

THIS DEED is made the      day of June 2002

**BETWEEN:**

- (1)      **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF TOWER HAMLETS** of Town Hall, Mulberry Place, 5 Clove Crescent, London E14 2BG (**"Authority"**) and which expression shall include its successors and assigns;
- (2)      **TH SCHOOLS LIMITED PARTNERSHIP**, a limited partnership established under the laws of England and Wales (**"Contractor"**) acting by its general partner Tower Hamlets Schools Limited of 7<sup>th</sup> Floor, 1 Fleet Place London EC4M 7NR, or any substitute or its permitted successors in title or assigns;
- (3)      **DRIVERS JONAS** acting through its present and future partners whose principal place of business is at 6 Grosvenor Street, London W1K 4DJ (**"Independent Assessor"**).

**WHEREAS:**

- (A)      By an agreement (the ***Project Agreement***) dated on or about the date of this Deed between the Authority and the Contractor, the Authority has awarded to the Employer under the UK Government's Private Finance Initiative a concession to design, build, refurbish, maintain, service and finance accommodation for schools and community facilities within the London Borough of Tower Hamlets.
- (B)      The terms of the Project Agreement require the Authority and the Contractor to appoint the Independent Assessor jointly.
- (C)      The Authority, the Contractor and the Independent Assessor have agreed to enter into this deed (the **"Deed"**) for the purposes of setting out the terms upon which the Independent Assessor is appointed.

IT IS AGREED as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Deed, unless the context otherwise requires, terms defined in the Project Agreement shall have the respective meanings given to them in the Project Agreement save where otherwise expressly defined herein.

1.2 The following terms shall have the meanings given to them below:

<b>“Additional Fee”</b>	Means the amounts payable to the Independent Assessor for the performance of any Additional Services as set out in Clause 6;
<b>“Additional Services”</b>	Means any services other than the IA Services which the Independent Assessor performs pursuant to Clause 6;
<b>“Counterparties”</b>	Means each of the parties numbered (1) and (2) above and <b>“Counterparty”</b> shall mean any one or more of them as the context of any particular provision of this Deed so requires;
<b>“Documents”</b>	Means all technical information (whether or not stored in computer systems), drawings, models, bills of quantities, specifications, schedules, details, plans, programmes, budgets, reports, calculations or other documents whatsoever provided or to be provided by the Independent Assessor in connection with the Project;
<b>“Employer’s Agent”</b>	means Drivers Jonas or any replacement Employer’s Agent appointed pursuant to the Asset Management Contract;

<b>“Fee”</b>	Means the amounts stated in Schedule 2 payable to the Independent Assessor in accordance with the provisions of Clause 5 in consideration of the performance of the IA Services;
<b>“IA Services”</b>	means the services to be performed by the Independent Assessor in connection with the Project as set out in Schedule 3 and the body of this Deed;
<b>“Partner”</b>	means the person named in Schedule 1 or such replacement person appointed in accordance with Clause 4.2;
<b>“Payers”</b>	means in the case of all and any payments due in respect of the IA Services, the Contractor and, in respect of any Additional Services, the Counterparty which instructed the same pursuant to Clause 6;
<b>"Project"</b>	means the design, development, construction and financing of the Works (as defined in the Project Agreement) and the management and provision of services to the Project Schools all as provided by the Project Agreement;
<b>"Project Agreement"</b>	means the agreement entered into on or about the date of this Deed (including any variation or replacement of such agreement from time to time) between the Authority and the Contractor for the provision of the Project;
<b>“Project Documents”</b>	means the Project Agreement, the Asset Management Contract, the Soft FM Contract and the Co-ordination Agreement;

<b>"Security Trustee"</b>	means Abbey National Treasury Services plc;
<b>"Statutory Requirements"</b>	means the requirements of any present or future legislation as apply from time to time in respect of the Works and/or the Services and/or any other obligations of the Independent Assessor under this Deed;
<b>"Technical Advisor's Appointment"</b>	means the appointment of even date with this Deed between the Independent Assessor and the Security Trustee in relation to the Project for the provision of services to the Security Trustee.

1.3 The Clause headings in this Deed are for the convenience of the Parties only and do not affect its interpretation.

1.4 Words importing the singular meaning include the plural meaning and vice versa.

1.5 Words denoting the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably in that manner.

1.6 Reference in this Deed to a Clause or Schedule or Appendix are to a Clause of or a Schedule or Appendix to this Deed unless otherwise specified.

1.7 Reference in this Deed to any statute or statutory instrument includes and refers to any statutory amendment or re-enactment thereof from time to time and for the time being in force.

## **2. APPOINTMENT OF INDEPENDENT ASSESSOR**

2.1 The Authority and the Contractor hereby jointly appoint the Independent Assessor and the Independent Assessor hereby accepts such appointment and agrees to perform the IA Services regularly and diligently in accordance with the terms and

conditions of this Agreement with a view to enabling completion of the Project in accordance with the Project Agreement.

2.2 The Authority and the Contractor shall act in good faith towards the Independent Assessor at all times.

2.3 The Independent Assessor shall perform the IA Services which are more particularly described in Clauses 21 to 24 of the Project Agreement, as well as those listed in Schedule 3 to this Agreement.

### **3. INDEPENDENT ASSESSOR'S DUTIES**

3.1 The Independent Assessor shall perform and, to the extent work has been carried out prior to the execution of this Deed, has performed the IA Services fully and faithfully upon and subject to the provisions of this Deed and the Independent Assessor acknowledges that each of the Counterparties has relied and will continue to rely on the professional skill and care of the Independent Assessor in the performance of the IA Services and that it owes a duty of care to each of the Counterparties in relation thereto.

3.2 Subject always to Clause 23.2 below, where, in the performance of the IA Services or any Additional Services, the Independent Assessor is required to exercise a discretion as between the Counterparties and/or any third party, the Independent Assessor shall at all times act objectively and impartially and shall exercise its discretion fairly and shall in no circumstances place the interests of any one party above those of any other party including any third party.

3.3 Where, in the performance of the IA Services or any Additional Services, the Independent Assessor seeks or is obliged to seek the approval or agreement of the Counterparties to any matter or issue, the giving or confirming of the same shall not in any way derogate from the Independent Assessor's obligations under this Deed nor diminish any liability on its part for breach of such obligations and no enquiry, inspection, comment, consent, decision or instruction at any time made or given by or on behalf of the Counterparties shall operate to exclude or limit the obligations of the

Independent Assessor to exercise all the skill, care and diligence required by this Clause or to comply with the obligations contained in this Deed.

3.4 The Independent Assessor warrants to each of the Counterparties jointly and severally that it has exercised and will continue to exercise, in the performance of the IA Services and any Additional Services and all its duties hereunder, all the reasonable skill, care, diligence, prudence and foresight as may reasonably be expected of a suitably qualified and competent professional member of the Independent Assessor's profession rendering the IA Services or any Additional Services and experienced in projects of a similar size, scope and complexity as the Project.

3.5 The Independent Assessor further warrants to each of the Counterparties severally that in the provision of the IA Services or any Additional Services it will comply with all Statutory Requirements and shall comply with directions, instructions or requests relating to or in pursuance of the same given or made by the Asset Management Contractor, the Soft FM Co, the Contractor, and the Authority whilst the Independent Assessor is present on any Facility or part of any Site.

3.6 The Counterparties shall procure that the Independent Assessor has such access to the Facilities and every Site as it may reasonably require for the purposes of carrying out the IA Services or any Additional Services and all purposes ancillary or related to this Deed.

3.7 The Independent Assessor shall visit the Facilities and Sites so often as may be necessary or appropriate to carry out the IA Services or any Additional Services. Where it is agreed with the Counterparties that the Independent Assessor shall provide site staff in connection with the IA Services or any Additional Services the Independent Assessor shall appoint such site staff to provide inspection of those parts of the Project to which the IA Services or any Additional Services relate.

3.8 The Contractor has provided the Independent Assessor with a copy of the Project Documents and the Independent Assessor is deemed to be aware of their contents. In the performance of the IA Services and any Additional Services the

Independent Assessor shall have full regard to any relevant requirements and/or obligations of the Project Documents and shall perform the IA Services or any Additional Services in such manner and at such times that no act, omission or default of the Independent Assessor shall constitute or cause any breach by the Authority, the Asset Management Contractor and/or the Contractor of any of the Project Documents.

3.9 Without prejudice to the generality of Clause 3.7, the Independent Assessor shall:

- (a) liaise and co-operate with the Counterparties and provide each of them with all such information in relation to the Project as they may from time to time reasonably require promptly and in good time so as not to delay or disrupt the progress of the Project or cause the Counterparties to be in breach of any of their respective obligations under any of the Project Documents;
- (b) in determining whether to issue a Certificate, act in accordance with the requirements of Clauses 22 and 24 of the Project Agreement;
- (c) have due regard to any written representations made to him by either the Authority and/or the Contractor, (the Party making the representation having previously sent the other a copy), in respect of any matter connected with the Project Documents, provided that nothing in this Clause 3.9 shall in any way fetter the discretion of the Independent Assessor (acting in accordance with the requirements of the Project Documents and its obligations under this Deed) as to whether any Certificate should properly be issued;
- (d) provide copies of any Certificate to each of the Counterparties forthwith upon its issue.

3.10 The Independent Assessor shall, if it fails to attend any Test for Completion properly notified to it in accordance with Clause 22.1 of the Project Agreement, be liable to pay each Counterparty all costs and losses that that Counterparty shall have incurred or suffered as a result of the Independent Assessor's failure to attend

(including, in the case of the Contractor, all reasonable costs incurred by its Subcontractors)

3.11 The decision of the Independent Assessor with respect to the issue of a Certificate, and any matters referred to in the other Clauses of the Project Agreement listed in the IA Services or provided as part of Additional Services shall be final and binding subject only to the terms of the Project Agreement.

3.12 The Independent Assessor acknowledges that nothing contained in this Deed shall detract from or prejudice its liability in tort to any of the Counterparties.

3.13 The Independent Assessor shall:

- (a) only be liable under this Deed in respect of claims whether made in contract or in tort which are notified in writing to the Independent Assessor before the expiration of the later of twelve years from the date on which the last professional service is performed by the Independent Assessor under the terms of this Deed or such earlier date as this Deed may be terminated in accordance with its provisions; and
- (b) not be liable to the Counterparties in aggregate for any greater sum than five million pounds (£5,000,000) in respect of any one claim.

3.14 The Independent Assessor shall not (in his capacity as Independent Assessor under the terms of this Deed) make or purport to make any alteration or addition to or omission from the design of the Project (including, without limitation, the setting of performance standards) or issue any instruction or direction to the Contractor, the Asset Management Contractor or the Soft FM Co or to any professional consultant employed or engaged in connection with the Project or consent or agree to any waiver or release of any obligation of the Contractor or the Authority under the Project Agreement, the Asset Management Contract or the Soft FM Co or of any other contractor, supplier or professional consultant employed or engaged by the Contractor, in connection with the Project and hereby undertakes to perform all its duties under this Deed in accordance with the requirements and objectives of the Counterparties as



set out in the Project Agreement, but not so far as they override its professional responsibility and in particular not as to exclude the exercise of independent judgement on the part of the Independent Assessor.

3.15 The Authority and the Contractor may, by joint notice to the Independent Assessor suspend the activities of the Independent Assessor for a period previously agreed or determined by the Authority and the Contractor which may be for a period not exceeding 6 consecutive months without giving rise to rights of termination to either party.

#### **4. INDEPENDENT ASSESSOR'S PERSONNEL**

4.1 The Independent Assessor shall forthwith appoint the Partner and other key personnel named in Schedule 1 to direct and control the overall performance by the Independent Assessor of the IA Services and act as the primary contact and liaison with the Counterparties. Such person(s) or any replacement(s) approved by the Counterparties pursuant to Clause 4.2 from time to time shall have full authority to act on behalf of the Independent Assessor for all purposes in connection with this Deed. The Partner and the key personnel specified in Schedule 1 shall be available for so long as may be necessary to ensure the proper performance of the Services and on the basis set out in Schedule 1.

4.2 The Independent Assessor shall not replace the Partner, the key personnel named in Schedule 1 or any person approved by the Counterparties pursuant to this Clause 4.2 without the prior written approval of the Counterparties (which approval shall not be unreasonably withheld or delayed) as to the fact and identity of such replacement and if such approval is given the identity of the replacement must be previously approved in writing by the Counterparties.

4.3 The Counterparties may from time to time (but not vexatiously) require by joint written notice to the Independent Assessor that any of the Partner or the other key personnel employed by the Independent Assessor on the Project shall be replaced, and in such event the Independent Assessor shall procure that the person or persons named by the Counterparties shall forthwith be replaced by others suitably qualified to

whom the Counterparties have no reasonable objection, and that such replacements shall be fully briefed on the Project.

## **5. REMUNERATION**

5.1 In full consideration of the performance of the IA Services in accordance with this Deed, the Payers shall pay the Independent Assessor:

- (a) the Fee;
- (b) the Additional Fee (if any),

in accordance with this Clause 5 and, for the avoidance of doubt, payment thereof shall constitute full reimbursement to the Independent Assessor of all costs, losses, expenses, overheads or profits suffered, incurred or earned, as the case may be, by the Independent Assessor in respect of the performance of its obligations under this Deed whenever they may be performed.

5.2 The Independent Assessor may submit an invoice for payment of an instalment to the Contractor at the address set out in Clause 19 (Notices) and marked for the attention of the person identified in Schedule 2 copied to the Authority on or after the occurrence of the event(s) allocated to that instalment and may include in such invoice (provided the same has not previously been included in any other invoice) any Additional Fee for any Additional Services which have been completed prior to the date of such invoice. The invoice shall show amounts claimed, amounts previously paid and any additional payments. The Fee and Additional Fee are inclusive of all disbursements, including inter alia, travel, photocopying and printing and accommodation, save as expressly provided in Schedule 2 but exclusive of any applicable Value Added Tax at the rate from time to time in force which shall be additionally payable by the Payers.

5.3 The Contractor will review the invoice submitted by the Independent Assessor and any sum properly included in the invoice submitted under and in accordance with this Clause 5, as the case may be, shall become due at the end of the month following the month in which the invoice is received by the Contractor.

5.4 The final date for the making of any payment of any sum due pursuant to this Deed shall be 10 days after the sum becomes due under the terms of this Deed (“the Final Date For Payment”). Subject to Clause 5.5, the Payers may (without prejudice to any other right or remedy which the Payers may have under or arising from or pursuant to this Deed, any other agreement or statute, at common law or otherwise) deduct or withhold from any money otherwise due to the Independent Assessor under or pursuant to this Deed any sum or sums for which the Independent Assessor is liable to the Payers under, arising from or pursuant to this Deed or statute or at common law.

5.5 Not later than five days after the date on which any sum becomes due or would have become due to the Independent Assessor pursuant to this Deed if:

- (a) the Independent Assessor had carried out its obligations under this Deed; and
- (b) no set-off or abatement was permitted by reference to any sum claimed;

the Contractor shall give notice to the Independent Assessor specifying the amount (if any) of the payment made or proposed to be made and the basis on which that amount is calculated.

5.6 If the Payers intend to withhold payment of any sum due to the Independent Assessor under this Deed pursuant to Clause 5.4, the Contractor shall give the Independent Assessor a notice not later than four days prior to the Final Date For Payment of that sum specifying:

- (a) the amount proposed to be withheld and the ground for withholding payment;  
or
- (b) if there is more than one ground, each ground and the amount attributable to it.

5.7 The Payers shall further be jointly and severally liable to pay to the Independent Assessor upon receipt of a valid VAT invoice, the total amount of Value Added Tax at the rate from time to time in force properly chargeable by the Independent Assessor on the supply by the Independent Assessor of any goods or services under this Deed.

5.8 Where an effective notice of intention to withhold payment is given by the Payers pursuant to Clause 5.6 but on the matter being referred to adjudication in accordance with Clause 22, it is decided that the whole or part of the amount should be paid, the adjudicator's decision shall (unless otherwise directed by the adjudicator) be construed as requiring payment not later than:

- (a) 7 days from the date of the decision; or
- (b) the date which apart from the notice would have been the final date for payment;

whichever is the later.

5.9 The Independent Assessor shall in no circumstances be entitled to claim additional costs or time charges in respect of any period of suspension of performance by any of the Independent Assessor's sub-contractors for non payment of sums due from the Independent Assessor to the sub-contractor under any relevant sub-contract, nor shall the Independent Assessor be entitled to any extension of any contractual time limits.

## **6. ADDITIONAL SERVICES**

6.1 In addition to the IA Services the Independent Assessor shall (subject always to clause 23.2 below) perform such Additional Services in relation to the Project as either Counterparty may from time to time instruct the Independent Assessor in writing (copied to the other Counterparty) and which the Independent Assessor shall agree to perform subject to a reasonable right of the Independent Assessor and the non-instructing Counterparty to object based on the Additional Services not being within the original spirit and scope of this Agreement. Any such objection shall be raised in writing and with all reasonable expedition.

6.2 The Counterparty or Counterparties instructing the performance of the Additional Services shall pay (jointly if more than one) to the Independent Assessor in respect of such Additional Services, the Additional Fee, which shall be agreed

between the proposed Payer and the Independent Assessor, prior to the commencement of the performance of such services.

## **7. PROFESSIONAL INDEMNITY INSURANCE**

7.1 Without prejudice to its other obligations under this Deed or otherwise at law, the Independent Assessor confirms that it has professional indemnity insurance and shall maintain professional indemnity insurance with reputable insurers or underwriters carrying on business within the European Union from the commencement of IA Services and for a period expiring no earlier than twelve (12) years after the completion of the IA Services. Notwithstanding the termination for any reason of this Deed or of the Independent Assessor's engagement under this Deed, the Independent Assessor shall maintain such professional indemnity insurance to cover each and every claim or series of claims consequent upon or attributable to the same cause or original source which it may incur under this Deed, with a limit of indemnity of not less than five million pounds (£5,000,000) in respect of each and every claim or series of claims as aforesaid, provided always that such insurance continues to be available to it in the European Union insurance market upon reasonable terms and at commercially reasonable premium rates and (for the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Independent Assessor's own claims record or other acts omissions matters or things peculiar to the Independent Assessor will be deemed to be within the Independent Assessor's obligation.

7.2 As and when it is reasonably required to do so, the Independent Assessor shall produce for inspection by any Counterparty documentary evidence that the insurance required by Clause 7.1 is being properly maintained subject to the same not constituting a breach of the terms of such insurance.

7.3 The Independent Assessor shall forthwith notify the Counterparties if the insurance required by Clause 7.1 ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Independent Assessor is unable to continue to maintain such insurance or if it becomes aware that such insurance may cease to be available and (in this event) shall take all such steps as

may be required by the Contractor or the Authority in order to obtain alternative insurance and shall in any event continue to maintain insurance upon such terms and with such a limit of indemnity as may then be available to it.

7.4 The Independent Assessor shall not compromise, settle or waive any claim which it may have under such insurance in respect of any professional liability which it may incur under this Deed without the prior written consent of the Counterparties.

## **8. CONFIDENTIALITY**

8.1 The Independent Assessor shall not, at any time during the period of its engagement hereunder (save in the proper course of its duties or as may be required by law or any regulatory authority) or at any time after its expiry or termination for any reason, disclose to any person nor otherwise make use of any confidential information (including, but without limitation, information relating to methods and techniques of construction for the Project and financial information relating to the Project) of which it has or may in the course of its engagement hereunder become aware relating to the Project, any of the Counterparties or otherwise, nor shall it disclose to any Person whatsoever (save as aforesaid or to its insurance or professional advisers) anything contained in this Deed, without the prior written consent of the Counterparties.

8.2 The Independent Assessor shall comply with its obligations under the Data Protection Act 1998 and other applicable legal requirements in respect of such data.

## **9. ASSIGNMENT AND SUB-LETTING**

9.1 The Independent Assessor shall not assign its interest in this Deed or any part thereof nor any right arising hereunder to any person without the prior written consent of the Counterparties and only then on terms expressly approved in writing by the Counterparties and subject to the Independent Assessor's obligations under this Deed remaining in full force and effect.

9.2 The Independent Assessor shall not be entitled to sub-contract the attendance by it at any Test for Completion or the decision on whether or not to issue any Certificate. The Independent Assessor shall not, without the prior written consent of

the Counterparties as to the identity and terms of appointment of any sub-consultant, sub-contract the performance of any of the other IA Services or any Additional Services. Where the Counterparties give consent to the Independent Assessor sub-contracting any of its duties pursuant to this Clause 9.2:

- (a) the Independent Assessor shall be responsible for the breaches, acts, omissions, negligence and/or other default of any sub-consultant its agents or employees appointed by the Independent Assessor as fully as if they were the breaches, acts, omissions, negligence and/or other defaults of the Independent Assessor, its agents or employees, and such sub-contracting shall not modify, release, diminish or in any way affect the liabilities and/or obligations of the Independent Assessor under this Deed and/or at law or otherwise; and
- (b) the remuneration payable to the Independent Assessor in accordance with Clause 5 shall not be increased by any amount payable by the Independent Assessor to its sub-consultants; and
- (c) the Independent Assessor shall procure from any sub-consultant engaged by the Independent Assessor for the performance of the IA Services or any Additional Services a collateral warranty in the form set out at Schedule 4 in favour of each Counterparty within 14 days of a request from such Counterparty.

9.3 Each of the Counterparties may at any time assign, charge or transfer its respective interest in this Deed and/or any rights arising hereunder (whether or not accrued):

- (a) to any Person for the purposes of providing finance for the Project upon notice to the Independent Assessor; and
- (b) to any other Person with the approval of the Independent Assessor, such approval not to be unreasonably withheld or delayed and provided that not more than two such assignments shall be permitted by any one Counterparty under this sub-Clause (b).

**10. WARRANTIES IN FAVOUR OF FUNDERS AND ASSET MANAGEMENT  
CONTRACTOR**

10.1 the Independent Assessor shall provide a collateral warranty to the Asset Management Contractor in the form set out Schedule 5 at the same time as this Deed is executed.

**11. TERMINATION OF INDEPENDENT ASSESSOR'S ENGAGEMENT BY THE  
CONTRACTOR OR THE AUTHORITY**

11.1 In the event of a material breach by the Independent Assessor of its obligations under this Deed which it either fails to remedy or continues, within 14 Working Days from receipt of written notice from the Contractor or the Authority (on behalf of the other Counterparty and having first obtained the consent of the other Counterparty, such consent not to be unreasonably withheld or delayed) specifying the breach and requiring its remedy, the Contractor or the Authority (on behalf of the other Counterparty and having first obtained the consent of the other Counterparty to do so, such consent not to be unreasonably withheld or delayed), may then on, or within 10 Working Days from the expiry of that 14 Working Day period by a further written notice to the Independent Assessor terminate the Independent Assessor's engagement under this Deed. Such termination shall take effect on the date of receipt of such further notice.

11.2 The Contractor or the Authority, on behalf of the other Counterparty and having obtained the other Counterparty's consent, may give 20 Working Days written notice to the Independent Assessor of their intention to bring to an end the performance of any divisible part of the IA Services. The termination of such part of the IA services shall take effect on the date of receipt by the Independent Assessor of a further written notice confirming such termination. The Independent Assessor shall have no right of objection.

11.3 The appointment of the Independent Assessor under this Agreement may be terminated by the Counterparties at any time by giving to the Independent Assessor



not less than one month's joint written notice (without prejudice to any other rights or remedies of the Counterparties).

## **12. TERMINATION OF INDEPENDENT ASSESSOR'S ENGAGEMENT BY INDEPENDENT ASSESSOR**

12.1 In the event of a material breach by any one or more of the Counterparties of its or their obligations under this Deed which it or they, as appropriate, shall fail to remedy within 20 Working Days from receipt of written notice from the Independent Assessor (such notice to be copied simultaneously to the other Counterparty) specifying the breach and requiring its remedy, the Independent Assessor may then on, or within 10 Working Days from, the expiry of that 20 Working Days by a further notice to the Counterparties (subject to Clause 14) forthwith terminate its engagement under this Deed. Such termination shall take effect on the date of receipt of such further notice.

## **13. CONSEQUENCES OF TERMINATION OF INDEPENDENT ASSESSOR'S ENGAGEMENT**

13.1 Upon any termination of the Independent Assessor's engagement under Clauses 11 or 12, the Independent Assessor shall be relieved of its obligation to continue with the performance of the IA Services and any Additional Services and shall take immediate steps to bring to an end the IA Services and any Additional Services in an orderly manner but with all reasonable speed, economy and with due regard to the ongoing obligations and responsibilities of the other parties and shall within 10 Working Days deliver to the Counterparties the Project Documents provided to it (and all copies thereof), copies of all Documents, reports, photographs, minutes of meetings and other documents prepared or in the course of preparation by the Independent Assessor in connection with the Project and (in the event that a replacement entity has been appointed to complete the performance of the IA Services) shall co-operate fully with such replacement to the extent that it is reasonable to do so.

13.2 If the Independent Assessor's engagement under this Deed is terminated (save other than for any act, omission or negligence of the Independent Assessor), the Contractor shall, on behalf of itself and the Authority (subject to any withholdings, deductions or set-offs which they are entitled to make and to Clauses 13.3, 13.4 or 13.5):

- (a) pay to the Independent Assessor that part of the Fee and Additional Fee which shall have accrued due prior to the date of such termination less the amount of any payments in respect of the Fee and the Additional Fee previously made by the Contractor, on behalf of itself and the Authority, to the Independent Assessor under this Deed; and
- (b) reimburse to the Independent Assessor the reasonable direct costs wholly and necessarily incurred by the Independent Assessor and resulting from such termination provided always that such termination and such costs have arisen otherwise than by reason of any negligence, omission or default on the part of the Independent Assessor its servants or agents, or any sub-operator or assignee or their respective servants or agents and that the Independent Assessor shall have first submitted its account for payment hereunder to the Contractor upon or within 5 Working Days following such termination.

13.3 Upon any termination of the Independent Assessor's engagement howsoever arising, the Counterparties shall not be liable, save as is exclusively set out in Clause 13.2, to the Independent Assessor for any loss of profit, loss of contracts or other consequential costs, losses and/or expenses arising out of or in connection with such termination.

13.4 Termination of the Independent Assessor's engagement howsoever arising shall, subject to Clause 13.3, be without prejudice to the rights and remedies of any Party in relation to any negligence, omission or default of any other Party prior to such termination.

13.5 The provisions of this Deed shall continue to bind each Party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.

#### 14. "STEP-IN" PROVISIONS

14.1 Subject to Clause 23.2 below, the Independent Assessor shall not exercise nor seek to exercise any accrued right to terminate this Deed, its engagement under this Deed or to suspend or discontinue the performance of the IA Services or any Additional Services for any reason whatsoever, including breach on the part of any one or more of Counterparty, without first giving to each Counterparty not less than 20 Working Days notice of its intention to do so and specifying the grounds for the proposed termination or discontinuance together with details of any sums due under this Deed which have not yet been paid.

14.2 Any period stipulated in this Deed for the exercise by the Independent Assessor of a right of termination shall be extended as necessary to take account of the period of notice required under Clause 14.1.

14.3 The Independent Assessor's right to terminate its engagement under this Deed or to discontinue the performance of the IA Services or any Additional Services shall cease if, within the period of 20 Working Days referred to in Clause 14.1, any Counterparty not in breach shall give notice to the Independent Assessor:

- (a) requiring him to continue the performance of the IA Services and any Additional Services; and
- (b) confirming that it is assuming all the obligations of the other Counterparty in breach under this Deed; and
- (c) undertaking to the Independent Assessor to discharge all payments which may subsequently become due to the Independent Assessor under this Deed and paying to the Independent Assessor any sums which have already become due but which remain unpaid except in respect of sums where valid notices of withholding have been served.

14.4 On compliance by any Counterparty with Clause 14.3, this Deed shall continue in full force and effect as if the right of termination or suspension or discontinuance on the part of the Independent Assessor had not arisen and on the basis that all references in this Deed to the Contractor shall thereafter be read and construed as references to the Counterparty complying with Clause 14.3, who may or may not be the Contractor.

14.5 Where a Counterparty has given notice in compliance with Clause 14 and has given an undertaking pursuant to Clause 14.3(c) and has assumed responsibility under this Deed in accordance with Clause 14.4 the Counterparty or Counterparties in breach shall reimburse and indemnify that Counterparty against each and every liability which that Counterparty may then have to the Independent Assessor by virtue of such undertaking and assumption of responsibility and against any claims, demands, proceedings, damages, costs and expenses, including interest and VAT, sustained, incurred or payable by that Counterparty as a consequence thereof insofar as and to the extent that the same has arisen by reason of any breach by such Counterparty of its obligations under this Deed.

## **15. VARIATION, WAIVER AND ENTIRE AGREEMENT**

15.1 All additions, amendments and variations to this Deed shall be binding only if in writing and signed by the duly authorised representative of each Party.

15.2 No waiver by any Party of any default or defaults by any other Party in the performance of any of the provisions of this Deed shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character.

15.3 This Deed supersedes any previous agreement or arrangement between the parties in respect of the LA Services (whether oral or written) and represents the entire understanding between the parties in relation thereto.

15.4 Notwithstanding the date of this Deed, it shall have effect as if it had been executed upon the actual commencement of the IA Services by the Independent Assessor.

## **16. DOCUMENTS**

16.1 Copyright in the Documents shall remain vested in the Independent Assessor and subject thereto to the Independent Assessor hereby grants to the Counterparties an irrevocable non-exclusive, royalty-free licence (for the avoidance of doubt such licence to remain in full force and effect notwithstanding determination of the Independent Assessor's appointment for whatever reason or any dispute hereunder) to copy and use the Documents and to reproduce the information, programmes and schedules contained in the Documents for all purposes related to the Project including but without limitation, to the construction completion reconstruction alteration extension maintenance letting promotion advertisement reinstatement use and repair of the Project or the Counterparties' interests in it and the Counterparties shall be entitled to grant sub-licences on terms equivalent to the provisions of this Clause 16.1 and the Counterparties' licence and any such sub-licence shall be transferable to others without charge PROVIDED ALWAYS THAT the Independent Assessor shall not be liable for the consequences of any use of the Documents by the Counterparties for any purpose other than that for which they were prepared and provided by the Independent Assessor.

16.2 The Independent Assessor shall provide to the Counterparties within 5 Working Days of any written request and subject to payment of its reasonable costs, in such manner and form as is reasonably requested, such additional copies of all or any of the Documents as are reasonably required by the Counterparties beyond those required for the construction and completion of the Project and shall provide such additional information and co-operation as is reasonably required in connection with the same.

16.3 Where any rights are vested in the Independent Assessor by virtue of Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988, the Independent Assessor hereby irrevocably waives any such rights in relation to the

Project or any part or parts thereof and to any Documents and shall obtain a written waiver from its employees from time to time of any rights that they may have in respect of the same.

## **17. CUMULATIVE RIGHTS AND ENFORCEMENT**

17.1 Any rights and remedies provided for in this Deed, whether in favour of the Counterparties or the Independent Assessor, are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.

17.2 The duties and obligations of the Independent Assessor arising under or in connection with this Deed arise to the Counterparties jointly and severally and the Counterparties may accordingly enforce the provisions hereof and pursue the prospective rights hereunder in their own name, whether separately or with each other.

17.3 The Counterparties covenant with each other that they will not waive any rights, remedies or entitlements or take any other action under this Deed that would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other Counterparty without the other Counterparty's prior written consent, such consent not to be unreasonably withheld or delayed.

## **18. SEVERANCE**

18.1 If any provision of this Deed shall be declared invalid, unenforceable or illegal, such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Deed.

## **19. NOTICES**

19.1 Any demand, notice or other communication given in connection with or required by this Deed shall be made in writing and shall be delivered to, or sent by pre-paid first class post to, the recipient at its registered office or its address stated below (or such other address as may be notified in writing from time to time) or sent by facsimile transmission to the recipient, to the number set out below (or to such other number as may be notified in writing from time to time).

(a) **Authority**

Attention	Moira Bishop
Address	Town Hall Mulberry Place 5 Clove Crescent London E14 2BG
Facsimile number	020 7364 4858

(b) **Contractor**

Attention	Company Secretary
Address	c/o Tower Hamlets Schools Limited 7 <sup>th</sup> Floor 1 Fleet Place London EC4M 7NR
Facsimile number	020 7203 7301

(c) **Independent Assessor**

Attention	Mike Cuthbert
Address	6 Grosvenor Street London W1K 4DJ
Facsimile number	020 7896 8001

19.2 Any such demand, notice or communication shall be deemed to have been duly served:

- (a) if delivered by hand, when left at the proper address for service; or
- (b) if given or made by pre-paid first class post, 2 Working Days after being posted; or

- (c) if sent by facsimile, on the day of transmission provided that a confirmatory copy is on the same day that the facsimile is transmitted, sent by pre-paid first class post in the manner provided for in this Clause 19;

provided that if the hand delivery or facsimile transmission occurs after 4.00 pm on a Working Day or on a day other than a Working Day, service shall be deemed to occur instead at 10.00 am on the next following Working Day.

## **20. COUNTERPARTS**

20.1 This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

## **21. GOVERNING LAW**

21.1 The application and interpretation of this Deed shall in all respects be governed by English Law. The Parties hereby accept the exclusive jurisdiction of the Courts of England and Wales.

## **22. ADJUDICATION**

22.1 Where Part II of the Housing Grants, Construction and Regeneration Act 1996 applies, any party may refer any dispute or difference arising under this Deed to adjudication. The adjudication procedures and liability for costs and the agreement for the appointment of an adjudicator will be as set out in the Model Adjudication Procedures published by the Construction Industry Council current as at the date of the referral notice. The nominating body will be the Royal Institution of Chartered Surveyors or any successor organisation.

22.2 Notwithstanding Clause 21.1 above, if any dispute or difference arising under this Deed raises the same or parallel issues as a related dispute or difference between the Authority and/or the Contractor and/or the Asset Management Contractor and/or the Employer's Agent and/or the Technical Advisor or any third party or any of them which has already been referred to adjudication, the parties shall (wherever practicable) refer the dispute or difference under this Deed to the same adjudicator for



decision and that adjudicator shall be the adjudicator for the purposes of this Deed in relation to the dispute or difference. In the referral to such adjudicator the parties shall require such adjudicator, where practicable, to reach his decision in a manner that is consistent with the decision in the related dispute or difference.

### **23. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

23.1 Subject to and as provided in Clause 23.2 below, this Deed is for the sole benefit of the parties and no provision of this agreement is intended to create or creates any right or benefit enforceable against the parties to this Deed under the Contracts (Rights of Third Parties) Act 1999.

23.2 Notwithstanding any other provision of this Deed (whether reference is made to this Clause 23 or otherwise), the Authority, the Contractor and the Independent Assessor agree and acknowledge for the benefit of the Funders and the Security Trustee, acting on behalf of the Funders, that:

- (a) the Security Trustee may enforce in its own right and on behalf of the Funders or the Funders may enforce in their own right the provisions of this Clause 23.2;
- (b) neither the Authority nor the Contractor shall instruct the Independent Assessor (and nor shall the Independent Assessor agree to perform) any Additional Services in relation to the Project), without the Security Trustee's prior written consent.

IN WITNESS whereof the Authority, the Contractor and the Independent Assessor have executed this document as a deed.

The COMMON SEAL of THE )  
MAYOR AND BURGESSES OF THE )  
LONDON BOROUGH OF TOWER )  
HAMLETS was hereunto affixed )

By order:

Duly Authorised Signatory:

Policy and Implementation Committee:

EXECUTED as a DEED by )  
TOWER HAMLETS SCHOOLS )  
LIMITED, acting as general partner of )  
TH SCHOOLS LIMITED PARTNERSHIP )

**EXECUTED** as a **DEED** by )

)

in his capacity as a partner of and for and on )

behalf of **DRIVERS JONAS** in the presence of: )

**Witness**

**Witness Address**

**EXECUTED** as a **DEED** by )

)

in his capacity as a partner of and for and on )

behalf of **DRIVERS JONAS** in the presence of: )

**Witness**

**Witness Address**

## **SCHEDULE 1**

### **THE PARTNER & KEY PERSONNEL**

#### **PARTNER**

NAME: MIKE CUTHBERT  
TEL: 020 7896 8351  
FAX: 020 7896 8001  
EMAIL: [mikecuthbert@driversjonas.com](mailto:mikecuthbert@driversjonas.com)  
MOBILE: 07802 582282

#### **KEY PERSONNEL:**

NAME: JOHN DULAKE  
TEL: 020 7896 8284  
FAX: 020 7896 8001  
EMAIL: [johndulake@driversjonas.com](mailto:johndulake@driversjonas.com)

## **SCHEDULE 2**

### **PAYMENT**

The Independent Assessor is entitled to be paid the fee of £330,000, payable in monthly instalments of £5,000 (five thousand pounds) plus applicable VAT on the submission of a valid VAT invoice following the completion of the Tests for Completion and the issue of the associated Certificate for each Phase of each Facility.

The Independent Assessor may submit an invoice to the Contractor within 10 days of the end of any month in respect of any sums it became entitled to in the course of that month.

Invoices shall be marked for the attention of Peter Champion.

## **SCHEDULE 3**

### **IA SERVICES**

The Independent Assessor shall perform all the functions and obligations attributed to the Independent Assessor in the relevant Clauses of the Project Agreement and in particular shall:

- At commencement of services fully familiarise itself with the Project;
- Attend monthly Project meetings as notified by the Contractor;
- Perform all of the obligations of the Independent Assessor contained in the Project Agreement including, without limitation, the obligations set out or referred to in Clauses [21] to [24] of the Project Agreement.

## **SCHEDULE 4**

### **FORM OF SUB-CONSULTANTS COLLATERAL WARRANTY**

**DATED**

**2002**

**(1) [**

**]**

**(the Sub-Consultant)**

**and**

**(2) COUNTERPARTY**

**(the Beneficiary)**

### **SUB-CONSULTANT'S DEED OF WARRANTY**

**-relating to-**

**London Borough of Tower Hamlets Group Schools PFI Project**





experienced in carrying out the duties and services of the type comprised in the Sub-Appointment for projects of a similar size, type, scope and complexity to the Project PROVIDED THAT the duty of care owed by the Sub-Consultant to the Beneficiary shall be no greater than the duty of care it would have owed to Beneficiary had it been named as the Independent Assessor under the Sub-Appointment (for this purpose not taking into account any variation in the terms of the Sub-Appointment or waiver of any breach thereof which might operate to reduce or diminish the liability to the Beneficiary under this Deed without the Beneficiary's prior written consent).

1.2 No enquiry, inspection, comment, consent, decision or instruction at any time made or given by/or behalf of the Beneficiary shall operate to prejudice or diminish the obligations of the Sub-Consultant to the Beneficiary.

1.3 The Sub-Consultant shall:

- (a) only be liable under this Deed in respect of claims whether made in contract or in tort which are notified in writing to the Sub-Consultant before the expiration of the later of twelve years from the date on which the last professional service is performed by the Sub-Consultant under the terms of agreement with the Independent Assessor or such earlier date as this Deed may be terminated in accordance with its provisions; and
- (b) not be liable to the Beneficiary for any greater sum than five million pounds (£5,000,000) [in respect of any one claim].

## **2. PROFESSIONAL INDEMNITY INSURANCE**

2.1 The Sub-Consultant warrants that it maintains professional indemnity insurance covering its obligations under this Deed with a limit of indemnity of not less than £5 million for each and every claim or series of claims. The Sub-Consultant undertakes to maintain such insurance with reputable insurers carrying on business in the European Union at all times until 12 years from the date of Final Completion of the Works (or if sooner 12 years after the termination of the employment of the Sub-Consultant under the Sub-Appointment) provided such insurance is available on

commercially acceptable terms and at commercially acceptable rates and (for the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Sub-Consultant's own claims record or other acts omissions matter or things peculiar to the Sub-Consultant will be deemed to be within the Sub-Consultant's obligation. The Sub-Consultant shall as soon as practicable inform the Beneficiary if such insurance ceases to be available on commercially acceptable terms and rates in order that the Sub-Consultant and the Beneficiary can discuss means of best protecting their respective positions and in the meantime the Sub-Consultant shall maintain such professional indemnity insurance cover as is available to it (if any) on commercially acceptable terms and rates.

2.2 When reasonably requested by the Beneficiary the Sub-Consultant will provide (but not in any way which would breach any term of the insurance policy then in force) documentary evidence that the insurance required hereunder is being maintained.

2.3 The Sub Consultant shall forthwith notify the Counterparties if the insurance required by Clause 2 ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Sub Consultant is unable to continue to maintain such insurance or if they become aware that such insurance may cease to be available and (in this event) shall take all such steps as may be required by the Authority in order to obtain alternative insurance and shall in any event continue to maintain insurance upon such terms and with such a limit of indemnity as may then be available to it.

2.4 The Sub Consultant shall not compromise, settle or waive any claim which it may have under such insurance in respect of any professional liability which it may incur under this Deed without the prior written consent of the Counterparties.

### **3. ASSIGNMENT**

3.1 The Beneficiary is entitled to assign the benefit of this Deed twice without the consent of the Sub-Consultant.

#### 4. COPYRIGHT

4.1 Copyright in the Documents shall remain vested in the Sub-Consultant and subject thereto to the Sub-Consultant hereby grants to the Beneficiary an irrevocable non-exclusive royalty free licence (for the avoidance of doubt such licence to remain in full force and effect notwithstanding determination of the Sub-Consultant appointment for whatever reason or any dispute hereunder) to copy and use the Documents and to reproduce the information, programmes and schedules contained in the Documents for all purposes related to the Project including but without limitation to the construction completion reconstruction alteration extension maintenance letting promotion advertisement reinstatement use and repair of the Project or the Beneficiary's interest in it and the Beneficiary shall be entitled to grant sub-licences on terms equivalent to the provision of this Clause [ ] and the Beneficiary's licence and such sub-licence shall be transferable to others without charge PROVIDED ALWAYS THAT the Sub-Consultant shall not be liable for the consequences of any use of the Documents [by the Counterpart purpose] other than that for which they were prepared and provided by the Sub-Consultant.

4.2 The Sub Consultant shall provide to [the Counterparties] within 14 Working Days of any written request and subject to payment of its reasonable costs, in such manner and form as is reasonably requested, such additional copies of all or any of the Documents as are reasonably required by [the Counterparties] beyond those required for the construction and completion of the Project and shall provide such additional information and co-operation as is reasonably required in connection with the same.

4.3 Where any rights are vested in the Sub-Consultant by virtue of Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988 the Sub-Consultant hereby irrevocably waives any such rights in relation to the Projects or any parts thereof and to any Documents and shall obtain a written waiver from its employees from time to time of any rights that may have in respect of the same.

## 5. EXPIRY OF DEED

5.1 This Deed shall cease to have effect 12 years after the date of [Final Completion of the Works] (or if sooner 12 years after the termination of the employment of the Sub-Consultant under the Sub-Appointment) save in relation to any claims hereunder in respect of which proceedings shall have been commenced against the Sub-Consultant before expiry of the said period of 12 years.

## 6. GOVERNING LAW

6.1 The application and interpretation of this Deed shall in all respects be governed by English Law. The parties hereby accept the exclusive jurisdiction of the Courts of England and Wales.

## 7. THIRD PARTY RIGHTS

7.1 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.

IN WITNESS whereof the Sub-Consultant and the Beneficiary have executed this document as a Deed.

THE COMMON SEAL OF )  
[NAME OF COMPANY] )  
was affixed to this deed )  
in the presence of: )

Director

Director/Secretary

THE COMMON SEAL OF )

[NAME OF COMPANY] )

was affixed to this deed )

in the presence of: )

Director

Director/Secretary

**SCHEDULE 5**  
**FORM OF INDEPENDENT ASSESSOR'S COLLATERAL WARRANTY**  
**TO ASSET MANAGEMENT CONTRACTOR**

DATED 2002

(1) **DRIVERS JONAS**  
(the "**Independent Assessor**")

and

(2) **BALLAST PLC**  
(the "**Beneficiary**")

---

**INDEPENDENT ASSESSOR'S DEED OF WARRANTY**

relating to  
London Borough of Tower Hamlets Group Schools PFI Project

---

THIS DEED is made the

day of

2002

**BETWEEN:**

- (1) **DRIVERS JONAS** acting through its present and future partners whose principal place of business is at 6 Grosvenor Street, London W1K 4DJ ("**Independent Assessor**");
- (2) **BALLAST PLC** whose registered office is at Manor Court, High Street, Harmondsworth, Middlesex UB7 0AQ. (the "**Beneficiary**").

**WHEREAS:**

- (A) By an agreement in writing made on [\_\_\_\_\_] 2002 (the "**IA Appointment**"), the London Borough of Tower Hamlets (the "**Authority**"), jointly with TH Schools Limited Partnership (the "**Contractor**"), has employed the Independent Assessor to undertake certification and other services (the "**IA Services**") in connection with the provision of works in respect of various schools and community facilities within the London Borough of Tower Hamlets (the "**Project**").
- (B) By an agreement in writing between the Contractor and the Beneficiary dated [\_\_\_\_\_] 2002 (the "**Contract**"), the Beneficiary has agreed to provide works and services in connection with the Project.
- (C) At the request of the Contractor, the Independent Assessor has agreed to enter into this Agreement with the Beneficiary on the terms herein contained.

**NOW THIS DEED WITNESSES** in consideration of the sum of £1 paid by the Beneficiary receipt of which the Independent Assessor acknowledges:

**1. DEFINITIONS**

1.1 Words and phrases which are defined (or whose definitions are adopted) in the IA Appointment shall, unless the context otherwise requires, have the same meaning in this Deed.

## 2. DUTY OF CARE

2.1 The Independent Assessor warrants to the Beneficiary that it has carried out and will carry out the duties and obligations on its part to be performed under and in connection with the IA Appointment and that in performing the same the Independent Assessor has exercised and shall continue to exercise all reasonable professional skill, care, diligence, foresight and prudence to be expected of a properly qualified and competent professional member of the Independent Assessor's profession experienced in carrying out the duties and services of the type comprised in the IA Appointment for projects of a similar size, type, scope and complexity to the Project **PROVIDED THAT** the duty of care owed by the Independent Assessor to the Beneficiary shall be no greater and last for no longer than the duty of care it would have owed to Beneficiary had it been named as the Counterparties under the IA Appointment (for this purpose not taking into account any variation in the terms of the IA Appointment or waiver of any breach thereof which might operate to reduce or diminish the liability to the Beneficiary under this Deed without the Beneficiary's prior written consent) and **PROVIDED THAT** nothing in this Deed shall relieve or otherwise reduce the Beneficiary of liability for the performance of its obligations under and pursuant to the Contract and further the parties expressly agree that the Independent Assessor shall have no duty to the Beneficiary or any liability to the Beneficiary in respect of any defects discovered in the Works (whether before or after the date of issue of any certificate).

2.2 No enquiry, inspection, comment, consent, decision or instruction at any time made or given by/or behalf of the Beneficiary shall operate to prejudice or diminish the obligations of the Independent Assessor to the Beneficiary.

2.3 Without prejudice to Clause 2.1 above, the Independent Assessor shall:

- (a) have due regard to any written representations made to him by the Beneficiary (the Beneficiary having previously sent the Contractor and the Authority a copy), in respect of any matter connected with IA Services, provided that nothing in this Clause 2.3(a) shall in any way fetter the discretion of the Independent Assessor (acting in accordance with the requirements of the



Project Documents (as defined in the Appointment) and its obligations under the IA Appointment as to whether any Certificate should properly be issued; and

- (b) provide copies of any Certificate issued by it pursuant to its obligations under the IA Agreement and the Project Documents to the Beneficiary forthwith upon their issue; and
- (c) if the Independent Assessor fails to attend any Test for Completion, be liable to the Beneficiary for any and all costs and losses that the Beneficiary may incur as a result.

### **3. PROFESSIONAL INDEMNITY INSURANCE**

3.1 Without prejudice to its other obligations under this Deed or otherwise at law, the Independent Assessor confirms that it has professional indemnity insurance and shall maintain professional indemnity insurance with reputable insurers or underwriters carrying on business within the European Union from the commencement of the IA Services and for a period expiring no earlier than twelve (12) years after the completion of the IA Services. Notwithstanding the termination for any reason of the IA Appointment or of the Independent Assessor's engagement under the IA Appointment, the Independent Assessor shall maintain such professional indemnity insurance to cover each and every claim or series of claims consequent upon or attributable to the same cause or original source which it may incur under this Deed, with a limit of indemnity of not less than five million pounds (£5,000,000) in respect of each and every claim or series of claims as aforesaid, provided always that such insurance continues to be available to it in the European Union insurance market upon reasonable terms and at commercially reasonable premium rates and (for the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Independent Assessor's own claims record or other acts omissions matters or things peculiar to the Independent Assessor will be deemed to be within the Independent Assessor's obligation.

3.2 As and when reasonably requested by the Beneficiary, the Independent Assessor will provide (but not in any way which would breach any term of the insurance policy then in force) documentary evidence that the insurance required hereunder is being properly maintained.

3.3 The Independent Assessor shall forthwith notify the Beneficiary if the insurance required by Clause 3.1 ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Independent Assessor is unable to continue to maintain such insurance or if they become aware that such insurance may cease to be available and (in this event) shall take all such steps as may be required by the Beneficiary in order to obtain alternative insurance and shall in any event continue to maintain insurance upon such terms and with such a limit of indemnity as may then be available to it.

3.4 The Independent Assessor shall not compromise, settle or waive any claim which it may have under such insurance in respect of any professional liability which it may incur under this Deed without the prior written consent of the Beneficiary.

#### **4. ASSIGNMENT**

The Beneficiary is entitled to assign the benefit of this Deed twice without the consent of the Independent Assessor and thereafter with the consent of the Independent Assessor not to be unreasonably withheld or delayed.

#### **5. CONFIDENTIALITY**

5.1 The Independent Assessor shall not, at all times during the period of his engagement under the Appointment (save in the proper course of its duties or as may be required by law or any regulatory authority) and at any time after its expiry or termination for any reason, disclose to any person nor otherwise make use of any confidential information (including, but without limitation, information relating to methods and techniques of construction for the Project and financial information relating to the Project) of which it has or may in the course of its engagement under the Appointment and/or under this Deed become aware relating to the Project, the

Beneficiary or otherwise, nor shall it disclose to any Person whatsoever (save as aforesaid or to its insurance or professional advisers) anything contained in this Deed, without the prior written consent of the Beneficiary.

5.2 The Independent Assessor shall comply with its obligations under the Data Protection Act 1998 and other applicable legal requirements in respect of such data.

## **6. EXPIRY OF DEED**

This Deed shall cease to have effect 12 years after Final Certification Date (or if sooner 12 years after the termination of the employment of the Independent Assessor under the Appointment) save in relation to any claims hereunder in respect of which proceedings shall have been commenced against the Independent Assessor before expiry of the said period of 12 years.

## **7. GOVERNING LAW**

7.1 The application and interpretation of this Deed shall in all respects be governed by English Law. The parties hereby accept the exclusive jurisdiction of the Courts of England and Wales.

## **8. THIRD PARTY RIGHTS**

8.1 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.

## **9. SUBCONTRACTING**

9.1 In the event that the Independent Assessor intends to sub-contract any of its duties under the Independent Assessor's Appointment, the Independent Assessor shall inform the Beneficiary of the same and shall within 14 days of a request from the Beneficiary procure a collateral warranty from the sub-contractor appointed by it substantially in the form set out in Schedule 4 in favour of the Beneficiary.

IN WITNESS whereof the Independent Assessor and the Beneficiary have executed this document as a Deed.

Executed as a deed by )  
[authorised partner] )  
in his capacity as a partner of and for and on )  
behalf of DRIVERS JONAS in the presence of: )

Witness

Witness Address

Executed as a deed by )  
[authorised partner] )  
in his capacity as a partner of and for and on )  
behalf of DRIVERS JONAS in the presence of: )

Witness

Witness Address

SIGNED as a DEED by ) .....  
BALLAST PLC ) Director  
by: ) .....  
 ) .....  
 ) Director/Secretary

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