor) to perform and discharge the obligations on its part set out in the Contract. Furthermore the Contractor undertakes to the Company that he will not seek to recover from the Company a sum due or to become due to the Contractor which has been taken into account when assessing sums due to the Company under this Bond.

6. THIRD PARTY RIGHTS

- 6.1 Save that any member of the Tfl Group (as defined in the Contract) has the right to enforce the terms of this Bond, the parties to this Bond do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 6.2 Notwithstanding clause 6.1, the parties to this Bond are entitled to vary or rescind this Bond without the consent of any or all members of the Tfl Group.

7.ASSIGNMENT

The benefit of this Bond may be assigned by the Company at any time without the prior written consent of the Surety or the Contractor subject to the Company giving prior written notice of such assignment to the Contractor and the Surety.

8.JURISDICTION

The Bond shall be governed by and construed in accordance with the laws of England and Wales and be in all respects subject to the non-exclusive jurisdiction of the courts of England and Wales.

Schedule 1 to the Bond

The Contract: A Deed dated [DATE] between the Company and the Contractor for TfL_scp_001600 Hydrogen Refuelling Station.

The Amount: In respect of any breach of the Contract or an Insolvency Event which has occurred and in respect of which a claim in writing has been made upon the Surety the sum of £33,000 (thirty three thousand pounds) in each case exclusive of interest, legal fees and expenses.

The Expiry Date: The date of issue of the Completion Certificate.

Executed as a deed by affixing the common seal of

London Bus Services Limited

in the presence of:

Authorised signatory.....

Signed for and on behalf of

NEL HYDROGEN A/S

.....

SCHEDULE 20

APPROVED FORMS OF COLLATERAL WARRANTY

Form of Contractor Collateral Warranty

BETWEEN:

- (1) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Contractor");
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] ("the Beneficiary" which expression includes its permitted successors in title and assigns); and
- (3) [EMPLOYER] of [Address] ("the Employer").

BACKGROUND:

- (A) By a contract dated [date] ("the Contract") [the Employer] [EMPLOYER NAME] has appointed the Contractor for the provision of works as defined in the Contract ("the Works").
- (B) [The Beneficiary is [the/a] [purchaser][tenant][provider of finance in connection with the [purchase][lease]] of [description of part of the site] [member of the TfL Group (as defined in the Contract)]].
- (C) The Contractor is obliged under the Contract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. CONSIDERATION

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

2. CONTRACTOR'S WARRANTIES

- 2.1 The Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Contract in accordance with the Contract.
- 2.2 The Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Contract imposes a higher standard in which case such higher standard will apply) in relation to the following (so far as the Contractor is responsible for them):
 - 2.2.1 the design of the Works;
 - 2.2.2 the selection of goods, materials, equipment or plant for the Works; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Works.

3. **INTELLECTUAL PROPERTY RIGHTS**

- 3.1 Subject to the following provisions of this Deed, all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Contractor in the course of performing its obligations under the Contract (“the Documents”) will remain vested in the Employer. For the purposes of this clause 3, “Intellectual Property” shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
- 3.2 To the extent that it is able to do so, the Employer grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence³ to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 3.3 The Employer will not be liable for any use the Beneficiary may make of the Documents.

4. **PROFESSIONAL INDEMNITY INSURANCE**

- 4.1 The Contractor by this Deed covenants with the Beneficiary that it has at its own cost taken out and will maintain professional indemnity insurance with reputable insurers carrying on business in the European Union with a limit of indemnity of not less than £[figures] ([words] million pounds) for any one occurrence or series of occurrences arising out of any one event, in relation to the Works provided always that:
- 4.1.1 such insurance shall be in place from the date of commencement of the Works until no less than 12 years after the completion of the Works; and
- 4.1.2 if such insurance is not available to the Contractor (and/or design and build contractors engaged in works of a similar, size nature and complexity as the Works) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Contractor), the Contractor and the Beneficiary will meet

³ The Intellectual Property licence will need to be considered if the drafting of clause 22 (Intellectual Property) of the building contract is amended. The current drafting assumes that Intellectual Property rights are vested in the Employer.

and the Contractor will outline the steps he intends to take to manage such risks. If the steps proposed by the Contractor are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk.

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

5. NOTICES

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

6. ASSIGNMENT

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

7. OTHER RIGHTS AND REMEDIES

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

8. NO APPROVAL

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

CLAUSE 9 TO BE USED IN FINANCIER WARRANTY ONLY

9. **STEP-IN RIGHTS**

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

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

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

9.1.3 if:

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

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

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

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

9.3 The Contractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Beneficiary to the exclusion of the Employer in respect of the Works upon the terms and conditions of the Contract. The Beneficiary shall then

become the employer under the Contract to the exclusion of the Employer and the Contractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Employer under the Contract.

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

10. **LIMITATION**

- 10.1 The Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Beneficiary had been a party to the Contract as joint employer provided that the Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Contractor from the Employer.
- 10.2 The Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer.
- 10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being twelve years after the date of completion of the Works.

10.4 The Contractor shall not by reason of this Deed have any liability to the Beneficiary for delay in completion of the Works or any part of them.

11. GOVERNING LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

12. THIRD PARTY RIGHTS

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

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

Form of Consultant Collateral Warranty

Consultant Warranty

between

[CONSULTANT]

and

[BENEFICIARY]

and

[EMPLOYER]

relating to [PROJECT]

THIS DEED is made on

201[]

BETWEEN:

- (1) [CONSULTANT] [(registered number [no.]) whose registered office is] [of] [Address] (“the Consultant”);
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] (“the Beneficiary” which expression includes its permitted successors in title and assigns); and
- (3) [EMPLOYER] of [Address] (“the Employer”).

BACKGROUND:

- (A) The Employer [has appointed] [intends to appoint] the contractor under a contract [dated [date]] (“the Contract”) for the provision of works [as defined][to be defined] in the Contract (“the Works”).
- (B) By an appointment dated [date] (“the Appointment”) [the Contractor] [CONTRACTOR NAME] has appointed the Consultant for the provision of services in relation to the Works (“the Services”).
- (B) [The Beneficiary is [the/a] [purchaser][tenant][provider of finance in connection with the [purchase][lease]] of [description of part of the site] [member of the TfL Group (as defined in the Appointment)]].
- (C) The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. CONSIDERATION

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

2. CONSULTANT’S WARRANTIES

- 2.1 The Consultant warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Appointment in accordance with the Appointment.
- 2.2 The Consultant further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Appointment imposes a higher standard in which case such higher standard will apply) in relation to the following (so far as the Consultant is responsible for them):

2.2.1 the design of the Works;

2.2.2 the selection of goods, materials, equipment or plant for the Works; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Works.

3. **INTELLECTUAL PROPERTY RIGHTS**

3.1 Subject to the following provisions of this Deed, all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Consultant in the course of performing its obligations under the Appointment (“the Documents”) will remain vested in the Employer. For the purposes of this clause 3, “Intellectual Property” shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.

3.2 To the extent that it is able to do so, the Employer grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence⁴ to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

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

4. **PROFESSIONAL INDEMNITY INSURANCE**

4.1 The Consultant by this Deed covenants with the Beneficiary that it has at its own cost taken out and will maintain professional indemnity insurance with reputable insurers carrying on business in the European Union with a limit of indemnity of not less than £[figures] ([words] million pounds) for any one occurrence or series of occurrences arising out of any one event, in relation to the Works provided always that:

4.1.3 such insurance shall be in place from the date of commencement of the Services until no less than 12 years after the completion of the Works; and

4.1.4 if such insurance is not available to the Consultant (and/or other consultants providing services on projects of a similar, size nature and

⁴ The Intellectual Property licence will need to be considered if the drafting of the clause dealing with intellectual property in the Appointment is amended. The current drafting assumes that Intellectual Property rights are vested in the Employer.

complexity as the Works) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Consultant), the Consultant and the Beneficiary will meet and the Consultant will outline the steps he intends to take to manage such risks. If the steps proposed by the Consultant are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk.

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

5. **NOTICES**

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

6. **ASSIGNMENT**

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

7. **OTHER RIGHTS AND REMEDIES**

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

8. **NO APPROVAL**

The Consultant's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or

other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

CLAUSE 9 TO BE USED IN FINANCIER WARRANTY ONLY

9. STEP-IN RIGHTS

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

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

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

9.1.3 if:

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

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

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

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Consultant the Beneficiary will not be under any obligation to the Consultant nor will the Consultant have any

claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Consultant under either clause 9.1.1 or clause 9.3.

- 9.3 The Consultant further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Beneficiary to the exclusion of the Employer in respect of the Works upon the terms and conditions of the Appointment. The Beneficiary shall then become the employer under the Appointment to the exclusion of the Employer and the Consultant will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Employer under the Appointment.
- 9.4 [Where the Consultant has given rights in relation to the Appointment similar to those contained in this clause 9 to any other person then if both the Beneficiary and any such other person serve notice under clause 9.1.1 or clause 9.3 or its equivalent the notice served by the Beneficiary shall [prevail] [not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Employer acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant by the Beneficiary under clause 9.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 9.6 The Beneficiary may by written notice to the Consultant appoint another person to exercise its rights under this clause 9 subject to the Beneficiary remaining liable to the Consultant as guarantor for its appointee in respect of its obligations under this Deed.
- 9.7 Notwithstanding the other provisions of this clause 9, if the Appointment has for any reason been terminated prior to receipt by the Consultant of a notice from the Beneficiary served under clause 9.1.1 or clause 9.1.3, the Consultant shall on receipt of any such notice from the Beneficiary enter into a new contract with the Beneficiary on the same terms as the Appointment to continue the Works in all respects as if the Appointment had been transferred to the Beneficiary in accordance with the provisions of this clause 9.

10. **LIMITATION**

- 10.1 The Consultant has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Beneficiary had been a party to the Appointment as joint employer provided that the Consultant shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Consultant from the Employer.
- 10.2 The Consultant shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Appointment and to raise equivalent rights in defence of liability (but excluding set-offs and

counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer.

10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being twelve years after the date of completion of the Works.

10.4 The Consultant shall not by reason of this Deed have any liability to the Beneficiary for delay in completion of the Works or any part of them.

11. GOVERNING LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

12. THIRD PARTY RIGHTS

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

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

Form of Sub-Contractor Collateral Warranty

Sub-Contractor Warranty

between

[SUB-CONTRACTOR]

and

[EMPLOYER/FINANCIER OR OTHER BENEFICIARY]

and

[CONTRACTOR]

relating to [PROJECT]

BETWEEN:

- (1) [SUB-CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Sub-Contractor");
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] ("the Beneficiary" which expression includes its permitted successors in title and assigns);
- (3) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Contractor");⁵ and
- (4) [EMPLOYER] [(registered number [no.]) whose registered office is] [of] [Address]⁶.

BACKGROUND:

- (A) By a contract dated [date] ("the Main Contract") [EMPLOYER] ("the Employer") has appointed the Contractor for the provision of works as defined in the Main Contract (the "Main Works").
- (B) The Sub-Contractor has been appointed by the Contractor under a sub-contract dated [date] ("the Sub-Contract") to carry out and complete the part of the Main Works specified in the Sub-Contract ("the Sub-Contract Works").
- (C) [The Beneficiary is [the/a] [Employer] [Identify Other Beneficiary] [provider of finance in connection with the [Insert] of [description of part of the site] [purchaser][tenant]].
- (D) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. CONSIDERATION

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

2. SUB-CONTRACTOR'S WARRANTIES

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

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

⁵ Only required where step-in rights are given.

⁶ The Employer should be a party to this deed for the purposes of clause 3 (Intellectual Property Rights). Include this paragraph (4) where the Employer is not the Beneficiary under this warranty.

- 2.2.1 the design of the Sub-Contract Works;
- 2.2.2 the selection of goods, materials, equipment or plant for the Sub-Contract Works; and
- 2.2.3 the satisfaction of any performance requirement or specification of or for the Sub-Contract Works.

3. **INTELLECTUAL PROPERTY RIGHTS**

- 3.1 The parties acknowledge that all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Sub-Contractor in the course of performing its obligations under the Sub-Contract ("the Documents") will remain vested in the Employer. For the purposes of this clause 3, "Intellectual Property" shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
- 3.2 [To the extent that it is able to do so, the Employer grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence⁷ to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.]⁸
- 3.3 The Employer will not be liable for any use the Beneficiary may make of the Documents for any purpose other than the purposes set out in clause 3.2.

4. **INSURANCE**

- 4.1 The Sub-Contractor by this Deed covenants with the Beneficiary that it has effected [professional indemnity] insurance with reputable insurers carrying on business in the European Union with a limit of indemnity of not less than £[figures] ([words] million pounds) for any one occurrence or series of occurrences arising out of any one event, in relation to the Sub-Contract Works provided always that:
 - 4.1.1 such insurance shall be in place from the date of commencement of the Sub-Contract Works until no less than 12 years after expiry of the Term or

⁷ The Intellectual Property licence will need to be considered if the drafting of clause 22 (Intellectual Property) of the building contract is amended. The current drafting assumes that Intellectual Property rights are vested in the Employer.

⁸ This clause is only required where the Beneficiary is not the Employer.

(if later) Completion of the last Scheme to be completed (in each case as defined in the Contract); and

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

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

5. **NOTICES**

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

6. **ASSIGNMENT**

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

7. **OTHER RIGHTS AND REMEDIES**

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

8. **NO APPROVAL**

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

CLAUSE 9 TO BE USED IN EMPLOYER/FINANCIER WARRANTY ONLY

9. STEP-IN RIGHTS

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

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

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

9.1.3 if:

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

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

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

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

9.3 The Sub-Contractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept

the instructions of the Beneficiary to the exclusion of the Contractor in respect of the Sub-Contract Works upon the terms and conditions of the Sub-Contract. The Beneficiary shall then become the employer under the Sub-Contract to the exclusion of the Contractor; and the Sub-Contractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Sub-Contract.

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

10. **LIMITATION**

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

10.4 The Sub-Contractor shall not by reason of this Deed have any liability to the Beneficiary for delay in completion of the Works or any part of them.

11. **PARTNERSHIP**

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

12. **GOVERNING LAW AND JURISDICTION**

This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

13. **THIRD PARTY RIGHTS**

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

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

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