



- (b) he shall treat all information obtained under, arising from or in connection with the Appointment, this Deed and the Works as confidential, and that other than for the purpose of providing the design works, it shall not disclose any information or documents concerning the Appointment to any other person; and
 - (c) he shall not, without the prior written consent of the Employer, disclose any information obtained by him concerning the Employer or the TfL Group to any other person.
- 24.2 The Employer may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the Employer.
- 24.3 Clause 24.1 does not apply to the disclosure of:
- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subconsultant to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any applicable law or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 24.4 The Subconsultant shall procure that the Connected Persons comply with the provisions of this Clause 24 and is responsible to the Employer for any act or omission of any Connected Person in breach of such obligations.
- 24.5 The Subconsultant shall notify the Employer promptly if the Subconsultant becomes aware of any breach of confidence by a Connected Person and shall give the Employer all assistance the Employer may reasonably require in connection with any proceedings the Employer may bring or other steps the Employer may take against that Connected Person or any other person for such breach of confidence.
- 24.6 The Subconsultant acknowledges that damages would not be an adequate remedy for any breach of this Clause 24 by the Subconsultant and that (without prejudice to all other remedies to which the Employer may be entitled to as a matter of law) the Employer shall be entitled to any form of equitable relief to enforce the provisions of this Clause 24.
- 24.7 At the Employer's request and in any event upon the termination or expiry of the Appointment, the Subconsultant shall promptly deliver to the Employer or destroy as the Employer may direct all documents and other materials in the possession, custody or control of the Subconsultant (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the Employer in writing, remove all electronically held confidential information, including the



purging of all disk-based confidential information and the reformatting of all disks.

- 25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).
- 25.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.
- 25.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.
- 26 Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

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

Signature of Director/Secretary
Print name of Director/Secretary

[EXECUTED AND DELIVERED AS
A DEED by
[THE CONSULTANT] acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary



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

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary



Form of Warranty from Subconsultant to Financier or other beneficiary (Schedule 11B))

THIS DEED is made on ● 201 ●

BETWEEN:

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

WHEREAS:

(A) The *Consultant* has entered into a call off contract dated ● (the "**Contract**") with ● whose registered office is at ● ("the *Employer*", which expression shall include its successors in title and assigns) for the carrying out of certain ● (the "**services**") at ● ("**the Works**").

(B) The Subconsultant has entered into a deed of appointment dated ● (the "**Appointment**") with the *Consultant* for the design of certain parts of the *services* (the "**design works**") and into a collateral warranty dated ● (the "**Employer's Warranty**") with the *Employer*.

(C) [The Beneficiary [intends to enter into] / [has entered into] an agreement to provide finance for the carrying out and completion of the *services*]. [The Beneficiary intends to enter into an agreement with the *Employer* under which it will agree that on or following Completion of the *services* it will [purchase] / [take a lease of] the whole or part of the *services*]. [The Beneficiary has an interest in the whole or part of the *services* as a developer and [intends to enter into] / [has entered into] an agreement with the *Employer* for [●]].

NOW IT IS AGREED:

1 Terms and expressions defined in the Appointment shall where the context so permits have the same meanings in this Deed. The following expressions have the meanings set out herein:



(a) "Documents" means designs, drawings, models, Model(s), Federated Model(s) (as such terms are defined in the *IMM Protocol* forming part of the Contract), plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, manuals, instructions (including without limitation operating and maintenance instructions) and any other materials provided by the Subconsultant in connection with the *design works* (whether in existence or to be made);

(b) Not used.

(c) Not used.

(d) "TfL Group" means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all its subsidiaries and their subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary;

(e) Not used.

2 The Subconsultant warrants and undertakes to the Beneficiary that;

(a) he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of his duties to the *Consultant* under the Appointment; and

(b) he has complied with and will continue to comply with the terms of the Appointment.

3

3.1 The Subconsultant warrants and undertakes to the Beneficiary that to the extent the Subconsultant either is obliged to specify or approve products or materials for use or does so specify or approve, the Subconsultant does not specify or approve any products or materials which are generally known within the construction industry to be deleterious at the time of specification or approval in the particular circumstances in which they are to be used, or those identified as potentially hazardous in or not in conformity with:

(a) the report entitled "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation), or

(b) relevant International Standards, British Standards or European Standards or Codes of Practice and general good building and engineering practice, or

(c) any publications of the Building Research Establishment related to the specification of products or materials.

3.2 If in the performance of his duties under the Appointment, the Subconsultant becomes aware that he or any person has specified, approved or used any such products or materials, the Subconsultant immediately notifies the Beneficiary in writing. This clause does not create any additional duty for the Subconsultant to inspect or check the work of others which is not required by the Appointment.



4 The Subconsultant further warrants and undertakes to the Beneficiary that:

- (a) subject to clause 2(a), the *design works* will on Completion satisfy all performance or output specifications and other requirements contained or referred to in the Appointment;
- (b) he has exercised and will continue to exercise all reasonable skill, care and diligence in the selection of goods and materials for the *design works* in so far as such goods and materials have been or will be selected by or on behalf of the Subconsultant;
- (c) the *design works* are integrated with the designs of the *Consultant* and others;
- (d) the *design works* will on Completion comply with the Statutory Requirements, all applicable law; and
- (e) the *design works* will be carried out and completed timeously in accordance with the time constraints set out in the Appointment.

5 The Subconsultant warrants and undertakes to the Beneficiary that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Appointment and the *Employer's Warranty* and that he has professional indemnity insurance with a limit of indemnity of not less than £5 million in respect of each and every claim and in the aggregate which may be made against the Subconsultant in relation to the *design works*. The Subconsultant shall maintain such professional indemnity insurance for a period of 12 years from Completion of the whole of the *services* provided that such insurance remains available at commercially reasonable rates and shall notify the Beneficiary forthwith if such insurance ceases to be available at commercially reasonable rates. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subconsultant's insurance claims record.

6 As and when reasonably requested by the Beneficiary the Subconsultant shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.

7 To the extent that the intellectual property rights in any and all Documents have not already vested in the *Employer* or the *Consultant*, the Subconsultant grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subconsultant incorporated or referred to in them for all purposes relating to the *services* including without limitation the construction, use, maintenance, repair, alteration, modification, enhancement and demolition of the Works provided always that the *Subconsultant* shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties without the prior consent of the Subconsultant.

8 The Subconsultant agrees:



(a) on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 7 and at the Beneficiary's expense to provide copies of any such material; and

(b) at the Subconsultant's expense to provide the Beneficiary with a set of all such material on Completion of the *design works*.

9 If called upon to do so by the Beneficiary, the Subconsultant shall provide the Beneficiary with such information relating to the *design works* as the Beneficiary may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subconsultant for the purposes of the *services* provided that neither the provision of such information nor any inspection of the *services* by the Beneficiary or its agents nor the approval by the Beneficiary or its agents of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subconsultant under the Appointment or the *Employer's Warranty* or relieve the Subconsultant from any liability which he has in relation to the *design works*.

10 This Deed may be assigned by the Beneficiary to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subconsultant being required and the Subconsultant shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subconsultant.

11 The Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

12 The liability of the Subconsultant under this Deed shall cease 12 years following Completion of the whole of the *services*.

13

13.1 The Subconsultant shall owe no greater obligations to the Beneficiary than he owes to the *Consultant* under the Appointment as if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer, provided that the Subconsultant shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Subconsultant from the *Consultant*.

13.2 The Subconsultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as he would have against the *Consultant* thereunder (but excluding set-offs and counterclaims) as if, in lieu of this Deed, the Beneficiary had been a party to the Appointment as joint employer.

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

15 The *Consultant* agrees that he will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.



16 Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.

17

17.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Clause 41 of the Framework Agreement which shall be deemed to be included in this Deed as if they were recited herein in full (with the necessary changes).

17.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 17.3.

17.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The law of England and Wales shall be the proper law of this Deed.

18 Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

**[EXECUTED AND DELIVERED AS
A DEED by**

LONDON BOROUGH OF HAMMERSMITH & FULHAM acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

[EXECUTED AND DELIVERED AS



A DEED by

[THE CONSULTANT] acting by:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary



ANNEX 2

SCHEDULE 14A INFORMATION MODELLING AND MANAGEMENT (IMM) PROTOCOL

This protocol is based on the Construction Industry Council Building Information Modelling Protocol (CIC/BIM Pro first edition 2013), the copyright of which belongs to the Construction Industry Council



1. DEFINITIONS

1.1 In this Protocol unless the context otherwise requires, the following words and phrases shall have the following meanings:

- 1.1.1 **Agreement** means the agreement or contract between the Employer and the Project Team Member to which this Protocol is attached.
- 1.1.2 **Employer** means the person appointing the Project Team Member pursuant to the Agreement and any successors in title of the Employer, transferee or assignee of the Employer's rights and obligations under this Protocol, subject to the terms of such assignment.
- 1.1.3 **Federated Model** means a Model consisting of connected but distinct individual Models.
- 1.1.4 **Information Management Role** means a role in connection with the Project which includes, inter alia, the establishment and management of the processes, protocols and procedures set out in the Information Requirements.
- 1.1.5 **Information Manager** means the person appointed, initially by the Employer, to perform the Information Management Role.
- 1.1.6 **Information Requirements** means the document(s) referred to at Appendix 2 of this Protocol setting out the way in which Models shall be produced, delivered and used on the Project, including any processes, protocols and procedures referred to therein.
- 1.1.7 **Level of Detail** means the level of detail required for a Model as specified in Appendix 1 attached to this Protocol.
- 1.1.8 **Model** means a digital representation of part of the physical and/or functional characteristics of the Project
- 1.1.9 **Information and Model Production and Delivery Table** means the table attached to this Protocol at Appendix 1, as updated from time to time, specifying the subject matter of each Model, the person who is to produce and deliver each Model (described in the table as "Model Originator") at each Stage and the Level of Detail for each Model at each Stage.
- 1.1.10 **Other Project Team Member** means any person having responsibilities in relation to the production, delivery and/or use of Models and appointed by the Employer in relation to the Project, excluding the Project Team Member.
- 1.1.11 **Project** means the project to which the Agreement relates.
- 1.1.12 **Project Agreement** means any agreement entered into between the Employer and an Other Project Team Member in relation to the Project.
- 1.1.13 **Project Team Member** means the person appointed by the Employer pursuant to the Agreement.
- 1.1.14 **Project Team Models** means any Models which Other Project Team Members produce and deliver as specified in the Information and Model Production and Delivery Table and any Federated Models (or any part thereof) produced and delivered by Other Project Team Members.
- 1.1.15 **Protocol** means this information modelling and management protocol including the document(s) referred to at Appendix 1 and 2.
- 1.1.16 **Specified Models** means the Model or Models which the Project Team Member is to produce and deliver as specified in the Information and Model Production and Delivery Table.
- 1.1.17 **Stage** shall have the meaning stated in Appendix 1.



2 PRIORITY OF CONTRACT DOCUMENTS

- 2.1 This Protocol forms part of the Agreement.
- 2.2 In the event of any conflict or inconsistency between a Model prepared and delivered in accordance with this Protocol and any document or information extracted from such Model, except where the Information Requirements states otherwise, the Model shall prevail.
- 2.3 The terms of this Protocol (including, without limitation, clause 5) shall not limit the Project Team Member's obligations and liabilities under clause X21 of the Agreement.

3 OBLIGATIONS OF THE EMPLOYER

- 3.1 The Employer shall:
 - 3.1.1 arrange for a protocol in substantially the same terms as this Protocol and for the obligations set out herein, or obligations which substantially reflect the requirements of this Protocol, to be incorporated into all Project Agreements; and
 - 3.1.2 save to the extent that such obligations are within the scope of the Project Team Member's obligations under any other part of the Agreement:
 - a ensure that until the end of the Project the Information Requirements and the Information and Model Production and Delivery Table are reviewed and updated at each Stage; and
 - b ensure that the appointment of the Information Manager shall be changed or renewed as necessary to ensure that there is at all times until the end of the Project a person performing the Information Management Role.

4 OBLIGATIONS OF THE PROJECT TEAM MEMBER

- 4.1 The Project Team Member shall:
 - 4.1.1 produce the Specified Models (excluding any material forming part of the same which is provided to the Project Team Member by or on behalf of the Employer) to the Level of Detail specified in the Information and Model Production and Delivery Table using all the reasonable skill care and diligence normally used by an appropriate and competent professional designer experienced in producing models similar to the Specified Models in connection with projects of a similar size, scope and complexity and at a similar location to the Project, provided that if the Agreement imposes a higher standard of care such higher standard shall apply; and
 - a deliver the Specified Models at the Level of Detail specified in the Information and Model Production and Delivery Table at the Stage specified therein and in accordance with the Information Requirements;
 - b use the Project Team Models in accordance with any procedures therefor in the Information Requirements; and
 - c comply with the Information Requirements; and
 - 4.1.2 arrange for this Protocol to be incorporated into any sub-contracts that it enters into in relation to the Project to the extent required to enable the Project Team Member to comply with this Protocol.



5 ELECTRONIC DATA EXCHANGE

- 5.1 Without prejudice to the Project Team Member's obligations under this Protocol and the Agreement, the Project Team Member does not warrant, expressly or impliedly, the integrity of any electronic data during the course of its transmission via the common data environment, provided that the Project Team Member has transmitted and verified such electronic data in accordance with the Information Requirements.
- 5.2 The Project Team Member shall have no liability to the Employer in connection with any corruption or unintended alteration of the electronic data in a Specified Model which occurs after it has been transmitted to the common data environment and verified by the Project Team Member, in each case in accordance with the Agreement, save where such corruption or alteration is a result of the Project Team Member's failure to comply with this Protocol, the Agreement or its failure to use due skill and care in the transmission or verification of the electronic data.

6 USE OF MODELS

- 6.1 Clause 107 of the Agreement shall apply.

7 TERMINATION

- 7.1 Clauses 1, 2, 3, 5, and 6 of this Protocol shall continue to apply following termination of the Project Team member's employment under the Agreement.



APPENDIX 1

Information and Model Production and Delivery Table - Template

Information & Model Production and Delivery Table - Template

[illegible]



APPENDIX 2

Information Requirements

The document(s) referred to as [the Employer's Information Requirements¹³] [and the Employer's Standard Method and Procedure] contained within the [TBC] forming part of the Agreement.¹⁴

¹³ Note: Employer Information Requirements will be produced following the guidance of PAS 1192:2-2013 and uses consistent terminology.

¹⁴ Note: we understand that the Information Requirements will be set out in the Works Information (or equivalent) for NEC3 based contracts. In other forms of contract consideration will need to be given to where the documents will be included. This entry will need to be completed to reference where the Information Requirements can be found. The Employer's Standard Method and Procedure is to be included for Rail and Underground projects only (unless otherwise specifically agreed).



SURFACE TRANSPORT

CONTRACT

FOR

Hammersmith Bridge Refurbishment, Concept Design

VOLUME 2 SCOPE

**Call Off Contract under the TfL 91313 Professional
Services Framework**

Project Reference Number: tfl_scp_001144_co019

Framework Reference Number: PSF 91313

Outline agreement no. 4600005539

Transport for London
Palestra
197 Blackfriars Road
London SE1 8NJ

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