



Traffic Control Equipment Maintenance and Related Services Contract

Schedule 18

Form of Parent Company Guarantee

SCHEDULE 18

FORM OF PARENT COMPANY GUARANTEE

(Letterhead of Siemens AG)

To: Transport for London, Windsor House, 42-50 Victoria Street, London SW1H 0TL

Date:

Dear Sir/Madam

We, Siemens Aktiengesellschaft, of Wittelsbacher Platz 2, 80333 Munich ("**the Guarantor**"), understand that you have agreed to enter into Contract No tfl_scp_000952 ("**the Contract**") with Siemens Plc (the "**Contractor**") for traffic control equipment maintenance, capital works and related services (the "**Services**") on the condition that the obligations of the Contractor under the Contract be guaranteed by a Guarantor.

We are the parent company of the Contractor, and we warrant to you that this description of our relationship with/to the Contractor is true and accurate in all material respects.

WE HEREBY AGREE AND UNDERTAKE with you as follows:-

(a) We guarantee on demand:

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

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

(b) We guarantee to you that in the case of default by the Contractor in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in **paragraph (a)** above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Contractor were the primary obligor. Any payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.

- (c) The liability of the Guarantor pursuant to this Guarantee shall not exceed the lower of **REDACTED** or the limits of liability set out in Clause 21 of the Contract.
- (d) The continuing liability of the Guarantor pursuant to this Guarantee shall reduce on the 30th September 2020 to **REDACTED** but for the avoidance of any doubt, if the Guarantor has been notified of any claim, demand or liability under the Guarantee, including more than one individual claims, demands or liabilities prior to 30 September 2020 then this Guarantee shall continue to apply to those claims, demands or liabilities in full up to the limit detailed in paragraph (c) above notwithstanding the passing of 30 September 2020 even where such claims, demands or liabilities are disputed, unpaid or unsatisfied by the Guarantor prior to or after 30 September 2020.
- (e) This Guarantee shall be a continuing security and shall remain in full force and effect until 30th September 2023 save in respect of any claims made prior to, but which remain outstanding, unpaid or unsatisfied as at the 30 September 2023. For the avoidance of any doubt the Guarantor agrees that any delay in resolving any claims made under this guarantee prior to 30 September 2023 shall not release the Guarantor from any liability to meet any such claims, notwithstanding the passing of 30 September 2023.
- (f) The beneficiary undertakes to return this Guarantee to the Guarantor after its expiry within 10 business days of a written request from the Guarantor to do so. However, for the avoidance of doubt, this Guarantee expires independently of its return.
- (g) In the event the Contractor ceases to be a Subsidiary of the Guarantor, the Guarantor may offer a replacement guarantee for this Guarantee, substantially in the form hereof, but you shall be under no obligation to accept such a replacement guarantee.
- (h) Any demand or other notice made by you under this Guarantee shall be duly made if sent by first class recorded delivery post to us and shall be accompanied by a copy of your demand to the Contractor which demand shall comply with the requirements set out in clause (e) below and include your written statement that the Contractor has not complied with its obligations under the Contract in the specified cure period.
- (i) The Guarantor's liability pursuant to this Guarantee shall be conditional on the beneficiary first having made demand in writing in respect of the same on the Contractor specifying in reasonable detail the nature and amount of the claim and setting a delay of 14 days to comply with the obligations under the Contract. However, if an Administrator, Liquidator or Receiver is appointed to the whole or any part of the Contractor's business or assets then you may immediately make demand under this Guarantee without providing any cure period to the Contractor.
- (j) Subject to paragraph (i) above, you shall be entitled to enforce this Guarantee without taking any proceedings or enforcing or exhausting any right or remedy against the Contractor or any other person or taking any

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

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

PROVIDED THAT:

1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Contract if we had been named as the Contractor in the Contract and we shall be entitled to take advantage of any defences which would be available to the Contractor in any proceedings brought by you under the Contract.
2. Our obligations hereunder are those of primary obligor and shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Contract made by agreement between you and the Contractor (including, without limitation, any increase in the Contractor's obligations under the Contract or any alteration in the extent or nature or sequence or method or timing of the Services to be carried out under the Contract) or any novation of the Contract (in whole or in part); or
 - (b) any time being given to the Contractor or any other indulgence, waiver, concession, forbearance or forgiveness to the Contractor (whether express or by conduct) or any other thing done, omitted or neglected to be done under the Contract; or
 - (c) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Contractor under the Contract; or
 - (d) the release or waiver of any such bond, security or guarantee referred to in **paragraph 2(c)** above; or
 - (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Contractor; or
 - (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Contractor; or
 - (g) any legal limitation, disability or incapacity relating to the Contractor or discharge by operation of law or any change in the constitution, name or style of the Contractor or any other person (whether or not known to you); or

- (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Contractor under the Contract; or
 - (i) the termination or partial termination of the Contract or the cessation of any Services for any reason or the making of any variation to the Services in accordance with the Contract; or
 - (j) any claim or enforcement of payment from the Contractor or any other person; or
 - (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.
3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Contractor in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Contractor in competition with you for any sums or liabilities owing or incurred to us by the Contractor in respect of any such payment by or recovery from us or take or hold any security from the Contractor in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you.
4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provision of this Guarantee.
5. This Guarantee is irrevocable.
6. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.
7. For the purposes of this Guarantee we hereby appoint Siemens AG of c/o Siemens Plc, Sir William Siemens Square, Frimley, Camberley, Surrey, GU16 8QD to accept service of process on our behalf, and service on the said Siemens AG at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.

8. You will be entitled to assign the benefit of this Guarantee in whole or in part only with our prior written consent, such consent not to be unreasonably withheld or delayed, but we may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
9. If any provision (in whole or in part) of this Guarantee is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

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

Executed as a Deed by) _____
Siemens Aktiengesellschaft) Director
acting by a Director and the) _____
Secretary or by two Directors) _____
Director/Secretary

OR

The common seal of) _____
Siemens Aktiengesellschaft) Director
was affixed in the presence of:) _____
Director/Secretary

Appendix A - Form of Legal Opinion for use with Guarantee

To: Transport for London, Windsor House, 42-50 Victoria Street, London SW1H 0TL

Date:

Dear Sir/Madam

I am counsel to and I am giving this legal opinion in connection with the making by of the Guarantee (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the "**Guarantee**") dated made between Siemens Aktiengesellschaft, of Wittelsbacher Platz 2, 80333 Munich (the "**Guarantor**") and Transport for London ("**the Authority**"). Terms defined in or for the purpose of the Guarantee have the same meanings in this opinion.
2. Having considered the Guarantee and examined any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of..... I am pleased to advise that in my opinion:
 - (a) the Guarantor was incorporated in Munich, Germany (registration HRB 6684), on as a [company with limited liability] and validly exists under the laws of Germany as a separate legal entity possessing the capacity to sue or be sued in its own name. To the best of my knowledge having carried out [DESCRIBE APPLICABLE SEARCHES] today, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
 - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including, without limitation, approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) has been taken to enable the Guarantor to enter into the Guarantee and to perform the obligations of the Guarantor and the transactions contemplated thereby; and
 - (c) the entry into and performance of the Guarantee and the transactions contemplated thereby will not cause:
 - (i) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute, regulation, agreement or otherwise) to be exceeded; and
 - (ii) any law or order or constitutional document in respect of the Guarantor to be contravened;

- (d) the Guarantee has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Guarantee, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid, legally binding on and enforceable against the Guarantor under the laws of Germany and in the courts of Germany;
- (e) the signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
- (f) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other requirements of governmental, judicial and public bodies and authorities of or in Germany required or advisable in connection with the entry into, performance, validity and enforceability of the Guarantee and the transactions contemplated thereby have been obtained or effected and are in full force and effect;
- (g) all amounts payable by the Guarantor under the Guarantee may be made free and clear of, and without deduction for, or on account of, any taxes imposed, assessed or levied by Germany or any authority of or in Germany;
- (h) there are no registration, stamp or other taxes or duties of any kind payable in Germany in connection with the Guarantor including its signature, performance or enforcement by legal proceedings;
- (i) The Authority will not violate any law or regulation in Germany nor become liable to tax in Germany by reason of entering into the Guarantee or performing its obligations thereunder. It is not necessary to establish a place of business in Germany in order to enforce any provisions of the Guarantee;
- (j) the choice of English law to govern the Guarantee will be upheld as a valid choice of law in any action in respect of the Guarantee in the Germany Courts;
- (k) the consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation;
- (l) any judgment obtained in the courts of England against the Guarantor would be recognised and accepted by the German courts without re-trial or re-examination of the merits of the case; and
- (m) so far as I am aware after due enquiry, no litigation, arbitration or administrative proceedings are at present current, pending or threatened that might, if adversely determined, have a material effect on the business, assets or financial condition of the Guarantor.

3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of and accordingly express no legal opinion herein based upon any law other than the laws of

Signed