

Dated

2014

- (1) London Underground Limited
- (2) Earls Court Partnership Limited

Head Lease of Site EC1 of Earls Court Village, London

Eversheds LLP
Kett House
Station Road
Cambridge
CB1 2JY

Tel 0845 497 9797
Fax 0845 497 3777
Int +44 1223 443666
DX 5807 Cambridge
www.eversheds.com

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PARTICULARS

LAND REGISTRY PARTICULARS

LR1.	Date of lease	2014
LR2.	Title number(s)	
LR2.1	Landlord's title number(s)	BGL71558
LR2.2	Other title numbers	NGL631813, BGL101021, BGL66824
LR3.	Parties to this lease	
	Landlord	LONDON UNDERGROUND LIMITED (Company No. 01900907) of 42-50 Windsor House, Victoria Street, London, SW1H 0TL
	Tenant	Earls Court Partnership Limited (registered number 8872070) whose registered office is at 15 Grosvenor Street, London, W1K 4QZ
LR4	Property	In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail. The premises (referred to in this Lease as "the Premises") described in Schedule 1
LR5.	Prescribed statements etc	
LR5.1	Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003	Not applicable.
LR5.2	This lease is made under, or by reference to, provisions of:	An option dated [] made between the Landlord (1) and the Tenant (2)

LR6.	Term for which the Property is leased	The term is as follows: Nine hundred and ninety nine years (999) years and twenty five (25) days from the Term Commencement Date (This term is referred to in this Lease as "the Contractual Term")
LR7.	Premium	£[]
LR8.	Prohibitions or restrictions on disposing of this lease	This Lease contains a provision that prohibits or restricts dispositions.
LR9.	Rights of acquisition etc	
LR9.1	Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land	None
LR9.2	Tenant's covenant to (or offer to) surrender this lease	None
LR9.3	Landlord's contractual rights to acquire this lease	None
LR10.	Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	None
LR11.	Easements	
LR11.1	Easements granted by this lease for the benefit of the Property	The rights specified in clause 3.1 and Schedule 2
LR11.2	Easements granted or reserved by this lease over the Property for the benefit of other property	The rights specified in clause 3.3 and Schedule 3
LR12.	Estate rentcharge burdening the Property	None

- LR13. Application for standard form of restriction** None
- LR14. Declaration of trust where there is more than one person comprising the Tenant** Not applicable

DRAFT

THIS LEASE is made on the date set out in clause LR1 of the Land Registry Particulars

BETWEEN

- (1) the Landlord; and
- (2) the Tenant.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Defined terms

In this Lease, the following words and expressions have the following meanings:

- | | |
|----------------------------|---|
| "1925 Act" | Law of Property Act 1925; |
| "1927 Act" | Landlord and Tenant Act 1927; |
| "1954 Act" | Landlord and Tenant Act 1954; |
| "1995 Act" | Landlord and Tenant (Covenants) Act 1995; |
| "ACoP" | the Approved Code of Practice under the CDM Regulations; |
| "Accounting Period" | the period in respect of which accounts are required to be drawn up for the Tenant or, if the relevant Works are being undertaken by an undertenant, for the undertenant which for the purposes of this Lease is not to be less than 12 months and not to be greater than 15 months in relation to each Accounting Period; |
| "Accounts" | audited accounts including a profit and loss account and balance sheet, drawn up in respect of an Accounting Period and: <ul style="list-style-type: none">(a) in respect of a Tenant or undertenant or other entity incorporated or resident in the United Kingdom:<ul style="list-style-type: none">(i) audited by an independent accountant duly registered as an auditor qualified to audit company accounts; |

- (ii) prepared in accordance with accepted accounting principles in the United Kingdom, UK GAAP or any equivalent or replacement accounting standard and financial reporting standards; and
- (iii) in respect of a Tenant or undertenant, who is a company, prepared in accordance with the provisions of the Companies Act 2006; and
- (b) in respect of a Tenant or undertenant who is not incorporated or resident in the United Kingdom:
- (i) audited by reputable accountants qualified to act as auditors in the country of incorporation or residence of the Tenant or undertenant who have certified them to provide a true and fair view of the matters to which they relate;
- (ii) prepared in accordance with accepted accounting principles and statutory requirements applicable in that country; and
- (iii) which the Landlord, acting reasonably, accepts have been prepared and audited to standards reasonably comparable with those applying in the United Kingdom;

"Additional Structure"	any additional structure(s) of the Tenant (including without limitation columns, footings, foundations, and/or beams) to be constructed and/or installed within any parts of the Railway Premises situated beneath the Premises;
"Additional Structure Supplemental Lease"	a supplemental lease of the land upon and airspace within which the relevant Additional Structure(s) is to be located such lease to be in a form to be agreed between the parties (each acting reasonably) granted by the Landlord to the Tenant with full title guarantee at a nil premium and a peppercorn rent for a term co-terminous with the then unexpired residue of the Contractual Term of this Lease and otherwise on the terms of this Lease amended mutatis mutandis;
"Adjoining Premises"	any land or premises owned by the Landlord at any time during the Term, which are shown edged red on Plan [] (excluding the Premises but including the premises to be demised by the LUL Void Lease);
"Adverse Effect"	an adverse effect in any respect on the Operation of the Railway (as determined by the Engineer under Clause 21);
"Agreement for Underlease"	the agreement for the grant of the LUL Void lease made on the date hereof between (1) the Tenant and (2) the Landlord;
"Appointment"	an appointment or agreement to be entered into with any person or entity in respect of the provision of consultancy services with a material design role in connection with any Critical Works;
"Aprons"	the concrete and steel structures spanning the Railway Premises adjacent to Warwick Road and Brompton Road in the locations shown for identification only coloured pink on drawing number [] including all supporting columns, beams, walls, piles, pile caps, other foundations and fire protection cladding lying

beneath and supporting such structures;

"Architect"

such appropriately qualified and reputable architect as may from time to time be appointed by the Tenant under an Appointment in accordance with the provisions of this Lease;

"Authority"

any Secretary of State or other minister of the Crown, government department or any European, public, local, statutory or other authority (including the police and fire brigade and any authority responsible for safety) having functions, powers or rights which extend to the Premises and/or their use and occupation and includes any person or body acting under their authority;

"Base Rate"

either the base lending rate of Barclays Bank plc or such other clearing bank nominated by the Landlord at any time or, if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as the Landlord may reasonably determine;

"Building Contract"

a contract or contracts or Subcontract to be entered into in respect of the carrying out or implementation of any Critical Works;

"CDM Regulations"

the Construction (Design and Management) Regulations 2007;

"Common Facilities"

all Conduits, structures, walls, fences, roads, paths, works, services or facilities used in common by the Premises and/or the Railway Premises or by the owners or occupiers of them including any "party structures", "party walls" and "party fence walls" within the meaning of the Party Wall etc Act 1996 (but excluding the Load Bearing Structure and excluding also the Principal Estate Infrastructure);

"Concept Design Statement"

has the meaning given to it in **paragraph 1.2** of **Part B** of **Schedule 5**

“Conditions of Work”

the special conditions (including those set out in Schedule 5 and others to secure compliance with the Landlord’s safety, design, access and materials codes and policies throughout the Term) for work or works for the time being prescribed or adopted by, or binding upon, London Underground Limited or a Group entity of London Underground Limited to ensure the Operation of the Railway;

“Conduits”

all conduits or other conducting media, including all fixtures and ancillary apparatus, used for or in connection with all or any of:

- (c) the supply of Utilities;
- (d) the Plant and Machinery; and
- (e) the Railway

now present or installed in the future;

“Consultant”

the Architect, the Structural Engineer, the Temporary Works Designer, the Ground Movement Monitor or any other person appointed under an Appointment;

“Contractor”

a person employed under a Building Contract;

“Contractual Term”

nine hundred and ninety nine (999) years and twenty five (25) days from the Term Commencement Date;

“Critical Works”

any Works to the Premises (save for Non Notifiable Works) which in themselves or in their execution would affect the Load Bearing Regime or cause or be likely to cause an Adverse Effect, including any which:

- (a) involve any demolition and/or redevelopment, reconstruction or rebuilding of the whole or any part of the Load Bearing Structure;
- (b) are to be carried out to the Load Bearing Structure

- (c) involve any of the following:
- (i) Works to the structure of the Premises including any Redevelopment (other than Works relating to the internal fit out or other alterations of a non-structural nature which in either case will not impact on the Load Bearing Regime); or;
 - (ii) any penetration through a structural slab;
 - (iii) anything being fixed to, located against and/or connected into any part of the Railway Premises;
 - (iv) any demolition Works (other than internal demolition or other minor works of demolition which will not impact on any Load Bearing Structure or on the Load Bearing Regime);
- (d) require access to or across the Railway Premises;
- (e) necessitate the closure of the Railway Premises to the public;
- (f) reduce or interfere with any support or protection for the Railway Premises;
- (g) involve oversailing of cranes, loads, cradles or other equipment over the Railway Premises
- (h) may affect:
- (i) the safety of the Railway and/or the Railway Premises;

and/or

- (ii) the structural integrity and/or the load imposed on the Railway Premises;

“Deleterious Materials”

any products, substances or materials or any combination of them which at the time of specification are specified as deleterious materials in the relevant Appointments or the Building Contract or which otherwise (at the time of specification):

- (a) do not conform with British or (where applicable) European Standards or codes of practice or the recommendations of the Building Research Establishment; and
- (b) are generally known to the building profession to be deleterious to health and safety, the performance or durability of buildings or structures or damaging to the environment in the particular circumstances in which they are specified to be used or are used;

“Electromagnetic Disturbance”

any electromagnetic phenomenon which may degrade the performance of equipment used in connection with the Railway including (without limitation):

- (a) electromagnetic noise;
- (b) any unwanted signal; or
- (c) any change in the propagation itself;

“Emergency Exits”

such parts of the Premises that (inter alia) provide pedestrian egress for the public from the Railway Premises in emergencies and access to the fire and other authorities in the case of emergency from time to time;

“Engineer”

the appropriately qualified engineer appointed or employed by the Landlord at any time for

the purposes of providing professional engineering services to the Landlord;

“Environmental Law”

all Legislation, treaties, common law, mandatory codes of practice and decisions or formal requirements of any Authority or non-statutory governmental authority which at any time relate to the pollution or protection of the environment or harm to or the protection of human health and safety or the health of animals and plants;

“Existing Apron Column”

any column(s) of the Tenant forming part of the Aprons which as at the date of this Lease is located in the approximate position(s) shown on drawing number [ARUP-ST-LAI-027] and drawing number [ARUP-ST-LAI-028];

“Financial Year”

a 12 month period commencing on 1 January and ending on 31 December or such other 12 month period as the Tenant may specify;

“Ground Movement Monitor”

such appropriately qualified and reputable person as may from time to time be appointed by the Tenant to carry out or analyse ground and tunnel movement monitoring under an Appointment in accordance with the provisions of this Lease;

“Group”

means in relation to an undertaking, that undertaking any subsidiary undertaking or parent undertaking of that undertaking and any other subsidiary undertaking of any parent undertaking of that undertaking (as each such term is defined in section 1161 or section 1162 (as applicable) of the Companies Act 2006)

“Hazardous Materials”

any hazardous material present in any soil groundwater, building, structure, plant or equipment in or under any Premises during the Term (regardless of when such Hazardous Material is first discovered), including any migration or other escape of such Hazardous Material at or from the Premises at any time

whether during or after the Term;

"Hot Works"

any Works that includes or may include disc cutting, grinding, flame cutting, burning, soldering, welding or other processes that create or have the potential to create heat, sparks, flames or smoke;

"Independent Person"

has the meaning given to that term in **Schedule 7**;

"Index Linked"

in respect of the relevant sum or figure, such sum or figure adjusted annually on the first day of each Financial Year by applying the following formula:

A x C/B where:

A = the relevant sum or figure as set out in this Lease but not as previously Index Linked;

B = the UK RPI Index figure for [month preceding date of this Lease]; and

C = the UK RPI Index figure for the month preceding the date of calculation of the Index Linked sum or figure;

"Information Release Schedule"

has the meaning given to it in **paragraph 1.2** of **Part B** of **Schedule 5**

"Insured Risks"

the risks covered by a commercial "all risks" property insurance policy including:

- (a) the risks of fire, subterranean fire, explosion, lightning, storm, tempest, flood, aircraft and other aerial devices or articles dropped from them, earthquake, riot, civil commotion, labour and political disturbances, malicious damage, terrorism, bursting or overflowing of any tank, apparatus or pipes or the escape of any substances from them, impact (including by any road or rail vehicles), subsidence, ground heave or landslip

and accidental damage;

- (b) third party claims;
- (c) property owners liability

but excluding any risks (whether or not included in the risks set out above), for which insurance is not available on reasonable commercial terms with Standard Insurers;

"Landlord's Costs"

all proper costs, charges, expenses and fees properly incurred by the Landlord due to and arising from the carrying out of any Works or other matters in respect of which the Tenant is liable to pay the Landlord's costs and expenses and (for the avoidance of doubt) this may include the Landlord's proper internal and professional costs payable in accordance with Clause 4.7 of this Lease;

"Landlord's Existing Rights"

all rights of light and/or air howsoever acquired (whether by prescription, grant, statute, agreement or otherwise) enjoyed or to be enjoyed in the future by or benefiting the Adjoining Premises now or in the future and each and every part thereof over the Premises and each and every part thereof;

"Landlord's Obligations"

the obligations covenants and conditions to be complied with by the landlord of this Lease;

"Landlord's Surveyor"

any person appointed by the Landlord from time to time as its surveyor, including any surveyor employed by the Landlord or any Group entity of the Landlord for this purpose;

"Legislation"

Legislation means all Acts of Parliament and other public or local legislation having legal effect in the United Kingdom together with:

- (a) all secondary legislation made under that legislation including statutory instruments, rules, order, regulations, notices, directions, bye laws and permissions for the time being made

under or deriving validity from any Act of Parliament or other public or local legislation;

- (b) any European directive or regulations and rules having the force of law in the United Kingdom; and
- (c) any regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over works being carried out by the Tenant;

“Liabilities”

liabilities, actions, claims, demands, proceedings, costs, charges, expenses, damages and losses properly incurred;

“Lifecycle Account”

has the meaning given at **Schedule 10**;

“Lifecycle Period”

has the meaning given at **Schedule 10**;

“Load Bearing Regime”

the following information to be shown on the drawings and associated schedules and other documents from time to time for the relevant Load Bearing Structure:

- (a) the Load Bearing Structure and the design load capacity of the Load Bearing Structure annotated on those drawings in sufficient detail to show the magnitude of the load capacity (including inter alia point loads, line loads and uniform loads) and where these loads are designed to be applied to the Load Bearing Structure
- (b) details of any connection points between the Load Bearing Structure and any structure to be supported on the Load Bearing Structure
- (c) details of the waterproofing, protection to waterproofing and structural bearings

or such other replacement load bearing regimes as may be determined pursuant to **Schedule 5** for the Load Bearing Structure to which they relate;

“Load Bearing Structure”

any one or more of the following:

- (a) the Aprons; and
- (b) all other parts of the Premises which comprise concrete steel or other structures spanning any part of the Railway Premises or which are above or adjacent to the Railway Premises and otherwise provide support to the buildings and any other parts of the Premises which from time to time are constructed above the Railway Premises,

including in each case the waterproofing membrane and other protective layer forming part of such structures and providing waterproofing or other protection to the Railway Premises adjacent or beneath and all supporting columns, beams, walls, piles, pile caps, other foundations and fire protection cladding lying beneath and supporting such structures buildings and other parts of the Premises from time to time;

“LUL Standards”

LUL Standards means the rules and regulations including codes of practice and standards (including any rules and regulations of the Rail Safety and Standards Board) as specified from time to time by the Landlord and which apply to:

- (a) the Railway generally; or
- (b) matters of safety in respect of the Railway Premises and/or the Railway; or
- (c) the Operation of the Railway and/or design or construction of any part of

the Railway and/or the Railway Premises; or

- (d) Works carried on over or in the vicinity of the Railway and/or the Railway Premises;

and in the event of any inconsistency between different rules, regulations, codes of practice or standards the Landlord's decision as to the hierarchy or application of each shall be final and conclusive Provided Always That, if the Tenant has materially commenced the execution of the relevant Works (excluding for this purpose any enabling or demolition works) within three years after the date of issue of the Engineer's written approval of the Concept Design Statement and the Information Release Schedule in accordance with **paragraph 1.2 of Part B of Schedule 5**, the LUL Standards applicable to the carrying out of the relevant Works (but not further or otherwise) shall not be varied or amended after such date save to the extent required pursuant to statute or mandatory regulation or in the event that the Tenant has subsequently discontinued the execution of the relevant Works for a consecutive period of three years;

"LUL Void"

all those parts of the Premises in the approximate location shown for the purposes of identification only edged red on Plan [] annexed hereto to be demised by the Tenant to the Landlord by a lease to be entered into after the date hereof pursuant to the Agreement for Underlease;

[DN: Agreed form Void Zone plan to be included prior to engrossing]

"LUL Void Lease"

the underlease of the LUL Void to be entered into pursuant to the Agreement for Underlease;

"Maintenance Access Areas"

all that airspace between the exterior of any tunnels forming part of the Railway Premises

and (a) the lower surface of each Load Bearing Structure situated above such tunnels and (b) the face of all columns, the inside face of all walls, or the face of other structures forming part of a Load Bearing Structure and situated to the side of such tunnels;

“Maintenance Works”

any Works and any inspection, cleaning or servicing that are needed for the Operation of the Railway, whether on the Premises or elsewhere;

“Method Statements”

method statements in connection with the Critical Works or any element of them;

“Mortgagee”

a bona fide third party with a charge over the Premises which secures funding provided to the Tenant and whose existence identity and address have been notified by the Tenant to the Landlord in writing;

“Non-Notifiable Works”

(a) any Works at the Premises from time to time which do not affect or which only affect to a de minimis extent the Load Bearing Structure and in any event do not breach the Load Bearing Regime Provided that such Works do not:

- (i) cause Electromagnetic Disturbance;
- (ii) require access to or across the Railway Premises;
- (iii) necessitate the closure of the Railway Premises to the public;
- (iv) affect any Plant and Machinery which relates to or serves the Railway Premises;
- (v) reduce or interfere with any support or protection for the

Railway Premises;

(vi) comprise Hot Works on or affecting any exterior parts of the Premises including the Load Bearing Structure which may have an Adverse Effect or directly interface with the Railway Premises;

(vii) involve oversailing of cranes, loads, cradles or other equipment over the Railway Premises

(b) the repair, maintenance, renewal and landscaping of any non structural and/or any non load bearing part of the Premises which is situated above the protective layer to the waterproof membrane or other element separating the Premises from any Railway Premises beneath (including (but without limitation) open areas, landscaping, roads, footpaths and the internal non load bearing elements of any buildings on the Premises) provided that such repair, maintenance, renewal and landscaping will not penetrate or otherwise interfere with the relevant waterproof membrane, the protective layer above it or any Load Bearing Structure;

“Notifiable Works”

all Works to the Premises including Critical Works but excluding Non-Notifiable Works;

“Operation of the Railway”

the safe, efficient and economic construction, operation, use, inspection, repair, maintenance, protection, monitoring and security of the Railway and/or the Railway Premises including the safety of the public, passengers and persons employed in connection with the Railway;

“Operator”	the operator of the whole or any part of the Railway and/or any of the whole or any part of the Railway Premises and/or any railway services operated from or running through the Railway Premises from time to time;
“Outgoings”	all existing and future taxes, rates, charges, assessments and outgoings charged, imposed or levied in relation to the Premises or the owners or occupiers of them whether on a one-off, periodic or an irregular basis and whether or not in the nature of capital or income payments;
“Particulars”	the particulars set out at the front of this Lease;
“Permitted Use”	any use which does not interfere with or otherwise adversely affect the Operation of the Railway
“Plan(s) ”	the plan(s) numbered [DN: references] annexed to this Lease;
“Planning Acts”	the “Planning Acts” defined in section 336 Town and Country Planning Act 1990 together with the Planning and Compensation Act 1991 the Planning Act 2008 and any other relevant Legislation relating to town and country planning;
“Plant and Machinery”	all or any of the following: <ul style="list-style-type: none"> (a) fire alarm systems, sprinklers and other systems for detecting or extinguishing fires; (b) security alarms and other security systems including CCTV equipment; (c) systems for heating cooling and/or storing water; (d) systems for providing ventilation; (e) systems for heating or cooling air;

- (f) communication systems;
- (g) passenger information systems;
- (h) signalling systems;
- (i) plant, apparatus, equipment and systems relating to the provision and operation of lifts and/or escalators;
- (j) water and drainage pumps; and
- (k) any other machinery, plant or equipment;

“Premises” has the meaning referred to in paragraph LR4 of the Particulars and the Premises are described in **Schedule 1**;

“Prescribed Rate” four per centum (4%) per annum above Base Rate from time to time;

“Principal Estate Infrastructure” the principal estate roads, public realm and service corridors which are constructed (from time to time) within the Premises which are intended to be used for the benefit of the wider estate of which the Premises form part and/or for public use;

“Railway” the railway business or businesses or railway undertaking or undertakings carried on by the Landlord or their successors in respect of the London underground system or any similar public transport system running on under over or through the Railway Premises;

“Railway Premises” the whole or any part or parts of any land or building or airspace used for Railway purposes including the Ticket Hall, Conduits, tunnels, platforms, the Ventilation Shafts, Emergency Exits, staircases and stairways, escalators, structures, offices, staffrooms, foundations, Plant and Machinery and all other things serving or used or to be used in connection with the Railway which are over, under, adjoining or near to the Premises but the

expression does not include the Premises but does include the LUL Void (but only to the extent that and for so long as it is in operational use in connection with the Railway);

[DN: Parties to further develop and finalise this definition to make it clear what walls etc form part of Railway Premises and what walls etc form part of Premises.]

“Redevelopment”

any demolition and/or redevelopment, reconstruction or rebuilding of the Load Bearing Structure or any part thereof save for works carried out in pursuance of the Tenant’s repairing obligations hereunder;

“Reinstating Cost”

the full cost of reinstating the Premises (or the Critical Works, as the case may be) and the means of access to them following their complete destruction, including the costs of demolition, site clearance, shoring up, planning fees, architects, legal and other professional fees, the costs of complying with Legislation and taking into account cover for the effect of inflation and escalation of costs and fees, together with VAT on all such costs;

“Repairing Notice”

any notice served on the Tenant whether by the Landlord or any Authority (acting properly) requiring repairs or other Works to be carried out to the Premises for which the Tenant is liable under an obligation imposed on the Tenant pursuant to this Lease, including any schedule of dilapidations served on the Tenant by the Landlord;

“ROGS”

Railways and Other Guided Transport Systems (Safety) Regulations 2006 (SI 2006/599);

“Signage and Lighting Package”

the safety and directional signs, lights (including public street lighting), CCTV system, and fixings relating to the Operation of the Railway from time to time to the extent that they are within or annexed to the Premises but as varied from time to time as is necessary for

	the Operation of the Railway;
"Standard Insurers"	substantial and reputable insurers undertaking business in the United Kingdom or through underwriters at Lloyds;
"Standard Policy"	a policy of insurance placed with Standard Insurers that would provide, subject to reasonable excesses, policy exclusions and conditions of cover: <ul style="list-style-type: none"> (a) insurance cover against the damage or destruction of the Premises by any of the Insured Risks; and (b) a waiver of all rights of subrogation that the insurers may have against the Landlord or any lawful occupier;
"Station Interface Plan"	the document to be agreed pursuant to clause 22 of this Lease as the same may be varied or replaced from time to time;
"Structural Engineer"	such appropriately qualified and reputable other structural engineer as may from time to time be appointed by the Tenant under an Appointment in accordance with the provisions of this Lease;
"Subcontract"	the contract for the appointment of a subcontractor with design responsibility for the Load Bearing Structure or any other Critical Works;
"Temporary Works Designer"	such suitably qualified and reputable person as may from time to time be appointed by the Tenant to design temporary or protective works in respect of the Critical Works in accordance with the provisions of this Lease;
"Tenant's Existing Rights"	all rights of light and/or air howsoever acquired (whether by prescription, grant, statute, agreement or otherwise) enjoyed or to be enjoyed in the future by or benefiting the Premises now or in the future and each and every part thereof over the Adjoining Premises

and each and every part thereof;

“Tenant’s Obligations”

the obligations, covenants and conditions in this Lease to be complied with by a tenant of this Lease (including the Tenant);

“Term”

the Contractual Term and any continuation of it;

“Term Commencement Date” the date hereof;

“Ticket Hall”

the Landlord’s Ticket Hall more particularly shown coloured blue on Plan [] including:

- (a) The internal plaster surfaces and decorative finishes of all structural or load-bearing walls and columns in the Ticket Hall or which encloses the Ticket Hall;
- (b) The doors windows door frames and window frames mounted in walls which enclose the Ticket Hall;
- (c) The entirety of all internal non-structural or non-loadbearing walls and columns within the perimeter of the Ticket Hall and all doors and windows mounted therein;
- (d) The floor finishes of the Ticket Hall;
- (e) The ceiling finishes of the Ticket Hall;
- (f) All sanitary equipment in the Ticket Hall;
- (g) All fire fighting and fire detection systems in the Ticket Hall;
- (h) All Conduits within and exclusively serving the Ticket Hall;
- (i) All Plant and Machinery within and exclusively serving the Ticket Hall.
- (j) The escalator shaft shown coloured

grey on Plan [] and the upper head-wall of the escalator shaft shown edged red on Plan [];

- (k) All fixtures alterations and additions to the Ticket Hall; and
- (l) The gates separating the Ticket Hall from the Premises;

[DN: Parties to further develop and finalise this definition so that all structural elements supporting the escalator shall remain with LUL and do not form part of Premises. The only structural part LUL will retain is the escalator headwall on the east side of the Ticket Hall.]

"Title Matters"

the matters briefly described in **Schedule 4**;

"UK RPI"

the Retail Prices Index (RPI) All Items published by the Office of National Statistics or, in the event that the Office of National Statistics or a successor or alternative department of Her Majesty's Government ceases to publish such statistics (or re-bases or changes the method or basis of calculating the Retail Prices Index (RPI) All Items), such other measure of inflation as the Landlord and Tenant may agree (both acting reasonably);

"Utilities"

electricity, gas, water, air, telecommunications, surface water and foul drainage and other similar services;

"VAT"

Value Added Tax at the rate from time to time payable and includes any successor or equivalent tax payable from time to time;

"VATA"

the Value Added Tax Act 1994 (as amended);

"Ventilation Shafts"

any shaft or shafts and any ancillary Plant and Machinery providing ventilation to the Railway (including as at the date hereof the area shown hatched pink on Plan []) from time to time;

"Waste"

any discarded, unwanted or surplus substance irrespective of whether it is capable of being recycled or recovered or has any value (but

excluding normal, domestic or commercial waste from occupiers of the Premises);

“Working Day”

any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday or other public holiday in England;

“Works”

any works of repair, maintenance, renewal, rebuilding construction, reconstruction, alteration, improvement, demolition or other works including any inspection undertaken pursuant to **clauses 5.1.6, 5.1.7 or 5.3;**

“Works Information”

checked calculations, specifications, detailed drawings, Method Statements, risk assessments, programmes, test or other information (including temporary works drawings, supporting calculations, programme dates and hours of working) as applicable to the relevant Critical Works;

1.2 Construction

In this Lease:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Lease, references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule and references in a Part of a Schedule to a paragraph are to a paragraph of the Part;
- 1.2.3 references to any Legislation include references to any subsequent legislation directly or indirectly amending, consolidating, extending, replacing or re-enacting that Legislation;
- 1.2.4 references to the Landlord or the Tenant include their respective successors in title and, in the case of individuals, include their personal representatives;
- 1.2.5 references to the Premises, the Railway Premises, and the Adjoining Premises include any part of them unless specific reference is made to the whole of them;

- 1.2.6 the Landlord's Obligations in this Lease do not bind the Landlord named in the Particulars after it has disposed of its interest in the Premises and it will not be liable for any breach of the Landlord's Obligations in this Lease arising after the date of the disposal;
- 1.2.7 references to the date of assignment of this Lease mean the date of the deed of assignment or transfer of this Lease (or part thereof) and obligations given to the Landlord on an assignment of this Lease will take effect from this date;
- 1.2.8 for so long as the party whose interest is in immediate reversion to this Lease (the "Legal Landlord") is London Underground Limited (Company No. 01900907), or a Group entity of London Underground Limited (Company No. 01900907), or a public transport undertaking, that party may by written notice to the Tenant from time to time confirm that the whole or some of the Landlord's rights and obligations have been delegated to Transport for London, a TfL Group entity and/or an Operator and may direct the Tenant to deal with any such party as agent for the Legal Landlord in relation to such right or obligation until future notice and so that any such dealings by the Tenant with such party shall be binding upon the Landlord as if such dealings were with the Landlord itself but not so as to absolve the Legal Landlord from any obligation owed to the Tenant and for the avoidance of doubt the Landlord hereby delegates to its Engineer all rights and obligations expressed to be enjoyed or performed by the Engineer in this Lease;
- 1.2.9 references to the Landlord include a reference to any superior landlord in the following circumstances:
- 1.2.9.1 where there are rights reserved in favour of the Landlord;
 - 1.2.9.2 where any matter under this Lease requires the consent or approval of the Landlord;
 - 1.2.9.3 where notice has to be given to the Landlord under this Lease; and
 - 1.2.9.4 where there is a provision for the repayment of any costs and expenses incurred by the Landlord, including Landlord's Costs;
- 1.2.10 references to the end of the Term include the determination of the Term before the end of the Contractual Term;

- 1.2.11 any obligation not to do an act or thing shall be deemed to include an obligation not to permit or allow that act or thing to be done by any other person;
- 1.2.12 unless otherwise stated herein, the Tenant's Obligations are to be complied with at the Tenant's own expense;
- 1.2.13 where the consent of the Landlord is required for alterations, that consent may be given only by the completion of a licence executed as a deed containing the terms of the consent agreed between the parties unless the Landlord expressly elects in writing to waive this requirement referring to this provision of this Lease;
- 1.2.14 "including" means "including, without limitation";
- 1.2.15 "indemnify" means to indemnify against all Liabilities;
- 1.2.16 an obligation to pay a fair, proper or reasonable proportion includes an obligation, to pay the whole where it would not be fair proper or reasonable to apportion such payment;
- 1.2.17 where two or more people form a party to this Lease, the obligations they undertake may be enforced against them all jointly or against each of them individually;
- 1.2.18 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Lease is to be unaffected;
- 1.2.19 "knowingly" includes where the relevant party ought reasonably to know; and
- 1.2.20 at paragraph **1.1** of **Part A** of **Schedule 5** and paragraphs **1.5, 2.9, 3.3** and **3.6** of **Part B** of **Schedule 5** reference to "material" means any such matter which may directly or indirectly cause or contribute to the occurrence of an Adverse Effect.

1.3 **Particulars**

The Particulars form part of this Lease and words and expressions set out in the Particulars are to be treated as defined terms in this Lease.

1.4 **Contracts (Rights of Third Parties) Act 1999**

The parties to this Lease 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.

1.5 **Landlord and Tenant (Covenants) Act 1995**

This Lease is a "new tenancy" for the purposes of section 1 of the 1995 Act.

1.6 **Operation of the Railway**

1.6.1 The Tenant acknowledges that matters or concerns of the Operation of the Railway are paramount and that the Landlord's rights as a consequence may override other express or implied provisions of this Lease where such matters or concerns would or may result in an Adverse Effect (but not further or otherwise)

1.6.2 Notwithstanding anything else contained in this Lease, the Tenant agrees and accepts that, in the event of any conflict between any Works carried out by the Tenant under the terms of this Lease and the Operation of the Railway including but without prejudice to the generality of the foregoing

1.6.2.1 the programming or timing of the whole or any part of any Works carried out by the Tenant,

1.6.2.2 the possession of or access to any part of the Railway Premises or Adjoining Premises; and

1.6.2.3 the design or method of carrying out of the whole or any part of any Works by the Tenant,

the requirements of the Landlord shall prevail and, in relation to any question as to whether anything to be done in connection with the Works being carried out by the Tenant may affect Operation of the Railway, the decision of the Landlord shall be final.

1.7 The Landlord shall not be liable to the Tenant for any costs or expenses incurred by or any loss or damage or other liability suffered by the Tenant as a result of a decision given by the Landlord pursuant to this Lease after due consideration on any question relating to the Operation of the Railway notwithstanding that such decision may result in the Tenant being unable to proceed with the whole or any part of its Works or being delayed in the carrying out of any Works or incurring additional expenses or liability as a result of the decision.

1.8 In relation to all matters that arise (or which the Landlord anticipates may arise) in relation to a conflict between the Operation of the Railway and the other provisions of this Lease the Landlord shall keep the Tenant fully informed and alert the Tenant as soon as reasonably possible of the actual or possible conflict and to the extent reasonably possible both parties shall use reasonable endeavours to agree an alternative approach so as to avoid or minimise any

conflict between the Operation of the Railway and the Works to be carried out by the Tenant.

2. LETTING, TERM AND TERMINATION

2.1 Creation of the Term

The Landlord with full title guarantee lets the Premises to the Tenant for the Contractual Term reserving an annual rent of a peppercorn (if demanded).

2.2 Quiet enjoyment

The Landlord covenants with the Tenant that the Tenant may quietly enjoy the Premises throughout the Term without any interruption by the Landlord or anyone lawfully claiming under or in trust for the Landlord.

2.3 Right of re-entry to end this Lease

If at any time during the term:

2.3.1 the whole or any part of the annual rent or any other sums due under this Lease remain unpaid more than twenty-one (21) days after having been demanded in writing unless the matter is the subject of a bona fide dispute; or

2.3.2 the Tenant breaches any of the Tenant's Obligations;

and the Tenant or any Mortgagee does not make the payment or does not commence to remedy the breach in either case within two months (or such longer period as is reasonable having regard to the nature of the breach) of receipt of written notice from the Landlord to the Tenant and any Mortgagee (of whom the Landlord has received written notice) specifying the alleged breach and requiring it to be remedied and thereafter proceed expeditiously and diligently to remedy the breach then the Landlord may forfeit this Lease but so that any such forfeiture shall not be by re-entry on the Premises and any purported forfeiture by re-entry shall be void and of no effect but shall be by the issue and service of proceedings for the recovery of possession of the Premises.

2.4 Effect of the Lease coming to an end

When this Lease ends it will be without prejudice to any outstanding claims by any party against any other party or any obligation on the Tenant or any party to pay any sums of money due and demanded up to the date the Lease ends.

3. RIGHTS, RESERVATIONS AND OTHER MATTERS

3.1 Rights granted

The Premises are let together with the rights set out in **Schedule 2** which the Landlord grants to the Tenant with full title guarantee so far as the Landlord is able to grant the same:

- 3.1.1 for use in common with the Landlord and any other person using them with the express or implied authority of the Landlord unless the rights are expressed to be exclusive rights for the Tenant;
- 3.1.2 for the benefit of the Tenant and any other person using them with the express or implied authority of the Tenant including its employees, agents, permitted undertenants, any other permitted occupier of the Premises and any other person under its or their control;
- 3.1.3 subject to the right of the Landlord to bring to an end, suspend or vary the rights in circumstances where necessary for the Operation of the Railway provided that reasonable alternative rights which are no less convenient or commodious for the use and enjoyment of the Premises have been granted to the Tenant in the place of those which are to be brought to an end, suspended or varied it being acknowledged that nothing in this clause shall entitle the Landlord to prevent (whether temporarily or permanently) occupation of the whole or any part of the Premises otherwise than in cases of an emergency evacuation on grounds of safety.

3.2 **Exercise of rights granted**

- 3.2.1 When exercising the rights granted in **clause 3.1** the Tenant is to ensure that it or any other person exercising the rights with the express or implied authority of the Tenant causes as little disturbance, annoyance, inconvenience, nuisance or damage as reasonably practicable to the Landlord or the tenants or occupiers and users of any Adjoining Premises and/or the Railway Premises in the exercise of the rights and is to make good all physical damage to any Adjoining Premises and/or the Railway Premises as soon as reasonably practicable to the reasonable satisfaction of the Landlord or (in the case of the Railway Premises) at the Landlord's written election, the Tenant is to pay the Landlord's Costs in making good any such damage.
- 3.2.2 The Tenant acknowledges that in exercising these rights the Operation of the Railway is paramount.

3.3 **Rights reserved**

The rights set out in **Schedule 3** are reserved out of the letting for the benefit of the Landlord and any other person having express or implied authority from the

Landlord to benefit from them, including the Landlord's staff and anyone responsible for the carrying out of the Maintenance Works and/or the Operation of the Railway. The Tenant is to permit the exercise of these rights and is not to obstruct or prevent these rights being exercised in accordance with the terms of this Lease. The Tenant acknowledges that in the exercise of the rights reserved the Operation of the Railway is paramount.

3.4 **Exercise of rights reserved**

When exercising the rights reserved in **clause 3.3** or any other right reserved by this Lease where they involve entry upon the Premises the Landlord is to ensure that it and any other person exercising the rights with the express or implied authority of the Landlord causes as little disturbance, inconvenience, nuisance or damage as reasonably practicable (having regard to the reason for entry) to the Tenant or occupiers and users of the Premises in the exercise of such rights and is to make good all physical damage caused to the Premises in the exercise of the rights as soon as reasonably practicable to the reasonable satisfaction of the Tenant (regardless of the reason for entry) provided always that the Landlord shall have no liability in relation to consequential economic or other losses and liabilities directly or indirectly arising from such damage.

3.5 **Title matters**

The Premises are let subject to and with the benefit of the Title Matters. So far as they are still subsisting, capable of taking effect and affect the Premises, but by way of indemnity only the Tenant is to comply with the Title Matters and to indemnify the Landlord against any breach of them.

3.6 **Third party rights**

Subject to **clause 3.7**, the Premises are let subject to and with the benefit of all existing rights of light and air and all other existing legal or equitable easements and rights belonging to or enjoyed by any other property (excluding the Adjoining Premises and the Railway Premises).

3.7 **Rights of Light and Air**

3.7.1 In consideration of the release in **clause 3.7.2**, the Landlord hereby relinquishes and extinguishes with full title guarantee the Tenant and the Premises from the Landlord's Existing Rights to the intent that the said rights of light and air shall be extinguished and cease to exist with effect from the date of this Lease.

3.7.2 In consideration of the release in **clause 3.7.1**, the Tenant hereby relinquishes and extinguishes with full title guarantee the Landlord and the Adjoining Premises from the Tenant's Existing Rights to the intent

that the said rights of light and air shall be extinguished and cease to exist with effect from the date of this Lease.

3.7.3 The parties agree that, as from the date of this Lease:

3.7.3.1 the Landlord the Tenant and all other owners and occupiers of the Premises and the Adjoining Premises do not have and will not permit or be permitted to acquire any rights to light or air for the benefit of the Premises or the Adjoining Premises respectively as a result of which they could be held to be in breach of this clause 3.7; and

3.7.3.2 this Lease constitutes an agreement within the meaning of section 3 Prescription Act 1832 that precludes the acquisition by prescription, under that Act or otherwise, of a right to light or air in respect of any windows, apertures, lights or openings that now exist or may exist in the future in the buildings erected on the Premises and the Adjoining Premises at the date of this Lease or at any time in the future; and

3.7.3.3 they undertake not to make any claim against the other party nor claim any sum on account of any interference with the access of light to the Premises and the Adjoining Premises, including the claims of any person who would be entitled to claim through the parties, in respect of any loss of light to the Premises and the Adjoining Premises; and

3.7.3.4 they waive all claims (present and future) that they may have in respect of any remedy, including (without limitation) compensation for interference with rights of light and/or air.

3.8 **Exclusion of implied rights**

This Lease does not confer upon the Tenant any rights or privileges over any other property except as expressly set out in this Lease and any rights implied by section 62 of the 1925 Act or the rule in *Wheeldon v Burrows* are expressly excluded.

3.9 **Restrictions on rights**

The Tenant is not:

- 3.9.1 to do or omit to do anything which might result in the loss of any right or easement enjoyed by the Premises in a manner which may have an Adverse Effect;
- 3.9.2 to give any third party any acknowledgement that the third party enjoys the access of light to any window or opening in any adjoining or neighbouring building in a manner which may have an Adverse Effect;
or
- 3.9.3 to knowingly do or omit to do anything which results or might result in the creation of any new rights wayleaves or easements over the Premises which may affect the Operation of the Railway and, if it becomes aware of any which are being created, the Tenant:
 - 3.9.3.1 is to notify the Landlord in writing; and
 - 3.9.3.2 is, at the Landlord's reasonable and proper cost, to take any action which the Landlord reasonably requires to prevent the creation of new rights wayleaves and easements over the Premises.

3.10 **Challenge to Rights**

The Tenant is to notify the Landlord in writing if it becomes aware of any challenge to the Premises' or the Landlord's entitlement to the benefit of any covenant, right or condition contained or referred to in the Title Matters and shall not do anything which might support such challenge.

3.11 **Landlord's rights**

Nothing in this Lease is to limit or affect the rights of the Landlord:

- 3.11.1 to deal with any Adjoining Premises and/or the Railway Premises as it thinks fit; and
- 3.11.2 to permit the owner or occupier of any Adjoining Premises and/or the Railway Premises to deal with them as they think fit.

3.12 **Common Facilities**

- 3.12.1 The Tenant will repair, maintain, rebuild, renew or replace as necessary all Common Facilities which are located on the Premises and the Landlord will repair, maintain, rebuild, renew or replace as necessary all Common Facilities which are located on the Railway Premises.

3.12.2 The Tenant will pay to the Landlord or the Landlord will pay to the Tenant (as the case may be) a fair proportion (according to user) of the costs incurred by the other in carrying out its obligations under Clause 3.12.1 such payment to be made within 28 days of written demand.

3.12.3 Where the Landlord or the Tenant (as the case may be) intends to incur costs which are to be charged to the other under Clause 3.12.2, such Party shall consult with and have due regard to the views of the other and in any case shall ensure that such costs are reasonable and proper in the circumstances.

4. **RENTS AND OTHER SUMS PAYABLE**

4.1 **Obligation to pay rent**

The Tenant is to pay by way of rent to the Landlord during the Term without making any legal or equitable set-off counterclaim or deduction unless required to do so by law:

4.1.1 (if demanded in writing) the rent referred to in **clause 2.1** payable on the date of this Lease and on each anniversary of the date of this Lease; and

4.1.2 any other sums payable by the Tenant under the terms of this Lease, such sums (unless otherwise provided) to be payable within twenty eight (28) days of written demand.

4.2 **Value Added Tax**

4.2.1 The rents and any other sums payable under this Lease are exclusive of any VAT chargeable in respect thereof. Subject to **clause 4.3**, where, pursuant to the terms of this Lease, a party (for the purposes of this **clause 4**, the "Supplier") makes or is deemed to make a supply to another party (for the purpose of this **clause 4**, the "Recipient") for VAT purposes and VAT is or becomes chargeable on such supply, the Recipient shall, in addition to and at the same time as any other consideration payable for such supply, pay to the Supplier a sum equal to the amount of such VAT. The Supplier shall provide to the Recipient an appropriate VAT invoice in respect of such supply, together with (if applicable) evidence reasonably satisfactory to the Recipient of any relevant option to tax or real estate election which has effect under Schedule 10 to the VATA in relation to the relevant supply, including copies of such option to tax or real estate election and of the notification of such option or election submitted to HM Revenue &

Customs in accordance with Schedule 10 to the VATA and of any acknowledgement received from HM Revenue & Customs.

- 4.2.2 Where, pursuant to the terms of this Lease, a party (for the purposes of this **clause 4**, the "Payer") is required to pay, repay, reimburse or indemnify another party (for the purpose of this **clause 4**, the "Payee") for any cost, fee, charge, disbursement or expense (or any proportion of it) incurred by the Payee, the Payer shall also pay, repay, reimburse or indemnify (as the case may be) the Payee for any part of such costs, fee, charge, disbursement or expense (or proportion of it) which represents VAT, save to the extent that the Payee reasonably determines that it is entitled to recover (whether by way of credit, repayment or otherwise) such VAT from HM Revenue & Customs.
- 4.2.3 The parties recognise that the arrangements described in this Lease may include the provision and receipt of supplies of goods and/or services as non-monetary consideration on which it will be necessary to put a value for VAT accounting purposes. In such event, each party agrees they will work together in order to do that so as to be able to exchange the appropriate VAT invoices in respect of those supplies by the time at which the relevant supply is payable. Where VAT invoices are exchanged but they are not for identical amounts, the amount payable in respect of VAT by each party to the other will be offset against one another and payment of the appropriate balancing amount will be made to the other party by the party issuing the lower value invoice.
- 4.2.4 For the purposes of this **clause 4**, the expressions "supply" and "VAT invoice" shall bear the same meanings as they do in the VATA. References in this Lease to any person, or any right, entitlement or obligation of any person under the laws in relation to VAT, shall (where appropriate and unless the context otherwise requires) be construed, at any time when such person is treated as a member of a group for the purposes of VAT, to include a reference to the representative member, or to the right, entitlement or obligation under such laws of the representative member, of that group at such time (the term "representative member" to be construed in accordance with the relevant legislation in the VATA).

4.3 **Withholdings**

All sums payable to the Landlord under this Lease or for any breach of any warranty under this Lease shall be paid free and clear of all set off deductions or withholdings whatsoever save only as provided in this Lease or as required by law.

4.4 **Interest on late payment**

If the Tenant does not pay the rents or other sums properly due and demanded in writing to the Landlord under this Lease, whether or not reserved as rent and including in each case any applicable VAT payable thereon, within twenty eight (28) days of the due date for payment the Tenant is to pay interest on those sums, both after as well as before judgment, at the Prescribed Rate for the period from and including the due date for payment to and including the date of actual payment.

4.5 **Payment of Outgoings**

The Tenant is to pay all Outgoings in relation to the Premises and a proper proportion (to be determined by the Landlord or the Landlord's Surveyor acting reasonably) of any Outgoings assessed in relation to the Premises any Adjoining Premises and/or the Railway Premises. The provisions of this clause do not apply to any Outgoings arising from:

- 4.5.1 any dealing by the Landlord with its interest the Premises; or
- 4.5.2 any tax (other than VAT) payable by the Landlord on the annual rent or any other sums payable to the Landlord under this Lease.

4.6 **Utility costs**

The Tenant is to pay direct to the suppliers of the Utilities all costs payable in respect of Utilities provided to the Premises (including standing charges and taxes payable on Utility costs).

4.7 **Landlord's Costs**

- 4.7.1 The Tenant is to pay the Landlord's Costs arising from:
 - 4.7.1.1 any application made by the Tenant for the Landlord's consent or approval to any matter under this Lease whether or not:
 - (a) consent or approval is given unless a court determines that the Landlord has unreasonably or unlawfully withheld that consent or approval in circumstances where it is not entitled to do so; or
 - (b) the application is withdrawn;
 - 4.7.1.2 abating any nuisance on the Premises caused by the act, default or negligence of the Tenant;

- 4.7.1.3 the inspection and, if required, approval by the Landlord, the Engineer or the Landlord's Surveyor of any alterations, additions or improvements to the Premises;
- 4.7.1.4 verifying, where reasonable, compliance with and enforcing or making good any breach of the Tenant's Obligations, including the recovery of arrears of the annual rent or any other sums due to the Landlord under this Lease, whether by distress or by any other means;
- 4.7.2 Where the Tenant must pay the Landlord's Costs the following provisions shall apply:-
- 4.7.2.1 where reasonable and possible not later than 28 days before incurring any Landlord's Costs the Landlord shall provide an estimate of the amount together with details of the rate (or other basis) upon which such costs will be charged;
- 4.7.2.2 the Tenant shall promptly provide all such information as the Landlord may reasonably require to enable the Landlord to provide any estimate of the Landlord's Costs;
- 4.7.2.3 where the Landlord has given an estimate of the Landlord's Costs such estimate shall not be exceeded unless:
- (a) the Landlord has previously notified the Tenant as to why the estimate is likely to be exceeded and given a revised estimate; or
- (b) such Landlord's Costs have been incurred in preventing or remedying or avoiding the occurrence of an Adverse Effect;
- 4.7.2.4 Landlord's Costs which are charged in respect of its own employees shall not be more than would normally be charged by the Landlord to third parties in respect of such matters;
- 4.7.2.5 Landlord's Costs will be invoiced to the Tenant within 2 months of the relevant costs being incurred and each such invoice will be accompanied by a statement giving reasonable details of the items charged, the calculation of the charges and copies of all relevant invoices or valuations;

- 4.7.2.6 invoices in respect of the Landlord's Costs will be due for payment 28 days after such invoices are submitted and if not paid within 7 days of such due date, any unpaid amounts will bear interest at the Prescribed Rate from the date of the invoice or demand until the date of actual payment;
- 4.7.2.7 in the event of emergency or other urgent action required to avoid or prevent an Adverse Effect, the Landlord shall not be required to comply with sub-paragraphs 4.7.2.1 to 4.7.2.5 of this clause to any greater extent than would be reasonable to expect the Landlord to do so in the circumstances having regard for the need for such urgent action.

5. **REPAIR, MAINTENANCE AND PROTECTION OF RAILWAY AND RAILWAY PREMISES**

5.1 **Tenant's General Repair and Maintenance Obligations**

The Tenant is:

- 5.1.1 to keep the buildings and structures on the Premises in good and substantial repair and condition which shall include repairing any inherent or latent defects save for those of a minor nature which do not affect the Operation of the Railway provided that where such repair involves Critical Works such repair shall not be carried out without the Tenant complying with the Conditions of Work and LUL Standards (as applicable);
- 5.1.2 (save during periods of construction where the Conditions of Work, any relevant LUL Standards and Method Statements will apply), to keep all unbuilt parts of the Premises clean and tidy and secure;
- 5.1.3 without prejudice to the foregoing provisions of this **clause 5.1** not to do anything which would reduce any support shelter, waterproofing and protection provided by the Premises for the Railway Premises from such parts of the Premises as are designed to or in fact do provide support shelter, waterproofing and protection to such Railway Premises and not at any time to remove or lessen such support shelter, waterproofing or protection below the requirements of the Load Bearing Regime and at all times to take such steps as are reasonable and proper in respect of the state and condition of the Premises to ensure that the Railway Premises and all persons using the Railway Premises are fully and properly safeguarded and in so doing (if the Works in question are Critical Works) to comply with the Conditions of

Work and LUL Standards and to procure that any person deriving title under it observes and performs the provisions contained in this **clause 5.1.3** (if applicable);

- 5.1.4 not to do or permit anything to be done on the Premises (including any Critical Works) which will damage or weaken the waterproofing membrane and protective layer forming the part of the Load Bearing Structure or otherwise forming part of the Premises and protecting the Railway Premises provided that this shall not prevent the Tenant from fixing structures in accordance with the Load Bearing Regime subject (in respect of Critical Works) to the Conditions of Work and any relevant LUL Standards;
- 5.1.5 to carry out a visual inspection of the integrity of the Load Bearing Structure every year after the Term Commencement Date or following replacement of any Load Bearing Structure every year after the construction of that Load Bearing Structure and a detailed non-intrusive physical inspection of the integrity of the Load Bearing Structure every four years after the Term Commencement Date or following replacement of any Load Bearing Structure every four years after the construction of that Load Bearing Structure and in each case to notify the Landlord in writing before such inspection is being undertaken and within twenty (20) Working Days of the date of such inspection to provide the Landlord with a written report of the results of such inspection. For the avoidance of doubt the carrying out of inspections under this **clause 5.1.5** shall be Critical Works (save where the inspection is undertaken from within the Maintenance Access Areas) and the inspections shall inter alia be carried out in accordance with LUL Standard S1060 (Civil Engineering – Bridges and Structures Inspection Standard) or any replacement thereof;
- 5.1.6 before allowing construction traffic to pass over any of the Aprons, to undertake, at its own cost, a detailed condition survey and associated assessment to determine the strength of the relevant Apron(s) by a reputable and appropriately qualified professional (and provide a copy of such survey report with all supporting information, to the Engineer as soon as reasonably practicable and in any event within 20 Working Days following production of the report) to establish the extent to which any maintenance works need to be carried out to the relevant Apron(s) to enable the relevant Apron(s) to support the loading of such construction traffic, and before allowing such construction traffic to pass over the relevant Apron(s) to carry out, at its own cost, the required maintenance works identified by the report;

- 5.1.7 before carrying out any development works above any of the Aprons (which for the purpose of this sub-clause shall include the construction of new roads and/or any other use, not already dealt with under clause 5.1.6 hereof, which materially increases the loading placed upon the Apron(s)), to undertake, at its own cost, a detailed condition survey and associated assessment to determine the strength of the relevant Apron(s) by a reputable and appropriately qualified professional (and provide a copy of such report with all supporting information, to the Engineer as soon as reasonably practicable and in any event within 20 Working Days following production of the report), to establish the extent to which any strengthening works need to be carried out to the relevant Apron(s) to support the loading of the proposed development works, and prior to or as part of carrying out such development works to carry out, at its own cost, the required strengthening works identified by the report; and
- 5.1.8 For the avoidance of doubt the carrying out of surveys under clauses 5.1.6 and 5.1.7 shall be Critical Works and the surveys shall inter alia be carried out in accordance with LUL Standard S1060 (Civil Engineering – Bridges and Structures Inspection Standard) or any replacement thereof.

5.2 **Standard of repairs**

All repairs to the Premises are to be carried out in a good and workmanlike manner with good and proper materials in accordance with good building practice and in accordance with the requirements of all Legislation affecting the repairs or the means by which they are carried out, including the CDM Regulations, and in relation to Critical Works, in accordance with the Conditions of Work and LUL Standards (where applicable).

5.3 **Condition of the Load Bearing Structure**

- 5.3.1 If the Tenant exercises its right pursuant to **paragraph 2.1 of Schedule 2** the Tenant within five working days of completion of a structural survey is to supply to the Landlord a copy of the report; and
- 5.3.2 If such survey reveals that further investigations are required the Tenant shall arrange for such further investigations as are specified in the structural survey as necessary; and
- 5.3.3 If the Landlord does not accept the findings specified in the report nor any recommendation to carry out any Works or otherwise contained in the report, the Landlord shall provide written reasons for such non-acceptance to the Tenant within fourteen (14) days of receipt by the

Landlord of the report which shall relate solely to the Operation of the Railway; and

- 5.3.4 For the avoidance of doubt, the Landlord is not obliged to accept the findings specified in the report nor to carry out any Works or adhere to any recommendations contained in the report that in each case relate to the Operation of the Railway and the Landlord's decision whether or not to accept these elements of the report shall be final.

5.4 **Landlord's entry**

Subject always to **clauses 3.4** and **5.8**, the Tenant is to permit the Landlord with or without workmen and all necessary plant, equipment, tools and appliances to enter and remain for so long as reasonably necessary upon such parts of the Premises as are reasonably necessary (excluding save in the case of emergency private residential homes and commercial units):

- 5.4.1 to view the state of repair and condition of the Load Bearing Structure or other elements of the Premises which could have an Adverse Effect and to carry out investigations (including intrusive investigations) and/or to take a schedule of any dilapidations;
- 5.4.2 to remove any obstruction to access to and/or egress from the Railway Premises including without limitation the Emergency Exits;
- 5.4.3 to ascertain whether anything has been done which constitutes a breach or non-performance of any of the Tenant's Obligations;
- 5.4.4 to carry out a structural survey pursuant to **clause 5.6**;
- 5.4.5 to exercise any of the rights excepted and reserved to the Landlord by this Lease;
- 5.4.6 for any other reasonable reason or purpose connected with the interest of the Landlord in the Premises;
- 5.4.7 (if the Landlord considers that the Operation of the Railway is or may be endangered or that access to the Railway Premises is or may be impeded) to carry out any Works that the Landlord properly considers necessary, including the carrying out of any Works in respect of which the Tenant is in default, whether as referred to in **clauses 5** or **6** or otherwise; and
- 5.4.8 to remove any interference to the Signage and Lighting Package to the extent the Tenant fails to do so in breach of its obligations under this Lease;

provided that the Landlord cannot reasonably do so without gaining access to the Premises and provided further that in exercising any right under this clause 5.4 the Landlord shall procure that the person exercising such rights causes as little inconvenience, disturbance and damage as reasonably possible to the occupiers of the Premises and make good all damage caused as soon as reasonably practicable to the reasonable satisfaction of the Tenant.

5.5 **Repairing Notice**

5.5.1 The Landlord may only serve a Repairing Notice where a breach of the Tenant's obligations to repair under this Lease:

5.5.1.1 would or may cause an Adverse Effect; or

5.5.1.2 would otherwise cause a liability or potential liability for the Landlord to any third party.

5.5.2 Following the service of a Repairing Notice the Tenant is to commence to carry out any repair or other works properly required by the Repairing Notice:

5.5.2.1 immediately in the case of an emergency or threat to safety and otherwise within the reasonable period specified in the notice; or

5.5.2.2 if no reasonable period is specified within a reasonable period after the receipt of the Repairing Notice; and

thereafter to promptly and diligently complete the repair or other Works as soon as reasonably possible.

5.6 **Structural Surveys**

5.6.1 If a Repairing Notice is served on the Tenant by the Landlord and the Landlord has proper reason to believe that the Tenant is in breach of its obligations under **clauses 5.1, 5.2 and 5.5** or if the Landlord does not accept the findings of any report under **clause 5.3** then the Landlord may undertake a structural survey and report on the state and condition of the Premises and/or the magnitude or method of loading imposed by the structure of the Premises on the Load Bearing Structure and/or the Ventilation Shafts.

5.6.2 The Landlord will give written notice to the Tenant on commissioning the structural survey that it has done so and will procure that the Engineer has due regard to any representations made by the Tenant (although the Engineer will not be bound by such representations).

- 5.6.3 Within five (5) Working Days of completion of the report the Landlord is to supply to the Tenant a copy of the report which shall include the Engineer's recommendations (if any) for maintenance, repair or renewal of the Premises and/or the Load Bearing Structure and/or the Ventilation Shafts.
- 5.6.4 If the Engineer suggests that further investigations are required, the Landlord shall arrange for such further investigations as are necessary and the provisions of this **clause 5.6** shall apply to the commissioning of such further investigations as they do to the original structural survey. The report shall identify what (if any) Works are required to ensure the safety of the Railway or the Railway Premises or the Operation of the Railway.
- 5.6.5 The Landlord will procure that the Engineer has due regard to any representations made by the Tenant on any report prepared pursuant to this **clause 5.6** (although the Engineer will not be bound by such representations).
- 5.6.6 If the report identifies that Works are required in order to prevent or avoid an Adverse Effect the proper costs of producing such report and of further investigations as are necessary shall be payable by the Tenant within twenty eight (28) days of the Tenant being supplied with a copy of the report.
- 5.6.7 The Tenant shall be liable to carry out any Works referred to in the report which are specified by the Engineer as being necessary to prevent or avoid an Adverse Effect.

5.7 **Compliance with Repairing Notice**

If the Tenant does not comply with the Repairing Notice within the period referred to in **clause 5.5** then (save in the case of emergency) the Landlord may serve a further written notice ("**Warning Notice**") on the Tenant specifying the breach and setting out the repairs and/or works that the Tenant is required to do in order to remedy the breach and specifying a reasonable date by which the Tenant must commence to remedy the same and if the Tenant does not commence the repairs and/or works required by such date then:

- 5.7.1 the Tenant is to permit the Landlord to enter and remain upon the Premises with or without workmen, plant and materials for so long as is reasonably necessary to carry out the repairs or other works properly required by the Warning Notice; and
- 5.7.2 the proper costs incurred by the Landlord (as evidenced by copies of all relevant invoices, receipts and quantity surveyor valuations as

appropriate) in carrying out the repairs or other works properly required by the Repairing Notice are to be paid by the Tenant to the Landlord within twenty eight (28) days of written demand in accordance with **clause 4.7** together with interest on those costs at the Prescribed Rate calculated from and including the date on which the payment is due and including the date on which they are paid.

5.8 **Conditions of rights of entry**

Save where the Landlord exercises a right of access to the Premises in order to avoid or prevent an Adverse Effect arising because of a breach or non-performance by the Tenant of any of the Tenant's Obligations:

- 5.8.1 such access shall only be obtainable (save in the case of emergency) on reasonable prior appointment (to be arranged with the Tenant on not less than five (5) Working Days' written notice);
- 5.8.2 any person accessing the Premises shall (save in the case of emergency) comply with the reasonable security requirements of the Tenant or any lawful occupier of the Premises; and
- 5.8.3 the Landlord shall procure that any person exercising such rights shall cause as little damage, disturbance and inconvenience as reasonably practicable to the Tenant and any persons deriving title under it and/or any other occupiers of the Premises and shall make good any physical damage to the Premises as soon as reasonably practicable to the reasonable satisfaction of the Tenant

provided always that the Tenant agrees that it shall use reasonable endeavours to ensure that one of its representatives is made available to provide an appointment on five (5) Working Days' notice following receipt of a request under **clause 5.8.1**.

5.9 **Defective premises**

In respect of any defects in the Premises which might give rise to a duty or liability on the part of the Landlord under the Defective Premises Act 1972, any other statutory provision or common law, the Tenant is to:

- 5.9.1 give prompt notice in writing to the Landlord of the defects as soon as it becomes aware of them;
- 5.9.2 display on the Premises any notice which the Landlord may reasonably require in respect of such defects; and

- 5.9.3 take any other action which the Landlord may properly and reasonably require to discharge any duty or liability which may be imposed on the Landlord in respect of those defects.

5.10 No overloading

The Tenant is:

- 5.10.1 not to connect into or onto or make any affixation to the Railway Premises;
- 5.10.2 not to construct anything on or over the Railway Premises or the Ventilation Shafts other than in accordance with the Load Bearing Regime;
- 5.10.3 not to suspend any loads from the ceilings or other fabric of any buildings or structures on the Premises nor to load or to use the floors foundations or structure of the Premises or any buildings or structures on them in any manner which will in any way impose a weight or strain in excess of that which the Load Bearing Structure is designed to carry as set out in the Load Bearing Regime and if the Tenant is in breach of its obligations this clause, to remove such load as soon as practicable or immediately in case of danger or threat to safety and (if any part of the Railway or Railway Premises shall be endangered or impaired as a result) in accordance with the proper directions of the Engineer the Conditions of Work and any relevant LUL Standards.

5.11 Dangerous things

The Tenant is not to:

- 5.11.1 bring on to, place or keep on or in those parts of the Premises as shall be adjacent to or on the edge of the Railway Premises or the means of access or egress from it anything of a dangerous, combustible, flammable, radioactive or explosive nature or which would be likely to increase the risk of fire or explosion other than in quantities reasonably required for the use of the Premises and then only in accordance with the requirements of the Landlord and the requirements of the fire authorities and any manufacturers' or trade safety recommendations;
- 5.11.2 install or use on the Premises any Plant and Machinery which may cause electromagnetic interference with the Railway Premises and/or Railway and to remove any such Plant and Machinery installed on demand by the Landlord.

5.12 **Protection of the Railway Premises**

The Tenant is not to do or permit any thing which may adversely affect or injure the Railway Premises or interfere with, impede, disrupt or delay the Operation of the Railway.

5.13 **Protection of Ventilation Shafts**

The Tenant is:

- 5.13.1 to take reasonable precautions to prevent any object from entering the Ventilation Shafts and shall not without the consent of the Landlord (such consent not to be unreasonably withheld or delayed) construct any building or other construction over the Ventilation Shafts otherwise than in accordance with the Load Bearing Regime;
- 5.13.2 not to block the Ventilation Shafts or any louvres or other means of ventilation or airflow to the Railway Premises; and
- 5.13.3 not to pollute the air or air spaces serving any Ventilation Shafts or any other means of ventilation to the Railway Premises.

5.14 **Non-interference**

The Tenant is:

- 5.14.1 not to build any structures (whether temporary or permanent) which would obstruct any access to or egress from the Railway Premises or the Operation of the Railway or would otherwise have an Adverse Effect;
- 5.14.2 not to fix fasten or suspend any Conduits or other items from the external surfaces of the Load Bearing Structure directly fronting upon the Railway Premises (being those surfaces where there is no tunnel or other structure on the Railway Premises separating the Load Bearing Structure from the railway in the location where such Conduits or other items are fixed fastened or suspended);
- 5.14.3 not to fix or fasten any lights or signs which may interfere with or be confused with any safety systems (including traffic lights) upon or associated with the Railway, and to remove any so erected on demand by the Landlord;
- 5.14.4 to remove immediately upon request from the Landlord any advertisement, bill, placard, sign, fascia, light, flag, canopy, awning or other fixture or fitting which has or is likely to have an Adverse Effect; and

5.14.5 insofar as the Landlord has notified the Tenant of the then current Signage and Lighting Package, the Tenant shall on receipt of a written request from the Landlord remove any interference to such Signage and Lighting Package within a reasonable period.

5.15 **Emergencies**

If the Landlord considers that the Operation of the Railway is under immediate threat by the state or condition of the Premises or because access to or egress from the Railway Premises is impeded, the Landlord may enter the Premises to carry out immediate actions required to make safe or protect the parts of the Premises affected or ensure that such access is unimpeded without the need to serve any Repairing Notice or give the Tenant any prior notice and if the Tenant is in breach of the Tenant's Obligations the proper costs incurred by the Landlord in doing so shall be recoverable by the Landlord and payable by the Tenant within twenty eight (28) days of written demand and receipt of an invoice evidencing the payment required.

5.16 **Maintenance and Lifecycle Fund**

The Tenant is to comply with the Tenant's obligations at **Schedule 10 (Maintenance and Lifecycle Fund)** and the Landlord is to comply with the Landlord's Obligations at **Schedule 10**.

6. **ALTERATIONS, ADDITIONS AND WORKS**

6.1 **Conditions of Work and LUL Standards**

The Tenant is not to undertake any Critical Works without complying with the Conditions of Work any relevant LUL Standards and/or any proper regulations as notified to the Landlord by the Tenant in writing from time to time in accordance with **Schedule 5**.

6.2 **Prohibition on Critical Works without Landlord's consent**

The Tenant is not to carry out any Critical Works without:

6.2.1 the previous written consent of the Landlord which consent may be withheld in the Landlord's absolute discretion to the extent that such Critical Works would adversely affect the structural integrity or load-bearing capacity of the Railway Premises and/or the Operation of the Railway Provided always that it shall otherwise be reasonable for the Landlord to withhold consent to a Redevelopment if:

6.2.1.1 in the Landlord's reasonable opinion the Tenant or any undertenant undertaking the Critical Works does not have

sufficient expertise and/or financial standing properly to carry out and complete the Redevelopment; or

6.2.1.2 such Redevelopment does not in the Landlord's opinion provide adequate Emergency Exits for the Operation of the Railway; or

6.2.2 complying with the provisions of **Schedule 5**.

6.2.3 For the purposes of **clause 6.2.1** the Landlord shall be satisfied with the financial standing of the Tenant or any undertenant undertaking the Critical Works if the Tenant or any undertenant undertaking the Critical Works either:

6.2.3.1 provides Accounts for the Tenant or any undertenant or any guarantor of such party undertaking the Critical Works for not less than three Accounting Periods prior to the date of the application for consent showing net asset value (assessed in accordance with current UK GAAP or such other appropriate accounting standard as the Landlord may reasonably determine from time to time) equal to or greater than three times the estimated cost of the Critical Works; and/or

6.2.3.2 provides a bond, guarantee and/or other security (reasonably acceptable to the Landlord) which when combined with the net asset value (assessed in accordance with current UK GAAP or such other appropriate accounting standard as the Landlord may reasonably determine from time to time) of the Tenant or the undertenant or guarantor of such party undertaking the Critical Works is equal to or greater than three times the estimated cost of the Critical Works;

6.2.4 In the event that a bond, guarantee and/or other security is provided pursuant to Clause 6.2.3.2, the Landlord agrees to release any such bond, guarantee and/or other security upon completion of the relevant Critical Works and any such bond, guarantee and/or other security shall no longer be applicable.

6.2.5 For the avoidance of doubt it shall for the purposes of clause 6.2.3 be reasonable for the Landlord not to accept security comprising assets outside of the United Kingdom.

6.3 **General provisions relating to Notifiable Works**

The Tenant is not to execute any Notifiable Works without:

- 6.3.1 in the case of Notifiable Works not involving or amounting to a Redevelopment first giving at least thirty (30) Working Days previous notice in writing to the Landlord of the intention to carry out such Notifiable Works to the Landlord;
- 6.3.2 in the case of a Redevelopment (other than the first phase of Redevelopment after the date hereof) first giving six (6) months previous notice in writing to the Landlord of the intention to carry out such Redevelopment;
- 6.3.3 complying with the provisions of **Part A of Schedule 5** and (where applicable) the remaining provisions of **Schedule 5**; and
- 6.3.4 undertaking to pay to the Landlord the Landlord's Costs incurred in respect of such Redevelopment.

6.4 **Oversailing Requirements**

If in the course of any Works the Tenant intends to use a crane or cranes or other plant or equipment to oversail the airspace above the Railway Premises the Tenant shall comply with the Conditions of Works and any relevant LUL Standards and the proper requirements of the Engineer relating to the installation and operation of such cranes, plant or equipment in order to protect the Railway Premises and the safety of persons in the vicinity of them.

6.5 **Additional Structure(s) and Existing Apron Columns**

6.5.1 If the Tenant wishes to construct, install, replace, modify or relocate any Additional Structure(s) within any parts of the Railway Premises situated beneath the Premises and owned by the Landlord and the location of the Additional Structure(s) otherwise than within such parts of the Railway Premises is not for technical reasons reasonably practicable:

6.5.1.1 subject to the Landlord approving the proposed location and construction of the Additional Structure under **Clause 6.2**; and

6.5.1.2 subject to the Tenant agreeing to procure the removal of any Existing Apron Column or Additional Structure which has then or will following completion of the works of construction, installation or relocation of any new Additional Structure cease to provide support for any Load Bearing Structure; and

6.5.1.3 subject to the works referred to in this **clause 6.5.1** being approved and carried out in accordance with the Conditions of Works in Schedule 5;

within 10 Working Days of the date of practical completion of the works to construct and/or relocate the Additional Structure:

- (a) the Landlord shall grant the Tenant and the Tenant shall accept the grant of the Additional Structure Supplemental Lease; and
 - (b) in the case of relocation of an Additional Structure the Tenant shall give to the Landlord, and the Landlord shall accept from the Tenant a surrender of the parts of the Supplemental Lease in respect of the Additional Structure(s) that are being relocated including a full release of future liability for each party in respect of such Additional Structure, which shall be documented by way of a deed of surrender at a nil premium in a form to be agreed between the parties (each acting reasonably).
- 6.5.2 For the avoidance of doubt, if the Tenant wishes to repair, maintain, replace, remove and/or modify any Existing Apron Column then it shall:
- 6.5.2.1 first obtain the Landlord's approval to such works under **clause 6.2**; and
 - 6.5.2.2 ensure that the works to the Existing Apron Column are approved and carried out in accordance with the Conditions of Work in Schedule 5.
- 6.5.3 If the Tenant wishes to relocate any Existing Apron Column to any part of the Railway Premises situated beneath the Premises which is owned by the Landlord and the location of the Additional Structure otherwise than within such parts of the Railway Premises is not for technical reasons reasonably practicable, then:
- 6.5.3.1 subject to the Landlord approving the proposed relocation of the Existing Apron Column under **clause 6.2**; and
 - 6.5.3.2 subject to the works to relocate the Existing Apron Column being approved and carried out in accordance with the Conditions of Work in Schedule 5;
- within 10 Working Days of the date of practical completion of the works to remove and relocate the Existing Apron Column:
- (a) the Tenant shall give to the Landlord, and the Landlord shall accept from the Tenant a surrender of the parts of the Premises comprised in the relevant Existing Apron Column including a full release of future liability for each party in respect of such Existing Apron Column, which shall be documented by way of a deed of surrender at a nil premium in a form to be agreed between the parties (each acting reasonably); and
 - (b) the Landlord shall grant the Tenant and the Tenant shall accept the grant of an Additional Structure Supplemental Lease in respect of the relocated Additional Structure.

- 6.5.4 The Landlord and the Tenant agree that as soon as reasonably practicable during any works to install, construct, relocate, replace and/or remove any Additional Structure and/or Existing Apron Column, and in any case prior to the date of practical completion of any such works, they shall in each use all reasonable endeavours to agree appropriate, Land Registry compliant, plans and/or drawings to be attached to any Additional Structure Supplemental Lease and/or deed of surrender (as appropriate) and the Landlord shall use reasonable endeavours (at the proper cost of the Tenant) to assist the Tenant in dealing with any requisitions the Land Registry may raise.
- 6.5.5 The Tenant acknowledges that the Landlord has absolute discretion whether or not to consent to or approve (with or without conditions) any request by the Tenant made pursuant to this **clause 6.5** but the Landlord agrees that its decision will be made solely upon the view of the Engineer (applying all usual LUL Standards, requirements and recommendations in respect of the Operation of the Railway) as to whether or not the Tenant's request can be allowed or approved and as to any conditions which may be imposed in relation thereto in order to prevent or avoid an Adverse Effect.

6.6 **Permitted Works**

Nothing in this Lease shall prevent the Tenant from carrying out any Works to the Premises which are not expressly prohibited by this Lease provided that they are carried out in accordance with all relevant requirements of this Lease.

6.7 **CDM Regulations**

In relation to the CDM Regulations the Tenant is:

- 6.7.1 to comply fully with such regulations insofar as they relate to any Works to be carried out in, to or at the Premises by or on behalf of the Tenant;
- 6.7.2 (if the Landlord would be treated as a client in respect of the works under the CDM Regulations), to elect in writing to be treated as the only client in relation to those works under regulation 8 of the CDM Regulations; and
- 6.7.3 to maintain the health and safety file required by the CDM Regulations and provide to the Landlord within one (1) month of the completion of the works, the details of the works which need to be included in that file.

7. **USE OF THE PREMISES**

7.1 **Permitted use**

The Tenant is to use the Premises only for the Permitted Use.

7.2 **Prohibited uses**

The Tenant is not to use the Premises:

- 7.2.1 for any illegal immoral or offensive purpose or for any noisy, offensive or dangerous trade, manufacture, business or occupation; or
- 7.2.2 in breach of any restriction on use contained in the Title Matters.

7.3 **Restrictions on use**

The Tenant is:

- 7.3.1 not to use the Premises in a manner which creates a legal nuisance, or causes physical damage to the Landlord or any tenants or occupiers of the Adjoining Premises, the Railway Premises or to the public or passengers using the Railway Premises or which will or may cause any obstruction, interference, disturbance, physical damage or otherwise cause or may cause an Adverse Effect;
- 7.3.2 not to use any machinery on the Premises which causes significant vibration either within or outside the Premises;
- 7.3.3 not to obstruct or misuse any of the Common Facilities nor to build or construct on or otherwise obstruct the Emergency Exits;
- 7.3.4 not to emit any fumes from the Premises onto the Adjoining Premises.

7.4 **Fire Precautions**

The Tenant is:

- 7.4.1 to permit the Landlord's fire safety officers and any other properly authorised persons to inspect such necessary parts of the Premises and the Emergency Exits and to inspect and test the fire equipment and apparatus at the Premises and the Emergency Exits;
- 7.4.2 to ensure that appropriate members of the Tenant's staff who may manage or control the Emergency Exits have received all fire safety training required by the Landlord during the Term; and
- 7.4.3 to comply at all times with all Legislation the reasonable requirements of the Landlord and the requirements of the insurers relating to fire safety.

7.5 **Security and Fire Alarms and Sprinklers**

The Tenant is:

- 7.5.1 to permit the Landlord, the Landlord's Surveyor and others authorised by them to have access to the Emergency Exits in the event of any fire or security alarms or sprinkler systems being activated;
- 7.5.2 not to install or maintain any equipment or apparatus at the Premises and the Emergency Exits which may adversely affect the performance of any security or fire alarms or sprinkler systems on the Railway Premises;
- 7.5.3 to notify the Landlord immediately on becoming aware that any security or fire alarms or sprinkler systems are or may be defective; and
- 7.5.4 not to interfere with or make any unauthorised connection to any security or fire alarm or sprinkler system or ancillary equipment at the Railway Premises.

7.6 Lawful use

The Landlord gives no warranty to the Tenant that the Permitted Use is or will remain a lawful or permitted use for the Premises under the Planning Acts.

7.7 Gates and Alarm System

- 7.7.1 The Tenant is forthwith after the date of this Lease in respect of any existing Maintenance Access Areas and forthwith upon completion of the construction of any new Maintenance Access Areas to install and thereafter repair inspect maintain and replace gates or other means of security ("Gates") in each case acceptable to the Landlord acting reasonably in locations approved by the Landlord acting reasonably at each point of entrance to the Maintenance Access Areas.
- 7.7.2 The Tenant is forthwith after the date of this Lease in respect of any existing Maintenance Access Areas and forthwith upon completion of the construction of any new Maintenance Access Areas to install an intruder alarm system ("the Alarm System") on each of the Gates and thereafter repair inspect maintain and replace each Alarm System and keep it in good working order and condition.
- 7.7.3 The Tenant is forthwith after the date of this Lease in respect of any existing Maintenance Access Areas and forthwith upon completion of the construction of any new Maintenance Access Areas to connect each Alarm System into the alarm system serving the Railway Premises.

- 7.7.4 The Tenant is not to permit access to the Maintenance Access Areas other than by the Landlord and those expressly authorised in writing by the Landlord from time to time.
- 7.7.5 The Tenant is to keep the Gates closed and locked at all times save when the Tenant requires access in order to comply with its obligations under **clauses 5, 6 and 7** of this Lease.
- 7.7.6 The Tenant is to provide the Landlord with 3 sets of keys for each set of Gates forthwith upon completion of their installation.

8. **LEGISLATION**

8.1 **Compliance with Legislation**

The Tenant is:

- 8.1.1 to comply with all Legislation, including the Planning Acts, and the requirements of every Authority in respect of the Premises, their use and occupation or the carrying out of any Works to the Premises;
- 8.1.2 to carry out at its own cost all works and other matters required to fulfil this obligation; and
- 8.1.3 to indemnify the Landlord against any breach of its obligations in this **clause 8.1**.

This **clause 8.1** applies whether compliance with Legislation or the requirements of an Authority is the responsibility of the owner, landlord, tenant or other occupier of the Premises.

8.2 **Notices**

If the Tenant receives any notice, order, proposal, requisition, direction or other communication from any Authority or third party affecting or likely to affect the Load Bearing Structure, the Railway, the Railway Premises or passengers or public the Tenant is at its own cost and expense to immediately provide a copy of the notice, proposal, requisition, direction or communication to the Landlord except where to do so would be prejudicial to the Tenant's commercial interests.

8.3 **Effect of Legislation**

If any Legislation makes compliance with any of the terms of this Lease illegal or impossible:

- 8.3.1 no liability will arise in respect of any failure to comply with those terms; and

8.3.2 the Term will not end.

8.4 **Compliance with ROGS**

The Tenant is:

8.4.1 not by any act or omission to cause the Landlord to be in breach of the ROGS insofar as they apply to the Premises, their use and occupation or the carrying out of any Works to the Premises;

8.4.2 to carry out at its own cost all works and other matters required to fulfil this obligation; and

8.4.3 to indemnify the Landlord against any breach of its obligations in this **clause 8.4**.

This **clause 8.4** applies whether compliance with the ROGS is the responsibility of the owner, landlord, tenant or other occupier of the Premises.

9. **RESTRICTIONS ON PARTING WITH POSSESSION**

9.1 The Tenant is not to assign or underlet the whole or any part of Premises, except and to the extent that it is permitted to do so by the terms of this Lease.

9.2 For the avoidance of doubt the Tenant shall be permitted to grant rights and easements over the Premises for the benefit of other land or premises for the duration of this Lease.

10. **ASSIGNMENT**

10.1 **Prohibition on assignment**

Not to assign the whole or any part or parts of the Premises save as permitted under this **clause 10**.

10.2 **Permitted Assignments**

The Tenant may assign the whole or any part or parts of the Premises:

10.2.1 at any time (other than the circumstances described in **clause 10.2.1.2** below) if:

10.2.1.1 the relevant conditions set out in **clause 10.3** are satisfied; and

10.2.1.2 none of the circumstances set out in **clause 10.4** apply; and

- 10.2.1.3 the assignment is completed within six (6) months after the Landlord has given its consent under this **clause 10**, save that where a contract is entered into containing building obligations that provides for the future assignment, such assignment is completed within twenty four (24) months after the Landlord has given its consent; and
 - 10.2.1.4 in relation to an assignment of the whole of this Lease, it complies with any other conditions to the assignment of the Lease reasonably required by the Landlord; and
 - 10.2.1.5 in relation to an assignment of part only of this Lease the conditions set out in **clause 10.5** have been satisfied; and
 - 10.2.1.6 it obtains the prior written consent of the Landlord which shall be given within one month after the relevant preceding provisions of this **clause 10.2.1** have been complied with.
- 10.2.2 The provisions of **clause 10.2.1** above shall not apply to any assignment by way of charge for the purpose of securing monies but shall apply to any assignment by any charge in the exercise of its security.

10.3 **Conditions for assignment**

The conditions referred to in **clause 10.2** are specified for the purposes of section 19(1A) of the 1927 Act and are that:

- 10.3.1 in relation to an assignment of the whole of this Lease the proposed assignee enters into a direct covenant with the Landlord to comply with the Tenant's Obligations; or
- 10.3.2 in relation to the assignment of part only of this Lease, the proposed assignee enters into a direct covenant with the Landlord:
 - 10.3.2.1 to comply with the Tenant's Obligations in so far as they relate to the part of the Premises to be assigned ("the Permitted Part"), including (without limitation) covenants to comply with the Tenant's Obligations under:
 - (a) **Clause 5.16 and Schedule 10 (Maintenance and Lifecycle Fund)** hereof insofar as they relate to a Load

Bearing Structure forming part of the Permitted Part from time to time; and

(b) **Clause 16 (Insurance)**; and

10.3.3 in either case if reasonably requested to do so by the Landlord, that the proposed assignee provides to the Landlord a guarantee of the proposed assignee's obligations on the terms of **Schedule 9 (Guarantor)** by a company or companies or a person or persons that meet the criteria in **clause 10.4.2** as if it were an assignee.

10.4 **Circumstances where assignment is prohibited**

The circumstances mentioned in **clause 10.2.1.2** are specified for the purposes of section 19(1A) of the 1927 Act and are:

10.4.1 in the reasonable opinion of the Landlord, there is a material breach of the Tenant's Obligations contained in this Lease (or in the case of an assignment of part, the Tenant's Obligations in so far as they relate to such part) either at the date of the application for consent to assign or at any time after this but before the consent is granted;

10.4.2 the proposed assignee is a company or other legal entity incorporated in or an individual resident in a country outside the United Kingdom and there is no treaty for the mutual enforcement of judgments between the United Kingdom and that country unless, in relation to such company or entity:

10.4.2.1 already or upon completion of such assignment it will carry on and maintain a business in the United Kingdom; and

10.4.2.2 already has or upon completion of such assignment it will have a current bank account in the United Kingdom; and

10.4.2.3 it (together with any guarantor put forward in respect of it) already has or will upon completion of such assignment have in the reasonable opinion of the Landlord, sufficient assets in the United Kingdom to enable it to meet its liabilities under this Lease (or the part thereof to be assigned, as the case may be); and

10.4.2.4 it agrees to be bound by the jurisdiction of the English courts; or

- 10.4.3 the proposed assignee is a person who enjoys sovereign or state immunity, unless a department, body or agency or other wholly owned entity of the United Kingdom Government.

10.5 **Conditions for Assignment of Part**

The conditions for assignment of part of the Premises which are referred to in **Clause 10.2.1.5** are specified for the purposes of section 19(1A) of the 1927 Act and are:

- 10.5.1 the Permitted Part consists of (or is suitable for development as) land, buildings or structures which are Physically Independent (as defined below);

- 10.5.2 the assignment provides for the grant and reservation of such easements rights and other covenants as are necessary to ensure that both the Permitted Part and the remainder of the Premises (including any parts of the Premises that have previously been assigned) ("the Excluded Premises"):

- 10.5.2.1 will continue to enjoy the same (or substantially the same) easements, rights and other beneficial entitlements as existed prior to such assignment (in so far as the same remain necessary); and

- 10.5.2.2 will enjoy such additional easements rights and other beneficial entitlements as are necessary for the beneficial use and occupation of the Permitted Part and the Excluded Premises

in each case both at the date of the assignment and following the Redevelopment of the property to be assigned;

- 10.5.3 an apportionment (as between the property to be assigned and the Excluded Premises) has been approved by the Landlord (such approval not to be unreasonably withheld) in respect of:

- 10.5.3.1 the Tenant's liability to make payments under **Clause 5.16** and **Schedule 10 (Maintenance and Lifecycle Fund)**; and

- 10.5.3.2 any monies then standing to the credit of the Lifecycle Account provided that there shall be no such apportionment if at the date of the agreement there is no Load Bearing Structure at the property to be assigned in respect of which a Lifecycle Period has then commenced

and any such approval of the Landlord pursuant to this **clause 10.5.3** shall be deemed to be a binding apportionment of the liability of the Tenant under this Lease for the purposes of Sections 9 and 10 of the 1995 Act.

10.5.4 for the purposes of this **Clause 10.5**, "Physically Independent" means:

10.5.4.1 the Permitted Part is (or will following completion of Redevelopment be) capable of separate beneficial use and occupation; and

10.5.4.2 all buildings which have been (or will be) constructed within the Permitted Part are not dependent upon any other part of the Excluded Premises for structural integrity or support (or to the extent that they are or will be so dependent, the requirements of **clause 10.5.4.4** below are or will be complied with); and

10.5.4.3 all buildings which have been (or will be) constructed within the Excluded Premises are not dependent upon any part of the Permitted Part for structural integrity or support (or to the extent that they are or will be so dependent, the requirements of **clause 10.5.4.4** below are or will be complied with); and

10.5.4.4 in respect of any part of a Load Bearing Structure, or any roads, footpaths, estate areas, public realm, boundary walls, fences or other structures which may (or will) cross the boundaries of or fall partly within and partly outside the Permitted Part, the parts within the Permitted Part and any part of the Excluded Premises are in each case capable of being independently (here meaning without affecting the Excluded Premises or the Permitted Part (as the case may be)) accessed, maintained and/or replaced as necessary and all necessary easements and rights are granted or reserved over the Permitted Part and all other parts of the Excluded Premises as are necessary for this purpose.

10.5.5 Where there has been a permitted assignment of part of the Premises in accordance with the provisions of this **clause 10.5** with effect from the date of such assignment, no Tenant (and any applicable Guarantor) of the Excluded Premises shall be liable for any breach of any Tenant's Obligation in so far as such breach relates to the part of the Premises so assigned and no Tenant (and any applicable

Guarantor) of any part of the Premises so assigned shall be liable for any breach of any Tenant's Obligations in so far as such breach relates to the Excluded Premises.

10.6 **Health and safety file**

On an assignment of the whole or any part of the Premises, the Tenant is to hand to its assignee the original of any health and safety file maintained by the Tenant in respect of the whole or such part of the Premises under the CDM Regulations.

11. **UNDERLETTING**

11.1 **Underletting**

The Tenant may underlet the Premises or a part of the Premises if:

- 11.1.1 all of the conditions set out in **clause 11.2** are satisfied;
- 11.1.2 none of the circumstances set out in **clause 11.3** apply; and
- 11.1.3 it first obtains the prior written consent of the Landlord (which consent shall not be unreasonably withheld or delayed where the preceding provisions of this **clause 11.1** have been complied with).

11.2 **Provisions of underleases**

11.2.1 The conditions referred to in **clause 11.1.1** are specified for the purposes of 19(1A) of the 1927 Act and are:

11.2.1.1 the proposed undertenant enters into a direct covenant with the Landlord to comply with the terms of the underlease and the Tenant's Obligations in so far as relevant to the premises to be demised by the underlease;

11.2.1.2 the underlease is on no less onerous terms than the terms of this Lease and in particular contains:

(a) an express statement that the underlease is granted subject to the terms of this Lease insofar as they relate to the premises to be underlet;

(b) exceptions and reservations of the same easements, rights, powers and matters excepted and reserved to the Landlord and obligations on the Tenant imposed by this Lease insofar as they relate to the premises to be underlet and are required to protect the safety of the Railway,

Railway Premises and/or the Operation of the Railway;
and

- (c) if the underlease includes in its demise any part of the Load Bearing Structure, it shall contain a covenant by the underlessee to establish or contribute towards a Lifecycle Account (as defined in **Schedule 10**) in substantially the same terms as are set out in **clause 5.16** and **Schedule 9** (Lifecycle and Maintenance Fund) to this Lease.

11.3 **Circumstances where underletting is prohibited**

11.3.1 The circumstances referred to in **clause 11.1.2** are specified for the purposes of section 19(1A) of the 1927 Act and are:

11.3.1.1 the proposed undertenant is a company or other legal entity incorporated in or an individual resident in a country outside the United Kingdom and there is no treaty for the mutual enforcement of judgments between the United Kingdom and that country unless, in relation to such company or entity:

- (a) already or will upon completion of such underlease it will carry on and maintain a business in the United Kingdom;
and
- (b) already or upon completion of such underlease it will have a current bank account in the United Kingdom; and
- (c) it (together with any guarantor put forward in respect of it) already has or will upon completion of such underlease have in the reasonable opinion of the Landlord, sufficient assets in the United Kingdom to enable it to meet its liabilities under the underlease; and
- (d) it agrees to be bound by the jurisdiction of the English courts; or
- (e) the proposed undertenant is a person who enjoys sovereign or state immunity, unless a department, body or agency of the United Kingdom Government.

11.4 **Notification of Details**

Within ten (10) Working Days after any assignment, charge, assent or transfer of the Premises and the grant, assignment or charging of any underlease, however remote, which in any such case require the prior consent of the

Landlord the Tenant is to give written notice to the Landlord of the disposition together with certified copies of all the documents giving effect to it and is to pay to the Landlord a proper and reasonable registration fee, being not less than fifty pounds (£50.00).

12. **UNDERLETTINGS NOT REQUIRING CONSENT**

The consent of the Landlord shall not be required for the grant of occupational leases of any residential or other units or other leases which do not include in the demise any part of the Load Bearing Structure or other structural elements (nor any further transfers, underleases, charges or other dealings of or derived from such leases) and the provisions of **clause 11** hereof shall not apply to such underleases.

13. **PLANNING**

13.1 **Planning applications**

13.1.1 The Tenant is not to implement any planning permission under the Planning Acts which would be likely to have an Adverse Effect.

13.1.2 The Tenant is to obtain so often as occasion shall require all planning permissions licences, consents and approvals as may be required under the Planning Acts for the carrying out by the Tenant of any development on the Premises within the meaning of the Planning Acts or for the continuance of such development by the Tenant.

13.1.3 The Tenant is to indemnify (if and insofar as it is lawful for the parties to make such an arrangement) the Landlord against all charges payable in respect of any planning application made by the Tenant in respect of the Premises.

13.1.4 The Tenant is not to enter into any agreement with any Authority regulating the use or development of the Premises without the consent of the Landlord in respect of any matter which if implemented would be likely to have an Adverse Effect on the rights over the Premises which are reserved herein to the Landlord or would impose an obligation or liability on the Landlord.

14. **ENVIRONMENTAL LAW**

14.1 **Compliance with Environmental Law**

The Tenant is to comply with all requirements of Environmental Law and is not to use the Premises for the manufacture, use, storage, disposal or handling of any Hazardous Materials or Waste.

14.2 **Compliance with notices**

14.2.1 The Tenant is to supply the Landlord with copies of all notices, directions, reports or correspondence concerning any contamination of the Premises or any migration or other escape of Hazardous Materials or Waste which may result in proceeding being taken or threatened under Environmental Law.

14.2.2 The Tenant is at its own cost:

14.2.2.1 to take and complete promptly and diligently all actions or precautions required by such notice, direction, report or correspondence; and

14.2.2.2 upon notice in writing from the Landlord or, in the case of emergency upon oral notice, to take proper steps to remedy or prevent any pollution or contamination on or originating from the Premises or any obstruction or any blockage to the Conduits serving the Premises.

14.3 **Contamination**

The Tenant is not:

14.3.1 to do or omit to do anything that would cause any Hazardous Materials or Waste to escape, leak or be spilled or deposited on the Premises, discharged from the Premises or migrate to or from the Premises;

14.3.2 to keep any Hazardous Materials or waste on the Railway or the Railway Premises;

14.3.3 to keep any Hazardous Materials or Waste near the Railway or the Railway Premises other than in compliance with the Legislation; and

14.3.4 to discharge any Hazardous Materials or Waste into any Conduits nor discharge other materials, whether solid, liquid or gaseous, which might cause any obstruction or blockage to the Conduits.

14.4 **Notification**

The Tenant is to notify the Landlord immediately of any complaints from any person or any notice or proceedings against the Tenant relating to any matter affecting the Premises concerning the environment or the health or safety of human beings and provide the Landlord with copies of any correspondence, notices, proceedings or other documents relating to them.

14.5 **Right of entry**

The Tenant is to permit the Landlord and its employees and agents at all reasonable times after giving to the Tenant forty eight (48) hours written notice, except in an emergency, to enter the Premises to undertake investigations (including the taking of samples) in, on or under the Premises to ascertain the condition of the Premises and the nature, extent and mobility of Hazardous Materials or Waste in, on or under the Premises.

14.6 **Not to impede Operation of Railway**

Without prejudice to any of the obligations of the Tenant contained in this Lease, the Tenant is not to interfere with impede, disrupt or delay the Operation of the Railway nor the accesses to or egresses from the Railway Premises.

15. **END OF THE TERM**

15.1 **Return of the Premises**

At the end of the Term, the Tenant is to return the Premises to the Landlord in a state and condition consistent with the Tenant's Obligations.

15.2 **Continuation of liability**

The provisions of this **clause 15** will continue to bind the Landlord and the Tenant after the end of the Term.

16. **INSURANCE**

16.1 **Tenant to Insure**

The Tenant is to:

16.1.1 at all times during the Term insure the Premises under a Standard Policy covering the Insured Risks and the Reinstating Cost in the name of the Tenant and with the interest of the Landlord (either specifically or automatically) noted on the policy;

16.1.2 use reasonable endeavours to procure that any policy obtained by the Tenant in satisfaction of this **clause 16** includes a waiver of subrogation provision in favour of the Landlord;

16.1.3 procure insurance with Standard Insurers against all public liability risks of the Tenant to third parties arising out of or in connection with any matter relating to the Premises in an amount of not less than ten million pounds (£10,000,000) Index Linked (for each and every occurrence and with no annual aggregate limit) or as the Landlord may

from time to time (acting reasonably) require and notify to the Tenant in writing, such policy to be on terms approved by the Landlord (such approval not to be unreasonably withheld or delayed);

- 16.1.4 make all payments necessary for the purposes of obtaining and maintaining the insurances required under **clauses 16.1.1** and **16.1.3** and shall upon request from time to time, produce to the Landlord a copy or full details of the insurance policies effected in accordance with this Lease and all endorsements on such insurance policies and evidence that they are in force (including evidence that the last premium has been paid);
- 16.1.5 not less than once in every five years obtain at no cost to the Landlord an independent professional valuation of the Reinstating Cost of the Premises and to provide a copy of such valuation within ten (10) working days of its receipt by the Tenant;
- 16.1.6 pay to the Landlord within twenty eight (28) days of written demand the Landlord's proper costs of any independent professional valuation of the Reinstating Cost of the Premises obtained by the Landlord or on its behalf (as evidenced by appropriate receipts and/or invoices) if the Tenant has either failed to comply with **clause 16.1.5** or the Landlord and the Tenant are otherwise in dispute as to the provisions of this clause 16;
- 16.1.7 comply and use its reasonable endeavours to procure compliance by all persons acting for or under the control of the Tenant with the requirements and recommendations of the insurers (including as to the carrying out of any Works);
- 16.1.8 not knowingly do anything and shall use all reasonable endeavours not to permit anything to be done upon the Premises or any part thereof which is likely to render any of the Landlord's policy or policies of insurance void or voidable in relation to the Railway Premises or the Operation of the Railway;
- 16.1.9 not to and to use its reasonable endeavours to procure all persons acting for or under the control of the Tenant do not carry on or permit any trade business or activity which is likely to make any policy of insurance void or voidable or as a result of which payment of policy money might be withheld in whole or in part;
- 16.1.10 notify the Landlord immediately in writing of any damage to or destruction of the Premises or any claim under any of the insurances referred to in this clause (in each case whether or not caused by an Insured Risk); and

16.1.11 notify the Landlord as soon as reasonably practicable of the Tenant becoming aware of any material changes in a policy of insurance procured by the Tenant.

16.2 If the Tenant does not insure or procure all or any of the insurances required by this **clause 16** or fails to produce reasonable evidence that such insurances are in force, the Landlord may itself effect such insurance cover as it may consider prudent and the proper cost of so doing together with the Landlord's proper management and administrative costs for so doing will be payable by the Tenant to the Landlord within twenty eight (28) days of written demand and receipt of a valid invoice evidencing the payment required.

16.3 **Reinstatement**

16.3.1 The Tenant will:

16.3.1.1 use all reasonable endeavours to obtain any consents and approvals required to reinstate any damage to or destruction of the Premises or any part of thereof by any of the Insured Risks;

16.3.1.2 subject to any necessary consents and approvals being obtained and remaining unrevoked, apply the insurance proceeds received under the insurance policy or policies in reinstating damage to or destruction of the Premises or any part of thereof as aforesaid by as soon as reasonably practicable after the date of damage or destruction (but so that such reinstatement is required only in so far as is necessary to avoid or remedy any Adverse Effect), the Tenant making good any shortfall in the proceeds of insurance from its own money;

16.3.1.3 comply with the provisions of **clause 6** in carrying out such Works;

16.3.1.4 following such damage or destruction and pending receipt of such consents and approvals, carry out as expeditiously as possible such Works as may be required in order to remove any rubble or other loose building material and make the Premises safe having regard to the use of the Railway Premises and the Adjoining Premises by the public and passengers of the Railway and so as to maintain the integrity of the Load Bearing Structure.

16.3.2 In the event that the Tenant has not completed the reinstatement referred to in **clause 16.3.1** by the said 3 years, or, if earlier, it is

apparent that the necessary consents and approvals for the same cannot be obtained by such date, the Tenant shall carry out such Works as may be reasonably requested by the Landlord in order to restore reasonable amenity to the Railway Premises and the Adjoining Premises.

16.3.3 In the event of the Premises being destroyed or damaged by an event which is not an Insured Risk, the Tenant shall carry out as expeditiously as possible such Works as may be required in order to remove any rubble or other loose building material make the Premises safe having regard to the use of the Railway Premises and the Adjoining Premises by the public and passengers of the Railway and so as to maintain the integrity of the Load Bearing Structure.

16.3.4 When reinstating in accordance with **clause 16.3.1** the Tenant may make changes in the design, layout and specification or type to those used in the original building which is being reinstated.

16.4 **Determination of disputes**

Either the Landlord or the Tenant may refer any dispute about the Insured Risks or the terms of the Standard Policy under **clause 16** to expert determination under the provisions of **clause 25**.

17. **TITLE MATTERS**

The Tenant is to comply with the Title Matters so far as they are still subsisting, capable of taking effect and affect the Premises and is to indemnify the Landlord against any breach of them.

18. **LAND REGISTRY APPLICATIONS**

18.1 **First registration of title**

As soon as reasonably practicable after the date of this Lease, the Tenant named in the Particulars is to apply to the Land Registry for first registration of the title to this Lease and apply for a note of this Lease to be entered on the title number(s) set out in clause LR2.1 of the Land Registry Particulars. As part of the application, the Tenant is to use all reasonable endeavours to ensure that the Land Registry notes both the benefit of the rights granted by **clause 3.1** and the burden of the rights reserved by **clause 3.3** on the leasehold title. On completion of the registration, the Tenant is to provide official copies of the new title to the Landlord showing the Tenant registered as proprietor together with a copy of the title plan.

18.2 **Registration of rights and reservations**

As soon as reasonably practicable after the date of this Lease, the Tenant named in the Particulars is to apply to the Land Registry to note the burden of the rights granted by **clause 3.1** and to note the benefit of the rights reserved by **clause 3.3** on the title number(s) set out in clauses LR2.1 and LR2.2 of the Land Registry Particulars.

18.3 **Registration on assignment**

If, as a result of the assignment of this Lease, this Lease becomes registerable at the Land Registry or the Lease has already been so registered, the Tenant is to apply to the Land Registry to be registered as the proprietor of this Lease and, on completion of that registration, is to provide the Landlord with official copies of the title showing the Tenant as the registered proprietor of this Lease.

18.4 **End of the term**

At the end of the Term, the Tenant is to return the original Lease to the Landlord and use all reasonable endeavours to assist the Landlord in removing any notice of the Lease and the rights granted and reserved by it from the Landlord's title to the Premises if that title has by then become registered at the Land Registry.

18.5 **Exclusion of liability**

The Landlord will not be liable to the Tenant for any failure by the Tenant to register this Lease at the Land Registry or to register or note any of the rights granted or reserved by this Lease at the Land Registry either by notice or by way of caution against first registration, whichever is appropriate.

19. **INDEMNITY**

19.1 The Tenant is to indemnify the Landlord in respect of the following (each a "Claim"):

19.1.1 any:

19.1.1.1 injury to or death of any person,

19.1.1.2 damage to any property

19.1.1.3 actionable infringement, disturbance or destruction of any rights or easements or other matters

19.1.1.4 disruption or interruption to or suspension of the Operation of the Railway any train service or station service provided to, at or from the Railway Premises

arising from:

- (a) the state of repair and condition of the Premises or any tenant's or trade fixtures; or
 - (b) any breach or non-performance of the Tenant's Obligations contained or referred to in of the terms of this Lease; and
- 19.1.2 any charges payable by the Landlord in respect of its freehold reversion to the Premises (but excluding any other land owned by the Landlord whether or not forming part of the same Land Registry title) in respect of any planning application made or planning permission implemented by the Tenant in respect of the Premises.
- 19.2 The Landlord shall:
 - 19.2.1 as soon as practicable after becoming aware of any Claims, give notice in writing to the Tenant of any Claims brought or made or threatened to be brought or made against the Landlord;
 - 19.2.2 not admit liability, settle, adjust or compromise any Claim without first having notified the Tenant of its proposed actions and allowing the Tenant a reasonable opportunity to make representations in respect of such actions, which representations the Landlord shall pay due heed to but by which the Landlord shall not be bound;
 - 19.2.3 use reasonable endeavours to mitigate any Liabilities it suffers as a result of the occurrence of Claims; and
 - 19.2.4 give to the Tenant and the Tenant shall give to the Landlord, in each case at the Tenant's cost, such reasonable assistance as the other may reasonably require in respect of Claims.

20. **DEVELOPMENT OF ADJOINING PREMISES/RAILWAY PREMISES**

Subject to the rights granted to the Tenant and all other provisions of this Lease, the Landlord shall have the right at any time to carry out Works in or to or otherwise deal with or use any Adjoining Premises and/or the Railway Premises (whether for an estate in fee simple or for a term of years) as it may deem fit without obtaining any consent from or making any compensation to the Tenant.

21. **USE OF RAILWAY PREMISES AND ENGINEER'S DETERMINATION OF AN ADVERSE EFFECT**

21.1 Notwithstanding any other provision of this Lease:

21.1.1 the Tenant is not entitled to raise any objection in respect of the Operation of the Railway or the carrying out of any Works by the

Landlord on the Railway Premises (save to the extent the same is in breach of an express covenant on the Landlord's part in this Lease);

21.1.2 the Landlord is not responsible to the Tenant or to anyone enjoying the benefit of the Premises for any nuisance, disturbance, annoyance or inconvenience (howsoever caused) arising in consequence of or in relation to the Operation of the Railway;

21.1.3 the Tenant shall not be entitled to make any objection or complaint in respect of any noise discharge or vibration or any electronic interference from the Railway Premises arising from the Operation of the Railway;

21.1.4 the Landlord covenants that it will not remove any support for or cause any physical damage to any Load Bearing Structure or place any additional load or stress upon any Load Bearing Structure beyond that which it is designed to bear;

21.1.5 the Tenant covenants that it will not remove any support for or cause any physical damage to any part of the Adjoining Premises.

21.2 The determination as to whether or not any event or circumstances causes or is likely to cause an Adverse Effect and the action necessary to avoid or mitigate an Adverse Effect shall be within the discretion of the Engineer but in exercising his discretion the Engineer shall:

21.2.1 receive any representations and/or engineering or other professional advice which the Tenant may place before the Engineer; and

21.2.2 have regard only to matters properly relevant to the Operation of the Railway

22. **STATION INTERFACE PLAN**

22.1 The Landlord and the Tenant shall co-operate fully with one another in order to agree a Station Interface Plan from time to time as soon as reasonably practicable following a request from the Landlord as appropriate having regard to the Operation of the Railway.

22.2 The Station Interface Plan shall set out the interface arrangements between the Premises and the Operation of the Railway at the Ticket Hall.

23. **NOTICES**

23.1 **Service of notices**

Any notice under this Lease is:

- 23.1.1 to be made in writing;
- 23.1.2 to be addressed to the party on whom it is served at the registered office of that person or, where that person is an individual, at the last known address of that person;
- 23.1.3 to be delivered by hand, first class post, pre-paid or recorded delivery;
- 23.1.4 not to be served by e-mail or other forms of electronic communication; and
- 23.1.5 not be served at or upon the Premises.

23.2 **Time of receipt**

Unless the time of actual receipt is proved, a notice sent by the following means is to be treated as having been received:

- 23.2.1 if delivered by hand, at the time of delivery; or
- 23.2.2 if sent by post, on the second Working Day after posting; or
- 23.2.3 if served by fax at the time of transmission.

If a notice is received after 4.00 pm on a Working Day, or on a day which is not a Working Day, it is to be treated as having been received on the next Working Day.

23.3 **Joint parties**

If any party comprises more than one person, the service of any notice on any one of those persons will constitute good service on all of them.

24. **ENFORCEMENT**

24.1 **Applicable law**

This Lease is to be governed by and interpreted in accordance with English law.

24.2 **Jurisdiction**

The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Lease.

25. **DISPUTES**

- 25.1 Any dispute at to any matter of law under this Lease or the nature of the matter to be determined shall be determined by the Courts in accordance with English law.

25.2 Either the Landlord or the Tenant may refer any other dispute for determination by an Independent Person under the provisions of **Schedule 7**.

26. **EXECUTION**

The parties have executed this Lease as a deed and it is delivered on the date set out in clause LR1 of the Land Registry Particulars.

DRAFT

SCHEDULE 1

(The Premises)

[Note: Demise description to be finalised and Land Registry Plans to be prepared and agreed pursuant to Implementation Agreement.]

1. The premises known as EC1, Earls Court, London comprising:
 - 1.1 the land, buildings, structures shown edged red on drawing numbers [] (which for the avoidance of doubt includes the Load Bearing Structure and every part of it)
 - 1.1.1 including:
 - 1.1.1.1 all fences and walls (save for any forming part of the Railway Premises); and
 - 1.1.1.2 all airspace above each and every part of the said premises; and
 - 1.1.1.3 in relation to the Aprons, the areas hatched red on the attached drawing numbers [] and any Existing Apron Column(s); and

[DN: this drawing to include a redline at the undersurface of the lowest part of the Apron]
 - 1.1.2 excluding:
 - 1.1.2.1 the Railway Premises; and
 - 1.1.2.2 airspace forming a rectangle with a minimum depth of 200mm at all points measured from the extrados of any tunnels forming part of the Railway Premises (excluding the tunnels referred to at paragraph 1.1.2.3) as such airspace is shown for the purposes of illustration only on attached drawing numbers [] and all land beneath such airspace; and
 - 1.1.2.3 the Piccadilly Line tunnels including the ground around the Piccadilly Line tunnels forming a rectangle with a minimum width of 3 metres beyond the extrados on each side of the tunnel walls and a minimum height of 6 metres beyond the extrados above those tunnels (together the "Tunnel Surrounds") and all land beneath such Tunnel Surrounds as shown indicatively on plan [].

1.2 in each case including:

1.2.1 all alterations and improvements to those premises during the Term;

1.2.2 the Conduits which exclusively serve those premises during the Term.

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SCHEDULE 2

(Rights Granted)

The following rights (in common with the Landlord and all others now or hereafter entitled to the like rights):

1. Existing Services

The right to continue to use all Conduits existing at the date hereof serving the Premises laid in, on, under or over the Adjoining Premises for the free and uninterrupted passage of surface water and sewage from and water soil gas electricity telecommunications and other services to and from the Premises together with the right to enter and inspect repair maintain renew replace clean sever connections to and remove the same Provided Always that the Landlord shall (at its own cost) be entitled at any time upon giving to the Tenant prior written notice to divert relocate or remove any such Conduits subject to:

- 1.1 any such diverted or relocated Conduits being no less convenient and commodious (the "Varied Conduit Routes"); and
- 1.2 replacement rights being granted in respect of the Varied Conduit Routes otherwise on the terms of the rights granted in this Lease; and
- 1.3 there being no interruption (whether temporary or otherwise) to the provision of these services rights; and

the Tenant on being requested in writing by the Landlord to do so will enter into a deed at the reasonable and proper cost of the Landlord to effect the surrender of the relevant right or rights and to grant the replacement rights in favour of the Tenant (and those authorised by it) over the Varied Conduit Routes in a form approved by the Tenant (such approval not to be unreasonably withheld or delayed).

2. Entry to Adjoining Premises

The right to enter and remain upon those parts of the Adjoining Premises as are necessary and adjacent to the Premises (save for private residential homes and commercial units, unless in case of emergency) at all times in case of emergency and otherwise at all reasonable times on reasonable prior notice to the Landlord (provided that in the case of entry to Railway Premises the Tenant must always give to the Landlord not less than 30 Working Days prior notice (whether in case of emergency or not) and comply with the Conditions of Work the LUL Standards and the terms of this Lease) with or without workmen and others and all necessary appliances and materials:

- 2.1 in order to inspect, carry out a visual or structural survey of the Load Bearing Structure and/or other parts of the Premises; and/or
- 2.2 in order to make good any damage or disturbance caused by the exercise of the Tenant's rights pursuant to this Lease and/or the Landlord's rights pursuant to **paragraph 2 of Schedule 3** of this Lease;
- 2.3 in order to perform its obligations under **clauses 5.1.1, 5.1.5, 5.1.6 and 5.1.7** of this Lease; and/or
- 2.4 in order to carry out any Works permitted pursuant to this Lease (subject to compliance with **clauses 5 and 6** of this Lease); and/or

provided that the Tenant cannot reasonably do so without access to the Adjoining Premises and that the Tenant in exercising such rights shall:

- (a) do so as expeditiously as reasonably possible and with all due diligence;
- (b) cause as little damage inconvenience and interference as reasonably practicable to the Landlord or any other persons deriving title under it and/or any other occupiers of the Adjoining Premises;
- (c) as soon as reasonably practicable make good or procure the making good of all damage as a result of the exercise of these rights to the reasonable satisfaction of the Landlord;

PROVIDED ALWAYS that in the event of any damage or disturbance to the Adjoining Premises or any Plant and Machinery located at the Adjoining Premises caused by the exercise of such rights and the Tenant fails to make good such damage within a reasonable period of time, the Landlord shall be entitled to elect to exercise its rights pursuant to **paragraph 2.2 of Schedule 3** of this Lease.

3. **Rights over Third Party Land**

The benefit of all easements, rights and privileges contained and/or referred to in the following documents (in so far as capable of benefitting the Tenant and the Premises or any part of them):-

- 3.1 Deed dated 26 September 1972 made between the Mayor Aldermen and Burgesses of the London Borough of Hammersmith (1) and London Transport Executive (2);
- 3.2 Deed dated 29 May 1987 made between Land Securities Plc (1) and London Underground Limited (2) relating to the Empress State Building;

- 3.3 Agreement dated 9 January 1989 made between British Railways Board (1) London Regional Transport (2) and London Underground Limited (3) relating to bridging over the West London extension railway and ancillary provisions;
- 3.4 Transfer dated 9 January 1989 made between Ravenscroft Properties Limited (1) Land Securities Plc (2) Secretary of State for the Environment (3) London Underground Limited (4) and Earls Court Limited (5) relating to Empress State Building;
- 3.5 Deed dated 15 February 1993 made between Ravenscroft Properties Limited (1) and London Underground Limited (2) relating to the Empress State Building;
- 3.6 Deed of Grant of Easement dated 10 March 2010 made between (1) Tesco Stores Ltd and (2) Earls Court Ltd;
- 3.7 Deed of Easement dated 17 May 2011 made between (1) N.A.R. Limited and (2) Earls Court Ltd; and
- 3.8 Transfer dated 11 December 1970 made between (1) Earls Court Ltd and (2) Land Securities Investment Trust Ltd;

SCHEDULE 3

(Rights excepted and reserved to Landlord)

The following rights (in common with the Tenant and all others now or hereafter entitled to the like rights):

1. Existing Services

The right to continue to use all Conduits existing at the date hereof serving the Railway Premises and the Adjoining Premises laid in, on, under or over the Premises for the free and uninterrupted passage of surface water and sewage from and running of water soil gas electricity telecommunications and other services from and to the Adjoining Premises together with the right to enter and inspect repair maintain renew replace clean sever connections to and remove the same Provided Always that the Tenant shall (at its own cost) be entitled at any time upon giving to the Landlord prior written notice to divert relocate or remove any such Conduits subject to:

- 1.1 any such diverted or relocated Conduits being no less convenient and commodious (the "Alternative Conduit Routes"); and
- 1.2 replacement rights being granted in respect of the Alternative Conduit Routes otherwise on the terms of the rights reserved in this Lease; and
- 1.3 there being no interruption (whether temporary or otherwise) to the provision of these services rights; and

the Landlord on being requested in writing by the Tenant to do so will enter into a deed at the reasonable and proper cost of the Tenant to effect the surrender of the relevant right or rights and to grant the replacement rights in favour of the Landlord (and those authorised by it) over the Alternative Conduit Routes in a form approved by the Landlord (such approval not to be unreasonably withheld or delayed).

2. Entry to Premises

The right to enter and remain upon those parts of the Premises as are necessary and adjacent to the Adjoining Premises (save for private residential homes and commercial units, unless in case of emergency) at all times in case of emergency and otherwise at all reasonable times on reasonable prior notice to the Tenant with or without workmen and others and all necessary appliances and materials:

- 2.1 in order to carry out Works to the Railway Premises;

- 2.2 in order to make good any damage or disturbance caused by the exercise of the Tenant's rights pursuant to **paragraph 2 of Schedule 2** of this Lease;
- 2.3 in order to enforce or exercise any of the Landlord's rights or remedies relating to or provided for in this Lease;
- 2.4 in all circumstances where the Tenant covenants in this Lease to permit entry; and
- 2.5 for any other reasonable purpose mentioned in this Lease including entry by security staff (if any) employed by the Landlord or its agents at any time by day or night as it or they shall consider fit;

provided that the Landlord cannot reasonably do so without access to the Premises and that the Landlord in exercising such rights shall:

- (i) do so as expeditiously as reasonably possible with all due diligence;
- (ii) cause as little damage inconvenience and interference as reasonably practicable to the Tenant or any other persons deriving title under it and/or any other occupiers of the Premises;
- (iii) as soon as practicable make good or procure the making good of all damage to the Premises as a result of the exercise of these rights to the reasonable satisfaction of the Tenant;

PROVIDED ALWAYS that in the event of any damage or disturbance to the Premises or any Plant and Machinery located at the Premises caused by the exercise of such rights and the Landlord fails to make good such damage within a reasonable period of time, the Tenant shall be entitled to elect to exercise its rights pursuant to **paragraph 2.2 of Schedule 2** of this Lease.

3. **Works to and use of Railway Premises**

The right at all times during the Term in such manner as the Landlord may think fit to execute or permit or suffer the execution of excavations works repairs or alterations on under or to any part of the Railway Premises and to erect scaffolding in connection with such works, repairs or alterations to the Railway Premises provided that such right shall be exercised so as to cause as little damage inconvenience and interference to the Tenant and any other persons deriving title under it and/or any other occupiers of the Premises as is reasonably practicable having regard to the paramount importance of the Operation of the Railway and any damage caused to the Premises as a result of the exercise of such rights shall be made good to the reasonable satisfaction of the Tenant at the expense of the person causing such damage.

4. **Affixing of items**

The right (at the Landlord's cost) to install construct place affix any part or parts of the Signage and Lighting Package and/or Plant and Machinery as are necessary for the Operation of the Railway (provided that any such part or parts of the Signage and Lighting Package and/or Plant and Machinery does not impose any material additional load on any part of the Premises) to such parts of the Premises as are first approved in writing by the Tenant (such approval not to be unreasonably withheld or delayed) and to inspect renew replace maintain and repair the same provided that such rights shall be exercised so as to cause as little damage and inconvenience to the Tenant and any other persons deriving title under it and/or any other occupiers of the Premises as is reasonably practicable having regard to the paramount importance of the Operation of the Railway and any physical damage caused to the Premises as a result of the exercise of such rights shall be made good as soon as practicable to the reasonable satisfaction of the Tenant at the expense of the person causing such damage Provided That the Tenant shall be entitled at any time (at the Tenant's cost) to require the Landlord to relocate such part or parts of the Signage and Lighting Package and/or Plant and Machinery subject to the alternative location for such part or parts of the Signage and Lighting Package and/or Plant and Machinery being no less suitable for the Landlord's use and to be first approved by the Landlord (such approval not to be unreasonably withheld or delayed provided that it shall be reasonable for the Landlord to withhold its approval where such alternative location would have an Adverse Effect).

5. **Ventilation Shafts**

5.1 The uninterrupted right to take in and discharge air and gases from the Ventilation Shafts serving the Railway Premises Provided That the Tenant shall be entitled at any time (at the Tenant's cost) to require the Landlord to relocate such part or parts of the Ventilation Shafts subject to the alternative location for such part or parts of the Ventilation Shafts being no less suitable for the Landlord's use and to be first approved by the Landlord (such approval not to be unreasonably withheld or delayed provided that it shall be reasonable for the Landlord to withhold its approval where such alternative location would have an Adverse Effect) and immediately following such relocation, the Landlord shall grant the Tenant a supplemental lease of the land and/or airspace that the Ventilation Shaft previously occupied, such lease to be in a form to be agreed between the parties (each acting reasonably) with full title guarantee at a nil premium and a peppercorn rent for a term co-terminous with the then unexpired residue of the Contractual Term of this Lease and otherwise on the terms of this Lease amended mutatis mutandis.

5.2 The right to enter and remain with or without workmen on such parts of the Premises as may be reasonably necessary (save for private residential homes

and commercial units, unless in case of emergency) at all times in case of emergency and otherwise at all reasonable times on reasonable prior notice to the Tenant in order to (at the Landlord's cost) access clean inspect and carry out Works to the louvers of the Ventilation Shafts serving the Railway Premises from the outside of the Ventilation Shafts so far as the same cannot reasonably be achieved without entering the Premises.

6. **Removal of Finishes**

Where reasonably necessary in order to ascertain compliance with **clause 5** or **clause 6** of this Lease or where reasonably necessary in connection with the Operation of the Railway, the right (at the Landlord's cost) to remove finishes and/or Plant and Machinery or other tenant's fixtures and fittings provided always that the Landlord shall as soon as practicable replace such finishes and/or Plant and Machinery and as soon as practicable make good any physical damage caused to the Premises as a result of such removal and replacement.

7. **Rights of Way over Emergency Exits**

A right of way for the Landlord its customers and all others authorised by it over and across the Emergency Exits shown on [] where necessary in connection with the use of the Adjoining Premises as Railway Premises, or such other alternative Emergency Exits provided by the Tenant from time to time at the Premises (at the Tenant's cost) which shall be no less suitable for the Landlord's use.

8. **Rights for Ticket Hall**

A right of way for the Landlord its customers and all others authorised by it at all times on foot only to gain access to and egress from the Ticket Hall over and along the route or routes through the Premises as designated from time to time in writing by the Tenant (acting reasonably) to the Landlord.

9. **Not Used.**

10. **Fire Detection System**

The right (at the Landlord's cost) to connect any fire detection system serving the Premises (other than those relating to private residential homes) into any fire detection system serving the Railway Premises to allow notification to the Landlord when such fire detection system serving the Premises is activated.

11. **Gates**

The right (at the Landlord's cost) to install repair inspect maintain and replace gates or other means of security for the Maintenance Access Areas in connection with the Railway Premises and to keep the same closed and locked during any

periods when the station forming part of the Railway Premises is closed to the public.

12. **Shelter and Protection**

The right of shelter and protection now belonging to or enjoyed by the Railway Premises or which may at any time be acquired during the Term.

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SCHEDULE 4

(Title Matters)

1. Matters currently registered against title numbers LN176409 and NGL680303;
2. Lease dated 23 February 1959 made between (1) The British Transport Commission and (2) Earls Court Limited;
3. Telecommunications Lease dated 23 July 2008 between (1) Earls Court Limited and (2) Telefonica UK Limited;
4. Telecommunications Lease dated 30 September 2009 between (1) Earls Court Limited and (2) Vodafone Limited;
5. Lease of Transformer Chamber dated 2 April 2012 made between (1) Earls Court Limited and (2) London Power Networks plc;
6. Telecommunications Lease dated 12 June 2013 between (1) Earls Court Limited and (2) EE Limited;

SCHEDULE 5

(Conditions of Work)

PART A

1. Proposed Notifiable Works

1.1 If the Tenant proposes to:

1.1.1 carry out any Notifiable Works; or

1.1.2 make any material variation to any Notifiable Works which may include Critical Works;

it shall before commencing the same serve upon the Landlord:-

1.1.3 a proposal fully and fairly detailing the proposed Works and drawing attention to any Works which may be Critical Works; and

1.2 Within twenty (20) Working Days of receipt of a proposal pursuant to **paragraph 1.1**, the Landlord may serve upon the Tenant notification in writing that:

1.2.1 the proposed Works do not include Critical Works in which case this Schedule shall not apply insofar as the Works were fully and fairly described in the proposal and the Landlord's attention was drawn to any of the Works which may be Critical Works to enable the Landlord to determine whether any of the Works may be Critical Works; or

1.2.2 the proposed Works do include Critical Works in which case this Schedule shall apply; or

1.2.3 it requires further information from the Tenant to assist in deciding whether or not the proposed Works include Critical Works.

1.3 Within fifteen (15) Working Days of receipt of the further information referred to in **paragraph 1.2.3** the Landlord shall notify the Tenant in writing whether or not the proposed Works include Critical Works.

1.4 The notification by the Landlord pursuant to this **paragraph 1** as to whether the proposed Works include Critical Works and the extent of the Critical Works shall be conclusive.

1.5 If the Landlord does not respond either within twenty (20) Working Days of receipt of a proposal pursuant to **paragraph 1.2**, and/or within fifteen (15) Working Days of receipt of the further information referred to in **paragraph 1.3**, the Tenant may in each case give notice to the Landlord requiring the Landlord to respond to the relevant request within a further period of five (5) Working Days in each case and if the Landlord does not respond within such timescale the Tenant shall be entitled to elevate the matter to the Senior Engineer at the Landlord and the chief executive officer or other nominated senior representative of the Tenant for discussion and resolution.

2. **Landlord's Obligations**

2.1 The Landlord covenants with the Tenant:

2.1.1 to give reasons in writing (by e-mail or otherwise) for all its requirements, conditions or withholding approval or consent under this Schedule;

2.1.2 in making its decisions under and applying the provisions of this Schedule the Landlord shall not do so for the primary purpose of gaining any commercial advantage in doing so;

2.1.3 in the absence of a timetable in this Schedule for a decision, to make the decision without unreasonable delay.

2.2 Any act matter or thing done or omitted to be done by the Engineer shall be treated as acts, matters and things done by and omissions of the Landlord.

3. **Approvals**

3.1 A consent or approval granted by the Landlord under this Schedule may be either unconditional or subject to conditions.

3.2 Any consent or approval which is not to be unreasonably withheld shall also not be unreasonably delayed.

PART B

1. **Approvals**

1.1 Prior to commencing each and every stage or phase of any Critical Works the Tenant is to obtain all approvals, consents, permissions and licences (including any required under the Highways Act 1980) of any Authority that may from time to time be necessary to enable the Tenant lawfully to commence and to carry out that stage or phase of the Critical Works and if any Critical Works are destroyed or damaged to reinstate them (the "Approvals").

- 1.2 The Tenant is to prepare written statements outlining the principles of the design and the methods to be used in carrying out any Critical Works (the "Concept Design Statement") together with a timetable specifying when the Tenant will release the various elements of the Works Information (the "Information Release Schedule") and is to submit the Concept Design Statement and the Information Release Schedule with a request for approval in principle by the Engineer (such approval not to be unreasonably withheld or delayed save where such Critical Works would or are likely to have an Adverse Effect in which case such approval may be withheld in the absolute discretion of the Engineer). Subject to receiving such approval, the Tenant is to design and execute the Critical Works in accordance with such approved Concept Design Statement and is to comply in all respects with the prevailing LUL Standards and those conditions of the Landlord that are notified in writing to the Tenant forming part of that approval.
- 1.3 In accordance with the Information Release Schedule, the Tenant is to submit to the Engineer all Works Information as the Engineer may from time to time reasonably require showing comprehensive details of the manner in which each part of the Critical Works shall be executed. The Tenant is not to commence the relevant part of the Critical Works until such Works Information relating to that part of the Critical Works have been approved in writing by the Engineer (such approval not to be unreasonably withheld or delayed save where the manner of execution of such Critical Works as shown in or inferred by or arising as a consequence of such Works Information would or are likely to have an Adverse Effect in which case such approval may be withheld in the absolute discretion of the Engineer and the Engineer shall provide written reasons for his decision).
- 1.4 The Tenant is not entitled to commence or to permit the commencement of any Critical Works or any part or parts of them until the Engineer has approved in writing the details submitted in accordance with **paragraph 1.3** above.
- 1.5 The Tenant is not without first obtaining the written approval of the Engineer to make any material variation of or modification to the details approved by the Engineer under the terms of **paragraph 1.3** above (such approval shall not be unreasonably withheld or delayed save where such variation or modification would or is likely to have an Adverse Effect in which case such approval may be withheld in the absolute discretion of the Engineer and the Engineer shall provide written reasons for his decision).
- 1.6 The Tenant is to procure and deliver to the Engineer for his written approval prior to the commencement of the Critical Works (such approval not to be unreasonably withheld or delayed) the pre-construction health and safety plan (prepared in accordance with at least the recommendations of ACoP) and procure and deliver to the Landlord as soon as practicable following completion of the Critical Works (but not later than two months after that date) a copy of

the health and safety file prepared maintained and completed and updated as required by ACoP or any more stringent requirements of the CDM Regulations.

2. Appointments, Building Contracts and Collateral Warranties

- 2.1 Prior to entering into any Appointment or Building Contract in respect of any Critical Works the Tenant shall submit to the Landlord the names of the consultants and/or contractors whom it intends to appoint or employ in connection with the Critical Works (the "Appointment List"). The Landlord (acting reasonably) shall be entitled within twenty (20) Working Days of receipt of the Appointment List to require the Tenant to remove a consultant and/or contractor from the Appointment List (the Landlord giving its written reasons for requiring such removal), in which event the Tenant shall not appoint such consultant and/or contractor, Provided That the Landlord shall not remove a consultant and/or contractor from the Appointment List without just cause where the relevant consultant and/or contractor is on the list of approved contractors and consultants from time to time in existence in respect of works undertaken for the Landlord (here meaning London Underground Limited or any Group entity of London Underground Limited only). If the Landlord fails to issue a request to remove a consultant and/or contractor within twenty (20) Working Days of receipt of the Appointment List, the Appointment List shall be deemed approved and the Tenant shall be entitled to appoint any of the consultants and/or contractors on such Appointment List. Any consultant and/or contractor whom the Landlord does not require to be removed from an Appointment List shall be an approved Consultant or approved Contractor (as the case may be) for the relevant Critical Works for which the Tenant is seeking the consent of the Landlord.
- 2.2 The Tenant may submit to the Landlord any list of contractors and/or consultants to whom the Tenant proposes to invite to tender for any Critical Works, for pre-approval by the Landlord, and the Landlord shall give due consideration to such list (the "Tender List"). The Landlord (acting reasonably) shall be entitled within twenty (20) Working Days of receipt of the Tender List to require the Tenant to remove a consultant and/or contractor from the Tender List (the Landlord giving its written reasons for requiring such removal). Any consultant and/or contractor whom the Landlord does not require to be removed from a Tender List shall be an approved Consultant or approved Contractor (as the case may be) for the purposes of the relevant Critical Works for which the appointment is made only.
- 2.3 Any Appointment or Building Contract for any Critical Works are to be entered into by the Tenant with consultants and/or contractors suitable for the type of work to be undertaken and in any event must be with an approved Consultant or an approved Contractor.

- 2.4 The forms of any proposed Building Contracts and any Appointments are:
- 2.4.1 other than the financial terms which may be redacted, to be approved by the Landlord (such approval not to be unreasonably withheld or delayed);
 - 2.4.2 to be executed as a deed; and
 - 2.4.3 to require that the Consultant or Contractor (as the case may be) maintains professional indemnity insurance and such other insurances for a duration and at a level which is reasonable having regard to the scope and complexity of the works being undertaken,
- and the Tenant shall provide to the Landlord a copy of each Appointment and Building Contract certified as a true copy within five (5) Working Days of it being entered into.
- 2.5 The Tenant is to procure that any Contractor or Consultant undertaking or providing services in respect of any Critical Works or part thereof shall before the commencement of the Critical Works or relevant part of them enter into a collateral warranty with the Landlord in such form as the Landlord acting reasonably shall approve (or such other equivalent arrangements under which the Contractor or Consultant owes a duty of care to the Landlord for its services in respect of the Critical Works acceptable to the Landlord acting reasonably to reflect current market practice from time to time) and if reasonably required by the Landlord such warranty or security shall include the provision of a parent company guarantee for such Building Contractor or Consultant and/or such other performance security, if any, as is reasonably in line with current market practice from time to time, in each case in such form as may be approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed).
- 2.6 The Tenant is to use all reasonable endeavours to procure that each Contractor and Consultant complies with the terms of its Building Contract or Appointment insofar as they relate to the design or execution of the Critical Works.
- 2.7 The Tenant is not, without the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed, to:
- 2.7.1 dismiss any Contractor or Consultant if such dismissal would be likely to cause an immediate danger or emergency in respect of the Railway or the Railway Premises;
 - 2.7.2 waive, release nor stop itself from enforcing or seeking redress for any breach of the Appointments or the Building Contracts insofar as they relate to the design or execution of the Critical Works and would

prejudice the Landlord's rights under the collateral warranty or other arrangement referred to in **paragraph 2.5** above; or

- 2.7.3 do or omit to do any act or thing which would entitle any Contractor or Consultant to treat its Building Contract or Appointment as terminated by breach if such termination would be likely to cause an immediate danger or emergency in respect of the Railway or Railway Premises.
- 2.8 If there is any rescission, repudiation or termination of any Building Contract or Appointment before practical completion of the Critical Works, the Tenant is as soon as practicable to notify the Landlord in writing of such rescission, repudiation or termination and the reasons for it and, if the Tenant wishes to continue with the Critical Works, the Tenant shall use all reasonable endeavours to appoint another person, such appointment to be on the terms of this Schedule, in substitution for the person whose appointment was terminated.
- 2.9 If any Contractor or Consultant is in material default or commits a material breach of their obligations in relation to the Critical Works or any part of it, the Tenant will use all reasonable endeavours to enforce its rights and remedies in respect of that breach if such default or breach would be likely to cause an Adverse Effect;.
- 2.10 The Tenant is to comply (and procure compliance by the Contractors and any Consultants designing or carrying out Critical Works at the Premises) with:
 - 2.10.1 all relevant LUL Standards; and
 - 2.10.2 such relevant and reasonable and proper requirements as the Landlord may make and of which the Landlord notifies the Tenant in writing from time to time to avoid or remedy an Adverse Effect during the Critical Works and during any subsequent maintenance repair or renewal of the Critical Works and notified to the Tenant in writing.

3. **Conduct of the Critical Works**

- 3.1 The Critical Works shall be designed with all due skill and care reasonably to be expected of design consultants engaged in preparing designs for comparable works affecting Railway Premises and shall be carried out and completed:
 - 3.1.1 in a good and workmanlike manner;
 - 3.1.2 using good quality materials of their several kinds;
 - 3.1.3 free from Deleterious Materials;
 - 3.1.4 in accordance with all relevant British or (where applicable) European Standards and codes of practice;

- 3.1.5 in accordance with the relevant local authority's Considerate Contractor's Scheme or any replacement or substitute scheme;
- 3.1.6 in accordance with all relevant LUL Standards.
- 3.2 The Tenant is to comply and procure compliance by the Consultants and Contractors and the Tenant's agents and sub-contractors with all Legislation which may affect the Premises or which relate to the Railway and/or Railway Premises and which affect or may affect the design or construction of any Critical Works.
- 3.3 The Critical Works shall be carried out in full compliance with the materials and Works Information approved by the Engineer subject only to:
- 3.3.1 such material modifications as may be requested by the Tenant and approved in writing by the Engineer (such approval not to be unreasonably withheld or delayed save where such modified Critical Works would or are likely to have an Adverse Effect in which case such approval may be withheld in the absolute discretion of the Engineer and the Engineer shall provide written reasons for his decision); and
- 3.3.2 non-material and inconsequential modifications.
- 3.4 Subject to **paragraph 3.5** below, once commenced, the Tenant shall proceed with the Critical Works with all reasonable speed to the reasonable satisfaction of the Engineer so as to complete the same as soon as reasonably practicable in full conformity with all statutory and regulatory and other consents and approvals and the LUL Standards.
- 3.5 The Tenant may discontinue at any time the execution of Critical Works but, if it shall do so, the Tenant shall ensure to the satisfaction of the Landlord that the Critical Works, as then carried out, do not have and do not potentially have an Adverse Effect or cause an increased cost to the Landlord in related to the Operation of the Railway.
- 3.6 The Tenant is to keep the Engineer informed of material measures taken and stages reached by the Tenant in performing its obligations under this Schedule, the progress of and any material problems or delays affecting the Critical Works and shall on request supply promptly to the Landlord copies of all material documents, reports, revisions to the Health and Safety Plan, written records and minutes of site or other relevant meetings prepared in respect of the Critical Works.
4. **Instructions, site visits and Inspections**

- 4.1 The Tenant is not to commence the Critical Works without first procuring (the Landlord being entitled to require that access is on an accompanied and supervised basis) the carrying out, at its own cost, of a detailed condition survey of any part of the Railway Premises likely to be affected by the Critical Works by a reputable and appropriately qualified professional and providing a copy of such survey report with all relevant supporting information, to the Engineer within five (5) Working Days of the production of the report. If the report contains a recommendation that further investigations are required, or the Landlord reasonably considers that further investigations are required as a result of the report, the Tenant shall arrange at its own cost, for such further investigations as the Landlord may require. The process of procuring the carrying out of a condition survey is also to be repeated (on an accompanied and supervised basis if required by the Landlord) at the Tenant's cost immediately following completion of the Critical Works and, where reasonably requested by the Landlord, at appropriate interim points during the course of the Critical Works.
- 4.2 At all times whilst carrying out any Critical Works the Tenant is to appoint a suitably graded trained and experienced representative who is identified to and approved by the Engineer (such approval not to be unreasonably withheld or delayed) as the designated Tenant's Railway Representative ("Tenant's Railway Representative") to supervise and co-ordinate and be responsible for the supervision and co-ordination of all aspects and all elements of the Critical Works, plant and materials and general health and safety matters and to be the person to whom any issue that the Landlord wishes to raise in connection with the Critical Works should be communicated and to communicate to the Contractor any instructions properly given by the Engineer in accordance with the terms of this Lease. The Tenant is to procure that such person (or any alternate appointed and approved in accordance with this **paragraph 4.2**) shall (or such person's or alternative person's nominee shall) be available on site during the Contractor's normal working hours and shall be available by telephone 24 hours a day throughout the duration of the Critical Works.
- 4.3 In the event the Landlord has material and persistent problems communicating with and/or receiving co-operation from the Tenant's Railway Representative as a result of the Tenant's Railway Representative's default (where the Landlord is entitled to such communication and/or co-operation pursuant to this Schedule) the Landlord shall be entitled (after consultation with the Tenant) to require that the Tenant replace the Tenant's Railway Representative.
- 4.4 The Tenant is to make available or procure the availability for inspection by the Engineer at all reasonable times and on reasonable notice (save in case of emergency) copies of all registers, forms and certificates that the Tenant and the Contractors are obliged to hold or maintain by virtue of any Legislation in respect of any scaffold, material, Plant and Machinery, equipment or operation used in connection with the Critical Works.

4.5 The Engineer shall be entitled:

4.5.1 without prejudice to **paragraph 4.5.3** below at all reasonable times by prior arrangement with the Tenant to inspect the Critical Works but in so doing the Engineer shall:

4.5.1.1 not impede or obstruct the progress of the Critical Works or any other Works save in case of immediate danger or emergency in respect of the Railway or the Railway Premises;

4.5.1.2 not issue any instructions to the Contractor or any workmen employed at the Premises or any Consultants but will address any requirement, comment or complaint only to the Tenant or the Tenant's Railway Representative; and

4.5.1.3 comply with the reasonable requests of the Contractor and the Tenant in relation to the access to the Premises, including as to health, safety and security;

4.5.2 where he believes reasonably necessary to do so, to test and take samples of materials and workmanship subject to compliance with **paragraphs 4.5.1.1 and 4.5.1.2** (inclusive) and the Tenant shall give all necessary instructions to allow such a test to be carried out;

4.5.3 to give instructions in respect of the carrying out of the Critical Works to:

4.5.3.1 the Tenant's Railway Representative(s) with a view to avoiding any Adverse Effect or where the Engineer has a mandatory duty or professional obligation to address unsafe working practices or any other immediate construction risk; or

4.5.3.2 (where the Engineer has reasonable grounds to believe that there is an immediate danger or emergency) any Consultants, Contractors or other persons on the Premises

(provided always that the Engineer confirms such instructions to the Tenant's Railway Representative(s) in writing within five (5) Working Days); or

4.5.4 to make representations to the Tenant and the Tenant's Railway Representative about the Critical Works.

- 4.6 The Tenant shall whenever reasonably practicable ensure that the Engineer is given not less than five (5) Working Days prior notice of the date and time of all formal site meetings relating to the Critical Works and shall permit the Engineer to attend all such site meetings.
- 4.7 Where the Engineer, acting reasonably, believes that it would be useful to have a meeting between the Tenant, Tenant's Railway Representative, Engineer, Contractor and/or Consultant (as may be appropriate) in relation to the Critical Works, the Engineer shall notify the Tenant and the Tenant shall facilitate such request as soon as reasonably practicable following receipt of the same.
- 4.8 The Tenant, the Consultants, Contractors and the Tenant's agents and sub-contractors may be required by the Engineer to stop work or remove from any Critical Works any scaffold, material, Plant and Machinery or equipment which the Engineer considers may cause damage or be a hazard to the Railway and/or Railway Premises and which does not comply with the details of the Critical Works previously approved by the Engineer.
- 4.9 If in the course of carrying out the Critical Works the Tenant shall:
- 4.9.1 use any materials or execute any Works (not being materials or Works for which specific provision is made in the materials previously approved by the Engineer) which the Engineer shall on reasonable grounds consider materially inferior or unfit for the purpose intended or would or is likely to cause an Adverse Effect;
 - 4.9.2 execute any work which the Engineer shall on reasonable grounds consider have not been constructed in accordance with the agreed design (other than work which is usually included as items of snagging); or
 - 4.9.3 make any deviation of substance from the materials approved by the Engineer and the deviation is not approved by the Engineer;

the Tenant shall upon receipt of written notice from the Engineer requiring it so to do take all necessary steps to remedy the same and if the Tenant fails to commence and thereafter diligently rectify the same within thirty (30) Working Days after such notice then it shall be lawful for the Landlord and their respective agents and workmen to take such steps to rectify the same and the proper costs and expenses of so doing shall be paid by the Tenant in accordance with **clause 4.7**.

5. **Safety and consideration of environs**

- 5.1 The Tenant is to procure that:

- 5.1.1 proper provision is made for the security and protection of the Railway Premises during the carrying out of the Critical Works and for the protection of any materials, Plant and Equipment serving the Railway Premises and if reasonably required by the Landlord the Tenant is to provide the Engineer with suitable site accommodation in accordance with LUL Standards;
 - 5.1.2 proper precautions are taken for the safety of all persons upon or in the vicinity of the Railway Premises including maintaining such hoardings, fences, security patrols, safeguards and arrangements of lighting the Critical Works and other security measures as the Landlord or any competent statutory or other Authority may consider necessary or desirable in the interest of public safety or the safety of employees or passengers of the Landlord or other persons upon the Railway Premises or (if the Landlord shall provide any of these after consultation with the Tenant (save in the case of emergency)) repay to the Landlord the proper costs of so doing;
 - 5.1.3 the Critical Works are carried out in a manner which does not cause any nuisance, injury, loss or danger or interference to the Railway and/or the Railway Premises or to the Landlord or its officers servants agents or persons making use of the Railway and/or the Railway Premises and minimises any actionable annoyance or interference or inconvenience; and
 - 5.1.4 proper provision is made for the support of the Railway Premises and for the protection of all services benefiting the Railway Premises.
- 5.2 The Tenant shall in connection with the Critical Works (and unless otherwise agreed by the Landlord):
- 5.2.1 procure that the rights and interests of third parties are not infringed by the carrying out of the Critical Works, provided that the Tenant has notice of such rights and interests, in sufficient time for them to be taken into account prior to the Engineer's written approval of the Concept Design Statement and the Information Release Schedule in accordance with **paragraph 1.2 of Part B of Schedule 5**;
 - 5.2.2 at its own cost secure necessary access to or use of any land not owned by the Landlord and required temporarily or permanently in connection with the carrying out of the Critical Works;
 - 5.2.3 negotiate the terms of any agreements with owners and occupiers of neighbouring property for the release of rights of way, light and air or any other legal or equitable rights over the Premises, the Railway

Premises which would be infringed by or prevent or impede the carrying out of the Critical Works;

- 5.2.4 apply for and use all reasonable endeavours to obtain any orders which may be required for the temporary stopping-up or temporary diversion of any highways, footpaths or public rights of way to the extent that these may be required to enable the Critical Works to be carried out at its own cost take all necessary steps (including the placing and processing of orders) to arrange with the appropriate party for any temporary or permanent diversion of any Conduits or Critical Works and for any road closure or traffic diversions as may be necessary for the carrying out of any Critical Works in such a manner as not to render the Landlord in any way liable in respect thereof provided always that the Tenant shall not interfere with the access to or from any of the Utilities or Conduits which serve the Railway Premises without the prior written approval of the Engineer (such approval not to be unreasonably withheld or delayed unless such interference would or would be likely to have an Adverse Effect in which case the Engineer shall be entitled to withhold such approval in his absolute discretion) and that the Landlord may elect to carry out at the Tenant's expense any such temporary or permanent modification or diversion of such Utilities or Conduits.
- 5.3 The Tenant is not to do any act matter or thing in connection with any Critical Works which would or is likely to constitute a breach of any Legislation affecting the Railway and/or the Railway Premises or is likely to vitiate in whole or in part any insurance effected in respect of the Railway and/or Railway Premises the terms of which insurance have been notified to the Tenant in writing.
- 5.4 Unless otherwise required by the Engineer or agreed in writing the Tenant is prior to or within a reasonable time following the completion of the Critical Works or earlier vacation of the site of the Critical Works and to the reasonable satisfaction of the Engineer to reinstate and make good any damage caused by execution of the Critical Works to any of the Railway and/or the Railway Premises and any Plant and Machinery thereon and any existing Critical Works having regard to the carrying out of the Critical Works. Such reinstatement and making good is to comply with the LUL Standards in force at the time of reinstatement and notified to the Tenant in writing.

6. **Insurance**

- 6.1 During the carrying out of any Critical Works the Tenant is to effect and maintain with Standard Insurers for the composite interests of ,inter alia, the Landlord and the Tenant and on terms approved by the Landlord (such approval not to be unreasonably withheld or delayed):

6.1.1 public liability insurance for not less than fifty million pounds (£50,000,000) Index Linked (on a five yearly cycle) in respect of each and every occurrence against:

6.1.1.1 damage to the Railway Premises or any other property arising out of or in the course of and caused by the execution of the Critical Works (including subsidence movement removal of ground support heave and change in the water table);

6.1.1.2 personal injury to or death of any person arising out of or in the course of or caused by the execution of the Critical Works;

6.1.1.3 any interruption suspension or other impact on the Operation of the Railway arising out of or in course of the execution of the Critical Works;

and which policy shall contain a cross liability clause to the effect that each insured party is treated as a third party in respect of any liability to another insured party;

6.1.2 insurance against damage or destruction of Critical Works under a contractor's all risks policy for an amount no less than the full Reinstating Cost of the Critical Works;

6.2 During the carrying out of any Critical Works the Tenant is to procure that:

6.2.1 the Contractor maintains professional indemnity insurance of not less than ten million pounds (£10,000,000) Index Linked in the aggregate both during the carrying out of and for a period of twelve years after the date of practical completion of the relevant Works; and

6.2.2 any Contractor employed in relation to the Critical Works maintains with Standard Insurers employer's liability insurance of not less than five million pounds (£5,000,000) Index Linked in the aggregate

on terms approved by the Landlord (such approval not to be unreasonably withheld or delayed).

6.3 The Tenant shall provide details of all insurance effected pursuant to **paragraphs 2.4.3** and **6** of this **Part B** prior to commencement of the Critical Works (and a certificate of insurance and/or broker's letter shall be sufficient for this purpose).

6.4 The Tenant is to make all payments necessary for the purposes of obtaining and maintaining the insurances required under **paragraph 6.2** above and is to use

all reasonable endeavours and take all necessary steps to procure compliance by the relevant third parties with **paragraph 6.3** and shall upon request from time to time, produce to the Landlord a copy or full details of the insurance policies effected in accordance with this Lease and all endorsements on such insurance policies and evidence that they are in force (including evidence that the last premium has been paid).

- 6.5 If the Tenant does not insure or procure all or any of the insurances required by **paragraphs 6.1** or **6.2** above or fails to produce reasonable evidence that such insurances are in force, the Landlord may itself effect such insurance cover as it may consider prudent (but not more extensive than required under **paragraphs 6.1** or **6.2** above) and the cost of so doing together with the Landlord's management and administrative costs for so doing will be payable by the Tenant to the Landlord on written demand.

7. **Protection of adjoining premises**

- 7.1 The Tenant acknowledges that it is aware of the state and condition of the Railway, and the Railway Premises and shall take such extra precautions as may be necessary in order to protect the same.

- 7.2 The Tenant will in carrying out Critical Works comply with the Load Bearing Regime and **clauses 5.11** and **5.12**.

8. **Limitation on Landlord's Liability**

Save in the case of fraud or actionable negligence of the Landlord or the Engineer or in connection with any works carried out by the Landlord the Landlord shall not be liable by way of indemnity or otherwise in respect of any loss (including consequential economic loss) damage or delay to the Tenant, its employees contractors, agents or sub-contractors or any other person resulting from:

- 8.1 any approval or otherwise given by the Landlord of the Critical Works or any documentation in connection with any Critical Works;
- 8.2 any stoppage of the Critical Works as a consequence of the Landlord exercising its rights under and in accordance with the provisions of this Lease; or
- 8.3 the Tenant, its employees, contractors, agents or sub-contractors being prevented or delayed from entering upon or being properly required to vacate the site by reason of any emergency or exigency, regulation or operation relating to the Railway or the Railway Premises.

9. **Costs**

9.1 The Tenant is to pay to the Landlord the Landlord's Costs incurred in connection with the Landlord's exercise of its rights under this Schedule and the performance of its obligations under this Schedule in accordance with **clause 4.7** of this Lease. Where possible the services to be provided and the budgets for the Landlord's Costs or its consultants' costs shall be agreed with the Tenant before the relevant consultant is engaged by the Landlord.

10. **As built drawings and warranties**

Unless supplied with the Health and Safety Plan as provided in **paragraph 1.6** above, within four (4) weeks of any issue of a certificate of practical completion pursuant to **paragraph 14** of this Schedule, the Tenant is to deliver free of cost to the Landlord for record purposes two complete sets (one set in hard copy and another set in an electronic format specified by the Landlord) of "as-constructed" drawings, specifications, checked calculations (including all amendments made since the initial approval of the said drawings by the Landlord upon which the design and construction of the Works have been completed) and materials, test reports (in a digital format if the Landlord shall so require). The Tenant shall use all reasonable endeavours to procure that the Landlord is granted a non-exclusive irrevocable royalty-free licence to use such information for all purposes connected with the Premises and the Railway and Railway Premises.

11. **Load Bearing Regime**

11.1 Prior to practical completion of a Load Bearing Structure or practical completion of any Works to a Load Bearing Structure a properly qualified engineer appointed by the Tenant ("Tenant's Engineer") shall prepare a Load Bearing Regime for the Load Bearing Structure and serve it upon the Landlord for approval by the Engineer.

11.2 Within twenty (20) Working Days of receipt of a Load Bearing Regime under **paragraph 11.1** the Landlord may serve upon the Tenant notification in writing that:

11.2.1 the Load Bearing Regime is approved; or

11.2.2 it requires further information from the Tenant to assist in deciding whether or not to approve the Load Bearing Regime.

11.3 Within fifteen (15) Working Days of receipt of the further information referred to in **paragraph 11.2.2** the Landlord shall notify the Tenant in writing whether or not the proposed Load Bearing Regime is approved and the process at **paragraphs 11.2** and **11.3** shall be repeated until the Load Bearing Regime is approved.

- 11.4 If there is any change to the Load Bearing Structure during its lifetime due to damage, deterioration, repair or strengthening or otherwise ("LBS Change") the Tenant is to update the Load Bearing Regime for the Load Bearing Structure.
- 11.5 As soon as practicable after becoming aware of each LBS Change the Tenant is to procure that the Tenant's Engineer updates the relevant Load Bearing Regime and submit it to Landlord for the approval of the Engineer and the provisions of **paragraphs 11.2** and **11.3** shall apply.
- 11.6 The Load Bearing Regime approved by the Engineer under this **paragraph 11** shall for the purposes of this Lease be the Load Bearing Regime for that Load Bearing Structure.

12. **Landlord's Consents**

- 12.1 Any decision of the Landlord or the Engineer to withhold consent, approval or acceptance under the terms of this Lease or any direction given by the Landlord or the Engineer or decision made by the Engineer under the terms of this Lease:

12.1.1 (where the matter being the subject of such consent, approval, acceptance, direction or decision is likely in the opinion of the Engineer to affect the Operation of the Railway) shall be final, binding and conclusive; and

12.1.2 shall not in anyway reduce or eliminate the Tenant's Obligations save that where:

12.1.2.1 a condition, instruction, direction or requirement (collectively a "Requirement") is imposed by the Landlord or the Engineer on the design or execution of any Critical Works pursuant to this Schedule; and

12.1.2.2 the Tenant obtains written advice from an independent and appropriately qualified professional that such Requirement would be in breach of the Landlord's Obligations at paragraph 2.1.2 of Part A of this Schedule or otherwise contrary to the proper performance of the Engineer's professional duties; and

12.1.2.3 having received the advice obtained pursuant to paragraph 12.1.2.2, the Landlord or Engineer (as they agree to do) consults with the Tenant and insists upon the Tenant complying with the Requirement which is the subject of the advice obtained pursuant to paragraph 12.1.2.2 without variation or modification wholly to take account of such advice; then

- 12.1.2.4 the Tenant may refer the Requirement to a different more senior Engineer of the Landlord (being the Infrastructure Protection Manager or such other senior Engineer who may perform that role from time to time) to the one who made the Requirement which is the subject of the advice (the "Second Engineer") to determine whether the Requirement would be in breach of the Landlord's obligations at paragraph 2.1.2 of Part A of this Schedule or otherwise contrary to the proper performance of the Engineer's professional duties; and
- 12.1.2.5 if the Second Engineer finds wholly or partly in favour of the advice obtained at paragraph 11.1.2.2 then the extent of the Tenant's Obligations in respect of the relevant Critical Works shall be reduced in a manner which is reasonable having regard to the extent of the divergence of the Requirement from the advice obtained at paragraph 11.1.2.2 but not further or otherwise; and
- 12.1.2.6 (where the matter being the subject of such decision is likely in the opinion of the Second Engineer to affect the Operation of the Railway) the decision of the Second Engineer shall be final, binding and conclusive.

13. **Notices**

The Tenant is promptly to notify the Landlord of any notice it receives from an Authority or from any adjoining owner relating in any way to the Critical Works and must supply a copy of every such notice to the Landlord within five (5) Working Days after receipt of it.

14. **Practical Completion of any Critical Works**

- 14.1 The Tenant is to give to the Landlord not less than five (5) Working Days' prior notice in writing of the date and time at which an inspection of any Critical Works in anticipation of issuing a certificate of practical completion is to be carried out.
- 14.2 The Tenant shall permit the Landlord and those authorised by it (not exceeding three (3) in number) to attend the inspection referred to in **paragraph 14.1** and the Tenant shall have due regard to any reasonable representations made by the Landlord at that time to the extent that they relate to those elements of any Critical Works which still have or may still have an Adverse Effect.
- 14.3 The Tenant is to procure that a copy of the certificate of practical completion is delivered to the Landlord as soon as practicable after its issue.

- 14.4 The Landlord and the Tenant agree that the issue of the certificate of practical completion shall not be delayed by the existence (if at all) of any minor defects shrinkages or other faults usually included in a snagging list. The Tenant is to use reasonable endeavours to remedy such defects, shrinkages or faults as soon as reasonably practicable in accordance with the provisions of the relevant Building Contract.
- 14.5 As soon as reasonably practicable following the date of practical completion of the relevant Critical Works, the Tenant is to use all reasonable endeavours to:
- 14.5.1 procure that the Contractor carries out any further works that are required to make good any defects, omissions and snagging items identified in the certificate of practical completion to the reasonable satisfaction of the Landlord;
- 14.5.2 procure that all defects in the Critical Works for which the Building Contractor is responsible under the relevant Building Contract that arise within the contractual defects liability period are made good in accordance with the terms of the Building Contract to the reasonable satisfaction of the Landlord.

15. **Works to Landlord's Conduits**

- 15.1 Notwithstanding any of provisions of this Schedule 5 the Tenant shall not undertake any part of the Critical Works affecting the Conduits of the Landlord serving the Railway Premises ("Conduit Works") without complying with the provisions of this **paragraph 15**.
- 15.2 For the purposes of this **paragraph 15** no Appointment List or Tender List shall apply and the Landlord shall have an absolute discretion in approving every contractor or consultant the Tenant wishes to propose for appointment in connection with the Conduit Works.
- 15.3 If the Landlord grants its consent to the Conduit Works in accordance with **paragraph 1.3** of Part B of this Schedule 5 the Landlord shall simultaneously with the grant of such consent by notice in writing to the Tenant elect whether or not the Landlord shall carry out all or any part of the Conduit Works itself at the proper cost and expense of the Tenant and shall give due consideration to engaging the Tenant its contractors and consultants in connection therewith.
- 15.4 If the Landlord fails to respond in accordance with **paragraph 15.3** the Tenant may give notice to the Landlord requiring the Landlord to elect whether or not to undertake the Conduit Works within a period of five (5) Working Days and if the Landlord does not respond within such timescale the Tenant shall be entitled to elevate the matter to the Senior Engineer of the Landlord and the chief executive

officer or other nominated senior representative of the Tenant for discussion and resolution.

- 15.5 Unless the Tenant indicates in writing to the Landlord within fifteen (15) Working Days of receipt by the Tenant of the Landlord's notice of election under **paragraph 15.3** that it no longer requires the work that the Landlord has elected to carry out, any works to be carried out by the Landlord pursuant to **paragraph 15.3** shall be carried out with all reasonable diligence as soon as may be reasonably practicable.
- 15.6 The Engineer shall give to the Tenant an estimate of the amount and timing of the costs which may properly be incurred by the Landlord in carrying out the works under this paragraph and before the Conduit Works (or relevant part thereof) shall commence the Tenant shall pay to the Landlord 20% of that estimate.
- 15.7 When such amount as paid by the Tenant pursuant to **paragraph 15.6** has been properly expended by the Landlord, the Engineer shall provide a further estimate (which estimate shall consist of past actual costs plus future estimated costs less amounts paid by the Tenant under this paragraph) and the Tenant shall pay a sum equivalent to 20% of such further estimate on account.
- 15.8 The Tenant shall continue to pay like amounts and in like manner until the Engineer certifies the total costs incurred by the Landlord whereupon a final amount shall either be paid by or repaid to the Tenant as appropriate.
- 15.9 The Landlord shall procure the provision to the Tenant of adequate estimates costings receipts and invoices evidencing such costs.

SCHEDULE 6

Not used

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SCHEDULE 7

Appointment and Powers of an Independent Person

1. The Independent Person

1.1 The Independent Person is to be:

1.1.1 in the case of disputes referred under clause 16 an independent chartered surveyor experienced in the insurance and reinstatement of leasehold property; and

1.1.2 in the case of disputes relating to the Operation of the Railway or Critical Works save where it is specified in this Lease that such matters are to be determined by the Landlord or the Engineer in their absolute discretion, a duly qualified civil engineer experienced in railway transport matters; and

1.1.3 in the case of disputes relating to or arising out of the terms of this Lease to which **paragraphs 1.1.1** and **1.1.2** of this **Schedule 7** do not apply, the Landlord or the Tenant may propose an appropriate Independent Person having regard to the nature of the dispute.

1.2 For the purposes of this **Schedule 7** an "Independent Person" is a person:

1.2.1 qualified to act as an expert or an arbitrator (as the case may be) in relation to the dispute;

1.2.2 having not less than ten years' professional experience; and

1.2.3 having practical experience in relation to similar property to the Premises in London.

1.3 Any disputes between the Landlord and the Tenant to which this Schedule applies relating to the Operation of the Railway or Critical Works will be determined by arbitration.

1.4 All other disputes are to be determined by an expert.

1.5 The recipient of a notice under **paragraph 1.1.3** above will be deemed to accept the type and or identity of the Independent Person unless it gives notice in writing to the party serving the notice rejecting one or more of the proposals within ten (10) Working Days of receipt of the notice and on the service of a notice rejecting one or more of the proposals, **paragraph 2.2.3 and 2.2.4** above will apply.

2. **Basis Of Appointment**

2.1 An Independent Person is not to be appointed to determine any matter under this Lease unless this Lease makes specific provision for the appointment of an Independent Person to make that determination.

2.2 An Independent Person is to be appointed by agreement between the Landlord and the Tenant. In the absence of agreement within two (2) weeks of a request from either party to agree an appointment:

2.2.1 any dispute over the identity of the Independent Person appropriate to resolve all disputes relating to the Operation of the Railway or Critical Works is to be referred at the request of the Landlord or the Tenant to the President or other most senior available officer of the Institution of Civil Engineer who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Independent Person or to arrange his nomination;

2.2.2 any dispute over the type of Independent Person appropriate to resolve the dispute or the capacity in which a Independent Person is to act may be referred at the request of the Tenant or the Landlord to the President or next most senior available officer of the Royal Institution of Chartered Surveyors who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Independent Person or to arrange his nomination and to determine the capacity in which the Independent Person is to act; and

2.2.3 any dispute over the identity of the Independent Person is to be referred at the request of the Tenant or the Landlord to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Independent Person. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Independent Person is to be nominated by the President or next most senior available officer of the Royal Institution of Chartered Surveyors.

2.3 Where an Independent Person is to act as an independent expert:

2.3.1 the Landlord and the Tenant may make written representations within ten (10) working days of his appointment and will copy the written representations to the other party;

2.3.2 the Landlord and the Tenant are to have a further ten (10) working days to make written comments on each others' representations and will copy the written comments to the other party;

- 2.3.3 the Independent Person is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he may reasonably require;
 - 2.3.4 the Independent Person is not to take oral representations from the Landlord or the Tenant without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
 - 2.3.5 the Independent Person is to have regard to all representations and evidence before him when making his or her decision, which is to be in writing, and be required to give reasons for his decision;
 - 2.3.6 the Independent Person is to use all reasonable endeavours to publish his decision within four (4) weeks of his appointment;
 - 2.3.7 the Independent Person is to act impartially and in good faith between the parties; and
 - 2.3.8 another expert may replace the Independent Expert if he dies, becomes unwilling or incapable of acting or it becomes apparent for any other reason that he will be unable to determine the matter referred to him within a reasonable time.
- 2.4 Where an Independent Person is to act as an arbitrator:
- 2.4.1 all submissions made or evidence supplied to him are to be in writing unless the parties agree within ten (10) working days of his appointment that this requirement does not apply;
 - 2.4.2 the date of his award will be deemed to be the date on which he serves a copy of the award on the Landlord and the Tenant or, if the award is served on the Landlord and the Tenant on different dates, on the later of the two dates on which the award is served;
 - 2.4.3 he will not be entitled to order the rectification, setting aside or cancellation of this Agreement or any other deed or document;
 - 2.4.4 he will not be entitled to direct that the recoverable costs of the arbitration, or any part of it, be limited to a specified amount; and
 - 2.4.5 he will not be entitled to require that security be provided in respect of the costs of the arbitration.
- 2.5 Responsibility for the costs of referring a dispute to an Independent Person, including costs connected with the appointment of the Independent Person but not the legal and other professional costs of any party in relation to a dispute,

will be decided by the Independent Person and in the absence of a decision, they will be shared equally between the parties.

- 2.6 If the Tenant does not pay any part of the costs of referring a dispute to an Independent Person and, as a result, the release of the Independent Person's decision or award is delayed, the Landlord will be entitled to pay those unpaid costs and the Tenant will reimburse those costs as additional rent to the Landlord on written demand together with interest at the Prescribed Rate calculated from and including the date on which the Landlord paid them to and including the date on which the Tenant reimburses those costs to the Landlord.

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SCHEDULE 8

Not used

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SCHEDULE 9

Guarantor

1. **Defined terms**

1.1 In this **Schedule 9** (Obligations of a Guarantor), the following words and expressions have the following meanings:

Event of Default means one or more of the following:

- (a) the disclaimer of this Lease by the Crown or by a liquidator or trustee in bankruptcy of the Tenant;
- (b) if the Tenant is a company, the Tenant is struck off the register of companies or otherwise ceases to exist; or
- (c) the forfeiture of this Lease by the Landlord.

New Lease means a lease:

- (a) for a term beginning on the date on which the Event of Default occurred and ending on the date when the Contractual Term would have ended;
- (b) otherwise containing the same terms, conditions and rents as this Lease.

2. **Obligations**

2.1 The guarantor guarantees to the Landlord that the Tenant will comply with the Tenant's Obligations throughout the period during which the Tenant will be bound by the Tenant's Obligations pursuant to the 1995 Act. This guarantee:

- 2.1.1 is given by the guarantor as primary obligor, and not only as guarantor; and
- 2.1.2 includes an independent obligation both to comply with the Tenant's Obligations if they are breached and to indemnify the Landlord against that breach.

2.2 The guarantor agrees that the Landlord may make a claim under this guarantee and indemnity without first making a claim against the Tenant.

2.3 The guarantor is to pay all sums due to the Landlord under this guarantee and indemnity without any legal or equitable set-off, counterclaim or deduction.

3. **Continuation of the guarantee**

- 3.1 The obligations of the guarantor are not to be released by:
- 3.1.1 any delay or neglect by the Landlord in enforcing the Tenant's Obligations or any time allowed by the Landlord for their performance;
 - 3.1.2 any refusal by the Landlord to accept the payment of the rents in order to avoid waiving a breach of the Tenant's Obligations;
 - 3.1.3 any variation of the terms of this Lease;
 - 3.1.4 the surrender of any part of the Premises;
 - 3.1.5 any Event of Default;
 - 3.1.6 any legal limitation, immunity, disability, incapacity or other circumstances relating to the Tenant, whether or not known to the Landlord; or
 - 3.1.7 anything else which would have released the guarantor whether by the variation of the Tenant's Obligations or by the conduct of the parties.

4. **New Lease**

- 4.1 If an Event of Default occurs and within six (6) months of the Landlord receiving notice of the Event of Default the Landlord serves written notice on the guarantor requiring the guarantor to accept the grant of a New Lease, the guarantor is to:
- 4.1.1 enter into any licence required for the grant of the New Lease on the terms required by the Landlord;
 - 4.1.2 execute and deliver to the Landlord a counterpart of the New Lease; and
 - 4.1.3 pay the Landlord's legal costs and agents' costs for preparing and completing the New Lease and obtaining any licence required by the Landlord.
- 4.2 Where there is more than one guarantor the Landlord may require any one or more of them to accept the grant of the New Lease and the grant of the New Lease is not to release the guarantor s from any accrued liability under this **Schedule 8** (Obligations of a guarantor).
- 4.3 If, following an Event of Default, the guarantor ceases for any reason to be liable under the guarantee and indemnity and the Landlord does not serve notice on the guarantor requiring the guarantor to accept the grant of a New Lease then the guarantor is to pay to the Landlord on demand:

4.3.1 sums equal to those which would have been payable under the Lease but for the Event of Default for the period of six months from and including the date of the Event of Default or, if earlier, until the date on which the Landlord re-lets the Premises; and

4.3.2 the proper and reasonable costs legal and agents' fees and expenses incurred by the Landlord on any re-letting of the Premises together with all VAT on those fees and expenses which the Landlord is unable to recover.

4.4 Where the guarantor has given its guarantee and indemnity as an Authorised Guarantee Agreement, for the purposes of this paragraph 4 the term "Event of Default" is to be restricted to a disclaimer of the Lease by the Crown or by a liquidator or trustee in bankruptcy of the Tenant.

5. **Additional provisions**

5.1 The guarantor is not to claim any rights of subrogation in respect of the obligations guaranteed by the guarantor and is not entitled to participate in any security held by the Landlord in respect of those obligations unless and until those obligations have been performed or discharged in full.

5.2 The guarantor is not to claim in competition with the Landlord in the insolvency of the person who is responsible for complying with the obligations guaranteed and is not to take any security, indemnity or guarantee from that person in respect of those obligations.

5.3 If any payment made to the Landlord is set aside or avoided under the laws relating to insolvency, the Landlord may claim under the guarantee in respect of that payment and any settlement, release or discharge of the obligations guaranteed by the Guarantor is to take effect subject to this condition.

5.4 Any person who witnesses the sealing of this Lease is to be treated as having signed this Lease for the purposes of section 2 Law of Property (Miscellaneous Provisions) Act 1989.

6. **Variations on assignment and underletting**

Where the provisions of this **Schedule 9** (Obligations of a Guarantor) are incorporated into any guarantee given to the Landlord on an assignment of this Lease or the grant or assignment of any underlease, the Landlord may make any necessary amendments to the terms of this **Schedule 9** (Obligations of a Guarantor) to meet the particular circumstances in which the guarantee is given.

7. **Substitute Guarantor**

7.1 The Landlord hereby acknowledges that the Tenant and/or Guarantor shall be entitled from time to time to request that another entity (a "Substitute Guarantor") be substituted for any Guarantor (if applicable) under this Lease in accordance with the following provisions provided that:

7.1.1 the financial strength of the Substitute Guarantor (being its net asset value assessed in accordance with UK GAAP or such other appropriate accounts standard as the Landlord may reasonably determine from time to time for each of its three preceding accounting periods taking into account also any security offered by the Substitute Guarantor for performance of its obligations hereunder) is sufficient to enable it to perform the covenants and obligations of the Guarantor under this Schedule in the reasonable opinion of the Landlord (the "Covenant Requirement"); and

7.1.2 the Substitute Guarantor is not incorporated or resident in a country outside of the United Kingdom where there is no treaty for the mutual enforcement of judgments between the United Kingdom and that country, unless, in relation to such company or entity;

7.1.2.1 it carries on and maintains a business in the United Kingdom; and

7.1.2.2 it has a current bank account in the United Kingdom; and

7.1.2.3 it has in the reasonable opinion of the Landlord, sufficient assets in the United Kingdom to enable it to meet its liabilities under this Lease; and

7.1.2.4 it agrees to be bound by the jurisdiction of the English courts; or

7.1.3 the Substitute Guarantor is not a person who enjoys sovereign or state immunity unless a department body or agency of the United Kingdom Government;

7.2 If:

7.2.1 such accounts, financial and other information with regard to the Substitute Guarantor as may reasonably be required by the Landlord to assess whether the Substitute Guarantor satisfies the Covenant Requirement have been provided to the Landlord; and

7.2.2 the Landlord acknowledges that the Substitute Guarantor meets the Covenant Requirement (such acknowledgement not to be unreasonably withheld or delayed); and

7.2.3 a deed of covenant duly executed by the Substitute Guarantor which contains the same provisions as are set out in this Schedule 9 and pursuant to which the Substitute Guarantor assumed the same obligations to the Landlord as the Guarantor is delivered to the Landlord;

then upon delivery of such deed of covenant and completion of any additional security offered by the Substitute Guarantor in order to meet the Covenant Requirement the outgoing Guarantor shall from such delivery be released from any future liability under this Lease.

7.3 If the Landlord shall not have given its written acknowledgement that the Covenant Requirement has been met within 20 Working Days of having received the relevant information, then the matter may be referred to an Independent Person for determination in accordance with the provisions of **Schedule 7** of this Lease.

SCHEDULE 10

Maintenance and Lifecycle Fund

1. Definitions

In this **Schedule 10** (Maintenance and Lifecycle Fund) the following expressions shall have the meanings ascribed to them:-

- 1.1 "**Institution of Civil Engineers**" shall include any equivalent professional body for Civil Engineers if the Institution of Civil Engineers shall cease to exist.
- 1.2 "**Landlord's Nominated Person**" means a person who is a director or other senior officer of the Landlord or a qualified and practising engineer, accountant or solicitor (who may be a member of the Landlord's own staff) who is appointed by the Landlord (and notified to the Tenant and the bank in which the Lifecycle Account is held) from time to time as being an authorised signatory for withdrawals from the Lifecycle Account on behalf of the Landlord and so that there may be up to four Landlord's Nominated Persons at any one time.
- 1.3 "**LBS Obligations**" means all of the obligations on the part of the Tenant in this Lease in relation to the inspection, survey, maintenance, repair, alteration, replacement or renewal of the Load Bearing Structure (or any part thereof).
- 1.4 "**Lifecycle Account**" means a deposit account to be opened by the Tenant in the name of the Tenant (or in the name of an independent professional trustee holding for the benefit of the Tenant in accordance with the provisions of this Schedule) and which is separate from all of the Tenant's other bank accounts, such account or trust account to be held in such UK clearing bank as the Tenant shall notify the Landlord from time to time.
- 1.5 "**Lifecycle Engineer**" means a civil engineer being a member of the Institution of Civil Engineers who is appropriately qualified and experienced in respect of matters similar to the LBS Obligations and who shall be appointed by the Tenant and approved by the Landlord (such approval not to be unreasonably withheld or delayed).
- 1.6 "**Lifecycle Fund**" shall mean the monies from time to time standing to the credit of the Lifecycle Account.
- 1.7 "**Lifecycle Maintenance Report**" means a report from the Lifecycle Engineer which following all necessary surveys, inspections and investigations by the Lifecycle Engineer estimates on a commercially prudent basis the amounts and timing of all expenditure which is likely to be required in respect of (or should

prudently be accrued towards) (i) the Regular Maintenance Sum and (ii) such amount as is required to be paid into and accrued in the Lifecycle Account on an annual basis throughout the remainder of such Lifecycle Period so that taking into account interest, inflation and all other factors which would normally and properly be included in a prudent cash flow calculation from time to time, will result in the Make Safe Amount standing to the credit of the Lifecycle Account as at the end of the Lifecycle Period.

1.8 "**Lifecycle Period**" means:

1.8.1 in respect of the Regular Maintenance Sum for the Aprons the period commencing on the date hereof;

1.8.2 in respect of the Regular Maintenance Sum for all Load Bearing Structures which are constructed or substantially renewed or refurbished after the date hereof (but excluding the Aprons), the period commencing on the date of expiry of the defects maintenance period in relation to the works for the construction, renewal or refurbishment of such Load Bearing Structure; and

1.8.3 in respect of the Make Safe Amount;

1.8.3.1 for the Aprons, the period commencing on;

(a) the date five (5) years after the date hereof or, if earlier, in respect of any part of the Aprons which has been the subject of a disposal (here excluding a disposal to any Group entity of the Tenant herein named, any mortgage or charge) within that five (5) year period the date of that disposal; but

(b) if works (other than any works carried out under **Clause 5.1.6** hereof) have commenced to renew and/or refurbish the Aprons within a period of five (5) years following the date hereof, the date of expiry of liability under the collateral warranties provided to the Landlord pursuant to **paragraph 2.5 of Part B of Schedule 5** in relation to such works of renewal or refurbishment of such Aprons; and

1.8.3.2 for all Load Bearing Structures other than the Aprons which are constructed or substantially renewed or refurbished after the date hereof, the period commencing on the date of expiry of liability under the collateral warranties provided to the Landlord pursuant to **paragraph 2.5 of Part B of Schedule 5** in relation to the

works for the construction, renewal or refurbishment of such Load Bearing Structures;

and in all cases ending on the date anticipated in the most up-to-date Lifecycle Report to be the date by which such Load Bearing Structures will reach Obsolescence, without prejudice to the Tenant's general repair and maintenance obligations under this Lease.

- 1.9 **"Make Safe Amount"** shall mean the amount reasonably estimated by the Lifecycle Engineer in the most recent Lifecycle Maintenance Report as being the cost of such works which may need to be carried out at the time when the Load Bearing Structure reaches Obsolescence in order to prevent or avoid the occurrence of any Adverse Effect occurring in consequence of such Obsolescence and such works may include in whole or in part repair, replacement, renewal, removal or demolition (whichever is the most economical) having regard to any renewals, replacements, demolition or other work which has been carried out already. Such amount will include all proper professional fees and charges at normal commercial rates which would usually be required in respect of the design and carrying out of such works and if the Engineer does not agree such estimate by the Lifecycle Engineer (or the basis upon which it is calculated) then the matter shall be determined under **paragraph 10** of this Schedule.
- 1.10 **"Obsolescence"** means the relevant Load Bearing Structure is no longer able to provide the support or bear the load which it is required to bear from time to time and therefore needs to be wholly or substantially removed, rebuilt, strengthened or replaced in order to avoid any Adverse Effect.
- 1.11 **"Regular Maintenance Sum"** shall mean the annual sum estimated in the most up-to-date Lifecycle Maintenance Report to be required to be spent in order to inspect and carry out normal maintenance and repairs (both regular and reasonably anticipated) to the Load Bearing Structure in accordance with the Tenant's covenants in this Lease, and pending preparation of the initial Lifecycle Maintenance Report in each case, shall be such sum as to be agreed by both the Landlord and the Tenant (each acting reasonably).

2. **Inspections and Lifecycle Reports**

- 2.1 The Tenant shall procure that the first Lifecycle Maintenance Report is issued by the Lifecycle Engineer not later than one month before commencement of the Lifecycle Period and is updated following inspection and survey by the Lifecycle Engineer in accordance with **clause 5.1.5**.
- 2.2 The costs of carrying out and updating the Lifecycle Maintenance Report (including any inspections, surveys and investigations) will be borne by the Tenant.

- 2.3 The Lifecycle Maintenance Report will be addressed to the Landlord as well as the Tenant (and any other interested party).
- 2.4 Prior to commencement of the Lifecycle Period for any Load Bearing Structure the Tenant will set up the Lifecycle Account and the Tenant will ensure that the Lifecycle Account is maintained and operated throughout the remainder of the Term in accordance with the provisions of this Schedule.
- 2.5 The Tenant will pay into the Lifecycle Account during each year after commencement of the Lifecycle Period such sums as are indicated in the most up-to-date Lifecycle Maintenance Report (or in the case of the Regular Maintenance Sum for the Aprons (before preparation of the first Lifecycle Maintenance Report) such sum as agreed in accordance with **paragraph 1.10** of this **Schedule 10**) as being required to be paid into the Lifecycle Account so as to ensure that the Lifecycle Fund is (or accumulates, so that it becomes) sufficient to meet the amounts and timing of expenditure by the Tenant in order (i) to meet the Regular Maintenance Sums for the current year of the Lifecycle Period and (ii) an amount which will result in a credit balance accumulating during the remainder of the Lifecycle Period so that the Make Safe Amount in respect of the relevant Load Bearing Structure has accumulated in the Lifecycle Account at the end of the Lifecycle Period.
- 2.6 The payments into the Lifecycle Account required pursuant to part (ii) of **paragraph 2.5** of this Schedule will be reviewed upon receipt of each Lifecycle Maintenance Report and upon such report being updated.
- 2.7 The Tenant shall ensure that the Lifecycle Account shall bear interest at the best rate of interest reasonably obtainable from time to time for an account of this nature.

3. **Withdrawal of funds from the Lifecycle Account**

- 3.1 From time to time the Tenant may withdraw funds from the Lifecycle Account in order to meet the costs of complying with the LBS Obligations.
- 3.2 The Tenant shall provide to the Landlord annually (and additionally upon reasonable request but not more than once per quarter):
- 3.2.1 an up-to-date bank statement in respect of the Lifecycle Account; and
- 3.2.2 a statement showing variances in the amounts paid in or withdrawn from the Lifecycle Account from the amounts estimated in the most up-to-date Lifecycle Maintenance Report and any further such variances which are anticipated.

3.3 If the release of funds from the Lifecycle Account differs in any material respect from the amounts and timing estimated in the most up-to-date Lifecycle Maintenance Report on the basis of which the Tenant's payments into the Lifecycle Account were calculated, then either the Landlord or the Tenant may request the Lifecycle Engineer to re-calculate and update the amounts and timing of the Tenant's future payments into the Lifecycle Account so that the Lifecycle Fund continues to accumulate (over a reasonable period of time) sufficient amounts to meet the levels of expenditure anticipated in the most up-to-date Lifecycle Maintenance Report and to accumulate towards the Make Safe Amount (or the Landlord and the Tenant can agree such recalculation themselves) and the Tenant shall adjust its future annual payments into the Lifecycle Account to accord with such re-calculation.

4. **Withdrawal from Lifecycle Fund by the Landlord**

4.1 The Landlord shall annually (or whenever reasonably requested by the bank in which the Lifecycle Account is held) provide the names of all the Landlord's Nominated Persons, specimens of their signatures and such other information as the bank may require so that any two of them (acting together) are authorised signatories for the purposes of making withdrawals on behalf of the Landlord from the Lifecycle Account.

4.2 If the Landlord serves on the Tenant at any time during the Term a Repairing Notice pursuant to **clause 5.7** of this Lease and the Landlord exercises its rights to enter and carry out the repairs or other works required to the Load Bearing Structure in order to avoid an Adverse Effect then the Landlord may (without prejudice to any other right or remedy of the Landlord but subject to the Landlord giving to the Tenant not less than 10 Working Days prior written notice to this effect save in an emergency when no notice shall be required) permit the Landlord's Nominated Person to withdraw from the Lifecycle Account an amount equal to the expenses reasonably estimated by the Landlord to cover the cost of carrying out the relevant works to avoid an Adverse Effect and the Landlord will apply the monies so withdrawn (so far as they will go) in carrying out and completing the relevant works.

4.3 If the amount withdrawn from the Lifecycle Account by the Landlord pursuant to **paragraph 4.2** is insufficient to cover the costs and expenses properly incurred by the Landlord in carrying out the relevant works then the Landlord may withdraw further monies from the Lifecycle Account to cover such insufficiency and if the amount previously withdrawn from the Lifecycle Account exceeds the costs and expenses properly incurred by the Landlord in carrying out the relevant works then the Landlord shall as soon as reasonably practicable repay the excess into the Lifecycle Account.

4.4 The Landlord shall notify the Tenant in writing within 5 Working Days of any withdrawal having been made by the Landlord from the Lifecycle Account (the notice to state the amount withdrawn and to be accompanied by a copy of the Landlord's estimate of the cost of the relevant works) and after completion of the relevant works, the Landlord shall promptly supply to the Tenant a copy of all relevant invoices evidencing such expenditure or in the case of any internal costs of the Landlord such other evidence as the Landlord may reasonably provide.

5. **Mortgagee's Protection**

5.1 In the event of the Tenant having mortgaged or charged the benefit of this Lease and the mortgagee or chargee having given notice of such mortgage or charge to the Landlord:-

5.1.1 The Landlord will give not less than 2 months' written notice to the mortgagee or chargee of its intention to withdraw monies from the Lifecycle Fund;

5.1.2 If the mortgagee or chargee executes during the notice period specified in **paragraph 5.1.1** a deed (in such form as is approved by the Landlord, such approval not to be unreasonably withheld) in which the mortgagee or chargee undertakes to the Landlord to carry out the relevant works in accordance with the Tenant's covenants and obligations in this Lease then the Landlord shall not withdraw the monies from the Lifecycle Account unless such mortgagee or chargee fails materially to begin and/or complete the relevant works within the timescale provided for in the relevant Repairing Notice (but calculated from the date when the mortgagee or chargee has entered into the said deed).

5.1.3 The provisions of **paragraphs 5.1.1** and **5.1.2** shall not apply if the Landlord exercises its rights under **clause 5.7** when the Tenant is in breach of its obligations at **clause 5.5.1** requiring repair or other works to be undertaken to the relevant Load Bearing Structure in case of emergency or threat to safety.

6. **Interest and Tax**

6.1 All interest accruing on the Lifecycle Account shall be retained as part of the Lifecycle Fund.

6.2 All tax payable in respect of the Lifecycle Fund shall be withdrawn from the Lifecycle Account for the purposes of paying such tax.

7. **End of Term**

At the end or sooner determination of the Term for whatever reason or (if sooner) upon the Load Bearing Structure being removed the Landlord shall permit the Tenant to withdraw and retain for its own benefit absolutely all monies standing to the credit of the Lifecycle Account as soon as shall be reasonably practicable;

8. **Removal of the Load Bearing Structure**

If at any time during the Term the Tenant removes the Load Bearing Structure or a part thereof permanently without replacing it the Tenant may serve notice to this effect on the Landlord whereupon the Make Safe Amount shall be reduced to reflect such removal and the Tenant's payments into the Lifecycle Account shall be recalculated accordingly and the Make Safe Amount which has been accumulated in respect of any part of the Load Bearing Structure which has been so removed will be released to the Tenant absolutely.

9. **Parts of the Load Bearing Structure**

9.1 The provisions of this Schedule will be operated separately in respect of:

9.1.1 any part of the Premises which is comprised in an assignment of part of this Lease; and/or

9.1.2 any part of the Premises which is developed as a phase or area separately from the remainder of the Premises.

10. **Disputes**

10.1 Any dispute or difference which may arise between the Landlord and the Tenant concerning arising out of or in any way connected with the provisions contained in this Schedule relating to the operation of a Lifecycle Account (but not for the avoidance of doubt relating to the rights and obligations of either the Landlord or the Tenant regarding the carrying out any Works) shall be dealt with as follows:

10.1.1 disputes shall be referred to an independent civil engineer being a member of the Institution of Civil Engineers agreed upon by the parties or in default of agreement (within 15 Working Days of either party requiring the other to consent to the appointment of an independent civil engineer) appointed at the request of either the Landlord or the Tenant by or on behalf of the President for the time being of the Institution of Civil Engineers;

10.1.2 any reference to a civil engineer in this clause shall if the parties agree in writing within 15 Working Days of the civil engineer's appointment be deemed to be a reference to an expert but shall otherwise be

deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 (or any subsequent modification or re-enactment of it);

- 10.1.3 if the independent civil engineer acts as an expert he shall be appointed on terms under which:
 - 10.1.3.1 the parties shall be invited to and shall be entitled to submit to him representations and cross-representations with such supporting evidence as he shall reasonably consider necessary;
 - 10.1.3.2 he shall be required to have proper regard to any representations and cross representations made in making his decision; and
 - 10.1.3.3 he shall be obliged to deliver his decision as an expert in writing giving reasons for his decision and reference to him shall include authority to determine in what manner and proportions if any all of the costs of the referral shall be borne;
- 10.1.4 subject to **paragraph 10.1.5** the decision or award of the civil engineer shall be final and binding on the parties save in the case of manifest error;
- 10.1.5 the parties agree that either may appeal to the High Court on any question of law arising out of the civil engineer's award or decision or apply to the High Court to determine any question of law arising during the reference to the civil engineer;
- 10.1.6 the parties may require the dispute or difference to be referred to a different civil engineer to be appointed under this **paragraph 10.1** if either the Landlord or the Tenant reasonably considers that the civil engineer appointed to decide the dispute or difference is not appropriately qualified to determine it; and
- 10.1.7 if before the making of his final determination the civil engineer dies or otherwise ceases or becomes unwilling or unable to act as civil engineer the Landlord and Tenant shall promptly appoint another civil engineer in accordance with **paragraph 10.1**.

THE COMMON SEAL OF)
LONDON UNDERGROUND LIMITED)
was affixed to this deed)
in the presence of:)

Authorised Signatory

EXECUTED as a deed by)
EARLS COURT PARTNERSHIP LIMITED)
acting by)
a director and its company secretary)
or two directors)

Director

Director/Secretary

DRAFT