

Dated

2014

- (1) TRANSPORT FOR LONDON
- (2) CAPITAL & COUNTIES PROPERTIES PLC
- (3) EARLS COURT PARTNERSHIP LIMITED

Transparency Commitment and Confidentiality Agreement

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THIS AGREEMENT is made on
BETWEEN:

2014

- (1) Transport for London (a statutory corporation governed by the Greater London Authority Act 1999 as amended) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL ("**Transport for London**") for and on behalf of all Tfl Parties;
- (2) CAPITAL & COUNTIES PROPERTIES PLC (registered number 07145051) whose registered office is at 15 Grosvenor Street, London, United Kingdom W1K 4QZ ("**Capco Topco**") for and on behalf of all Capco Parties; and
- (3) Earls Court Partnership Limited a company registered in England, (Number8872070) whose registered office is at 15 Grosvenor Street, London, W1K 4QZ ("**JV LTD**")

(each "a Party" and together "the Parties")

BACKGROUND

- (A) On or around the date of this Agreement and thereafter, various companies in the Transport for London Group (defined below) and various companies in the Capco Group (defined below) will enter into various agreements relating to Earls Court Village.
- (B) The Tfl Group is subject to the Rules and the Transparency Commitment (both defined below) unlike the Capco Group. This Agreement is to acknowledge this and to set out a process for dealing with the consequences.

OPERATIVE CLAUSES

1. **DEFINITIONS**{ TC "1 DEFINITIONS" \ 1 }

"Business" means enabling the comprehensive development of Earls Court Village, as more fully defined in the Shareholders' Agreement;

"Capco Group" means the Group headed by Capco Topco, including for the purposes of this Agreement Capco Holdco, Capital & Counties Limited (registered number 00280739), Capvestco Limited (Jersey registered number 80766), EC Properties Management Limited (registered number 08742449), EC Properties GP Limited (registered number 07696161), EC Properties LP (UK Limited Partnership) (registered number LP014695) and EC Properties Nominee Limited (Registered number 07696994);

"Capco Holdco" means EC Properties LP Limited a company registered in Jersey (Company Number 108459) whose registered office is at 22-24 Seale Street, St Helier, Jersey, JE2 3QG;

"Capco Parent" means any person holding a Shareholder Interest in Capco Holdco or JV LTD (whether directly or indirectly) from time to time subject to and in accordance with the terms of the Shareholders' Agreement;

“Capco Party or Parties”	means any or every person or entity which is part of the Capco Group;
“Confidential Information”	means all information of a confidential or commercial nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by a Disclosing Party to a Receiving Party whether before or after the date of this Agreement including, without limitation, any information relating to the Disclosing Party’s (or any member of its Group’s) operations, processes, plans or intentions, know-how, design rights, trade secrets, market opportunities and business affairs, which for the avoidance of doubt includes the "Contract Information";
“Confidentiality Period”	means the term of this Agreement and for a period of 3 years after the termination or expiry of the Shareholders’ Agreement for any reason whatsoever;
“Contract Information”	means in relation to each agreement to which any Tfl Party is party and their annexures (but only where a Tfl Party is a party to any such annexure where that annexure is a document) (i) their terms and contents in their entirety (including agreed changes to them from time to time) and (ii) data extracted from the invoices submitted pursuant to them which shall consist of the invoicing party’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;
“Consulting Information”	means for the purposes of compliance with the Rules any Confidential Information which includes but is not limited to information about or in relation to the Business, the Shareholders' Agreement, any Project Agreement and/or any Contract Information, and in relation to any of them any Capco Party or JV LTD; or means for the purposes of compliance with the Transparency Commitment, the Contract Information which any Tfl Party intends to publish; and details of what redactions, if any, it intends to make to the Contract Information;
“Disclosing Party”	means any Party which discloses Confidential Information to another Party (save where any Tfl Party discloses Tfl Group only Confidential Information to another Tfl Party, or where any Capco Party discloses Capco Group only Confidential Information to another Capco Party);
“EIR”	to the extent that the information concerned is environmental information, the Environmental Information Regulations 2004 and any other implementing Regulations in England and Wales of EC Directive (2003/4EC) on Public Access to Environmental Information, and all related legislation,

together with all official relevant guidance and/or Codes of Practice issued pursuant or in relation to the Regulations and/or legislation, whether by the Information Commissioner's Office and/or the Department for Environment, Food and Rural Affairs from time to time;

"FOIA"

the Freedom of Information Act 2000 and all subordinate legislation, together with all official relevant guidance and/or Codes of Practice issued pursuant or in relation to the Act and/or legislation, whether by the Information Commissioner's Office and/or the Ministry of Justice and/or the Department for Communities and Local Government from time to time;

"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;

"Government Department"

means i) a Northern Ireland department and any other body or authority exercising statutory functions on behalf of the Crown, (excluding the Scottish Parliament, any part of the Scottish Administration, the Scottish Parliamentary Corporate Body, any Scottish public authority with mixed functions or no reserved functions, within the meaning of the Scotland Act 1998, and the Welsh Assembly Government); ii) the office of the Mayor of London, the London Assembly and the Greater London Authority; and (iii) any tax authority;

"Information"

means as defined under section 84 of the FOIA;

"JV LTD Subsidiary"

means any entity which JV LTD and the Nominee may in the future decide to establish, on condition that TFL has all necessary regulatory consents (if required) for such establishment, for the purpose of the Business in accordance with the Primary Purpose as defined in the Shareholders' Agreement, with a view to that entity acquiring and then going forwards, entering into leases with third parties, entering into income generating arrangements with third parties or selling any particular tranche or tranches of land previously owned by JV LTD;

"Nominee"

means a wholly owned Subsidiary of JV LTD, being a company limited by shares which is established for the purposes of holding a shareholder interest in any JV LTD Subsidiary that is a limited liability partnership;

"Project Agreements"

means each and any contract(s) to be entered into relating to the Business of JV LTD, including but not

limited to this Agreement and the Property Documents, the Implementation Agreement and the Business Management Agreement, all as defined in the Shareholders' Agreement;

"Receiving Party" means a Party which receives Confidential Information from a Disclosing Party;

"Recipient" means a recipient which is not a Party but which receives any Confidential Information from a Receiving Party pursuant to any of Clauses 3.4.5 – 3.4.9 (inclusive), or with the consent of the Disclosing Party;

"The Rules" means FOIA and/or EIR;

"Shareholder" means (subject to any such persons ceasing to be a Shareholder in accordance with the Shareholders' Agreement) TfL, Capco Holdco and any other persons who may from time to time and for the time being be admitted as shareholders of JV LTD in accordance with the terms of the Shareholders' Agreement;

"Shareholders' Agreement" means the shareholders' agreement of even date with this Agreement between TfL, Capco Holdco and JV LTD;

"Shareholder Interest" means the entire legal and beneficial interest a Shareholder has in JV LTD from time to time in its capacity as a shareholder and loan note holder;

"Subsidiary" has the meaning given to it by section 1159 of the Companies Act amended to include any limited liability partnership which would fall within that meaning if it were a company;

"TfL" means TfL Earls Court Properties Limited a company registered in England (Company number 08951012) whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL;

"TfL Parent" means any person holding a Shareholder Interest in TfL or JV LTD (whether directly or indirectly) from time to time subject to and in accordance with the terms of the Shareholders' Agreement and who is a member of the Transport for London Group (being, as at the Effective Date, TfL Propvestco);

"TfL Party" means any person or entity which is part of the Transport for London Group;

"TfL Propvestco" means TfL Properties Limited a company registered in England (Company number 08961151) whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL;

"TfL Topco" means Transport Trading Limited, a company registered in England (Company Number 03914810)

whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL, its successors and assigns;

“Transparency Commitment”

means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which Transport for London Group is committed to publishing its contracts, tender documents and data from invoices received which in the context of this Agreement relates to Contract Information only;

“Transport for London Group”

means the Group headed by Transport for London, including each of its subsidiaries (as defined in sections 1159 (1) and (2) Companies Act 2006) and wholly owned subsidiaries, including, TfL Topco, TfL Propvestco and TfL; and

“Working Days”

means 9.00 am to 5.00 pm on any day (other than a Saturday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business.

2. INTERPRETATION{ TC "2 INTERPRETATION" \ 1 }

2.1 This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

2.1.1 the headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement;

2.1.2 a statutory provision includes a reference to:

2.1.2.1 the statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and

2.1.2.2 any subordinate legislation made under the statutory provision (whether before or after the date of this Agreement).

2.1.3 except where the context expressly requires otherwise, references to Clauses, sub-Clauses, paragraphs, sub-paragraphs, parts and Schedules are references to Clauses, sub-Clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.

2.1.4 words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, companies, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.

- 2.1.5 where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
 - 2.1.6 the language of this Agreement is English. All correspondence, notices, and information shall be in English.
 - 2.1.7 references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.
 - 2.1.8 the words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
 - 2.1.9 in construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word other or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
 - 2.1.10 where this Agreement states that an obligation shall be performed no later than or within or by a stipulated date or event which is a prescribed number of Working Days after a stipulated date or event the latest time for performance shall be 5pm on the last Working Day for performance of the obligations concerned.
 - 2.1.11 unless expressly stated otherwise, where consent or approval of any party to this Agreement is required for any purpose under or in connection with the terms of this Agreement it shall be given in writing and within a reasonable time following a receipt for a request in writing for such consent or approval
- 2.2 The terms of this Agreement shall apply to all Project Agreements and Contract Information and in the case of conflict between any of their terms and the terms of this Agreement, the terms of this Agreement shall prevail, save:
- 2.2.1 For additional disclosures permitted pursuant to Clause 3.4.7; and
 - 2.2.2 Schedule 5 of the Implementation Agreement (novation of all Project Agreements and this Agreement in the event that JV LTD is replaced by JV LLP).
3. **CONFIDENTIAL AND FREEDOM OF INFORMATION**{ TC "3 CONFIDENTIAL AND FREEDOM OF INFORMATION" \ 1 }
- 3.1 During the Confidentiality Period the Receiving Party will:
- 3.1.1 keep Confidential Information confidential;

- 3.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party or in accordance with Clauses 3.2 to 3.4; and
- 3.1.3 not use Confidential Information for any purpose other than the performance of its obligations under the Shareholders' Agreement and the other Project Agreements.
- 3.2 For the purposes of this Agreement, the Parties acknowledge that to be protectable as 'confidential' under FOIA and/or EIR the Confidential Information must meet the standard for 'confidential quality' information required for an actionable breach of confidence action.
- 3.3 The Receiving Party shall so far as practicable procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient were a party to this Agreement (provided always that it is acknowledged that where such Recipient is subject to FOIA and/or EIR, any such confidentiality obligations are subject to the Recipient's obligations to comply with FOIA and/or EIR).
- 3.4 The obligations contained in Clause 3.1 shall not apply to any Confidential Information which
 - 3.4.1 is at the date of this Agreement in, or at any time after the date of this Agreement comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;
 - 3.4.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party and not subject to any obligations of confidentiality before disclosure by the Disclosing Party to the Receiving Party;
 - 3.4.3 subsequently comes lawfully into the possession of the Receiving Party from a third party and not subject to any obligations of confidentiality;
 - 3.4.4 is required by law (whether FOIA and/or EIR or otherwise) or a regulatory authority or body to be disclosed;
 - 3.4.5 is required by any Government Department to be disclosed to it;
 - 3.4.6 is required by the Project Agreements to be disclosed;
 - 3.4.7 is permitted to be disclosed (to the extent expressly allowed) in relation to Confidential Information relevant to and under a specific Project Agreement;
 - 3.4.8 is required to be disclosed to any Government Department for normal reporting, commercial, financial or budgetary, operational and/or approval reasons;
 - 3.4.9 is provided to a third party proposing to acquire an interest in JV LTD or a Capco Parent or a TfL Parent provided that such third party has entered into and delivered to JV LTD a confidentiality and non-disclosure agreement substantially in the form set out in Schedule 14 of the Shareholders' Agreement;

3.4.10 is provided to a proposed funder of JV LTD or any JV LTD Subsidiary under conditions of confidentiality; and/or

3.4.11 is required to be disclosed under the Transparency Commitment.

FREEDOM OF INFORMATION REQUESTS

The following provisions shall only apply for the Confidentiality Period and thereafter, so long as any TfL Party is a shareholder in JV LTD and any Capco Party is a shareholder in JV LTD

3.5 Disclosure obligations

Each Capco Party and JV LTD acknowledges that each TfL Party is subject to:

3.5.1 the Rules (and that the Rules presume that there is a public interest in the disclosure of Information held by public authorities); and

3.5.2 the Transparency Commitment.

3.6 Requests for information

Where a valid request for Information has been received by any TfL Party, which would involve the disclosure of Consulting Information, ("a Request for information"):

3.6.1 Transport for London will use reasonable endeavours to inform Capco Topco of it as soon as reasonably practicable after becoming aware of the receipt of such Request for information, including the details of what information has been requested, when it was received and the deadline for responding.

3.6.2 Notification to Capco Topco under this clause will be given in writing to the General Counsel and Company Secretary for the time being of Capital & Counties Properties PLC (whilst Capco Holdco is Controlled by Capco Topco).

3.7 Responding to Requests

Subject to Clause 3.13, where a Request for information has been received by any TfL Party and responding to it (which for the avoidance of doubt includes confirming or denying that the information is held by any relevant TfL Party) would involve the disclosure of Consulting Information, then Transport for London shall use reasonable endeavours to consult with Capco Topco before confirming or denying that such information is held and/or disclosing the information in order to use reasonable endeavours to provide an opportunity for JV LTD and/or Capco Topco to provide comments for consideration before Transport for London makes its independent and unfettered decision about:

3.7.1 whether it should confirm or deny holding the information and/or disclose the information; and/or

3.7.2 whether any exemptions under the applicable Rules or any other legislation may apply to prevent the confirmation or denial and/or the disclosure of such information; and/or

3.7.3 (where applicable) the public interest factors, their weight and whether the public interest in maintaining any exemption or exception outweighs the public interest in either confirming or denying whether the requested information is held, or disclosing the information.

3.8 Capco's views

Subject always to clause 3.13, for the avoidance of doubt the Parties agree that in pursuance of clause 3.7 Capco Topco shall be entitled to express its views to Transport for London in relation to whether it wishes any relevant TfL Party to consider whether disclosure (in whole or part) can be withheld on grounds including (but not limited to):

3.8.1 that the cost of compliance with the Request for information would exceed the appropriate limit under the applicable Rules;

3.8.2 that the Request for information represents a vexatious or repeated request under the applicable Rules;

3.8.3 legal professional privilege;

3.8.4 that the public interest in withholding the relevant information outweighs the public interest in disclosing it and why (including factors for and against disclosure in the public interest and the balancing test applied);

3.8.1 that (depending upon the applicable Rules), the information was when provided or created and still is Confidential Information and:

3.8.1.1 to the extent that it was provided to any relevant TfL Party and its disclosure by any relevant TfL Party without consent from that provider would constitute an actionable breach of confidence; and/or

3.8.1.2 its disclosure would prejudice the commercial interests of any party; and/or

3.8.1.3 it is commercial information whose confidentiality is provided by law to protect legitimate economic interest; and/or

3.8.2 it is personal data disclosure of which would breach one or more of the eight Data Protection Principles set out in the Data Protection Act 1998.

3.9 Non-disclosure

3.9.1 Where Capco Topco does not agree to such confirmation or denial and/or disclosure pursuant to clause 3.8, Capco Topco will provide details in writing to Transport for London as soon as possible and in any event within 5 Working Days of being notified of the details of the Request for information of the reasons it believes some or all of the information requested should not be disclosed.

3.9.2 Transport for London shall use reasonable endeavours to fully and properly consider any representations made to it by Capco Topco pursuant to and in accordance with clause 3.9.1 and in such cases shall

use reasonable endeavours to inform Capco Topco what information it intends to confirm or deny and/or disclose to the person making the Request for information at least 2 Working Days before confirmation or denial and/or disclosure is to be made to the extent practicable bearing in mind FOIA/EIR statutory deadlines compliance with which shall take precedence.

3.10 Duty to co-operate

3.10.1 Transport for London shall use reasonable endeavours to notify Capco Topco after becoming aware of receipt of notification of any internal review, complaint to the Information Commissioner in respect of such internal appeal, appeal to the First-Tier Tribunal or Upper-Tier Tribunal relating to any decision taken by any relevant TfL Party pursuant to clause 3.7 as soon as reasonably practicable after becoming aware of the receipt of the same.

3.10.2 For the avoidance of doubt, Capco Topco will be entitled to make written representation to Transport for London in relation to any such internal review, complaint or appeal as set out in clause 3.8 which subject to clause 3.13 Transport for London shall properly take into account.

3.10.3 If formally requested by Transport for London in writing pursuant to Clause 3.10.1, Capco Topco shall provide any relevant TfL Party with written representations in relation to its objections and reasoning within the reasonable time period requested by any relevant TfL Party.

3.11 Appropriate measures

Subject to clause 3.13 the Parties agree that nothing in this Agreement will operate to prevent any Capco Party from taking all measures that it considers appropriate where it does not agree to and seeks to prevent any TfL Party proposed confirmation or denial and/or disclosure of information pursuant to clause 3.7 and the Parties also agree that this shall not mean that in any such case any TfL Party accepts that any Capco Party has any such right or ability (including but not limited to seeking injunctive relief).

3.12 Press announcements

Prior to making any press announcements or similar public statements on any Project Agreements and/or any document referred to in them (which for the avoidance of doubt shall not include publications or disclosures by any TfL Party required by and pursuant to the applicable Rules) each Party shall make such announcement in accordance with clause 33 of the Shareholders' Agreement (announcements).

3.13 Compliance with legal obligations and the Transparency Commitment

Nothing in this Agreement will prevent any TfL Party (nor fetter its or their discretion in relation to):

3.13.1 complying with all or any of its legal obligations under and /or in relation to the applicable Rules whether or not in response to any Request for information; and/or

- 3.13.2 complying with any order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner and/or where applicable, the First-tier Tribunal (Information Rights) and/or the Upper Tribunal (Information Rights) and/or the courts of England and Wales under the applicable Rules in relation to any information; and/or
 - 3.13.3 complying with the Transparency Commitment.
- 3.14 Subject to the Rules, compliance with which shall take precedence, if any TfL Party intends to publish any Contract Information (which exists at the date of this Agreement or thereafter) to comply with the Transparency Commitment:
- 3.14.1 Subject to Clause 3.14.5, Transport for London will use reasonable endeavours to notify Capco Topco of the Consulting Information (as soon as possible and in any event, at least 7 Working Days before such proposed publication) in order to use reasonable endeavours to provide an opportunity for JV LTD and/or Capco Topco to make representations for consideration by Transport for London before it makes its independent and unfettered decision about:
 - 3.14.1.1 whether it should confirm or deny holding the information and/or disclose the information; and/or
 - 3.14.1.2 whether any exemptions under the applicable Rules or any other legislation may apply to prevent the confirmation or denial and/or the disclosure of such information; and/or
 - 3.14.1.3 (where applicable) the public interest factors, their weight and whether the public interest in maintaining any exemption or exception outweighs the public interest in either confirming or denying whether the requested information is held, or disclosing the information;
 - 3.14.2 Subject always to clause 3.13, for the avoidance of doubt the Parties agree that Capco Topco shall be entitled to express its views to Transport for London in relation to whether it wishes any relevant TfL Party to consider whether publication (in whole or part) under the Transparency Commitment can be withheld on grounds on the same basis as set out in clause 3.8;
 - 3.14.3 Where Capco Topco does not agree to such publication pursuant to the Transparency Commitment, Capco Topco will provide details of the reasons it believes some or all of the information requested should not be published in writing to Transport for London as soon as possible and in any event within 5 Working Days of being notified by Transport for London of the intended publication;
 - 3.14.4 Provided received within the period set out in Clause 3.14.3, Transport for London shall use reasonable endeavours to fully and properly consider any representations made to it by Capco Topco pursuant to and in accordance with clause 3.14.3 and in such cases shall use reasonable endeavours to inform Capco Topco what information it intends to confirm or deny and/or publish at least 2 Working Days before publication;
 - 3.14.5 Provided always that:

- 3.14.5.1 in relation to the Contract Information as at the date of completion of this Agreement, the Parties hereby acknowledge that they have consulted on the details of any proposed publication and redaction prior to completion and that Transport for London may publish the relevant Contract Information at completion or thereafter;
- 3.14.5.2 in relation to any Contract Information as at the date of completion of this Agreement which is subsequently varied following completion, the Parties hereby acknowledge notification that its publication (subject to the terms of this Agreement) shall take place as soon as possible after the date of such variation and at the latest within 20 Working Days of that date;
- 3.14.5.3 if Capco Holdco does not provide any objections to publication of, or any changes increasing redactions proposed by Transport for London in, Contract Information proposed to be published within the period in Clause 3.14.3, the TfL Party shall be entitled to publish that Contract Information as proposed without further delay or notice;
- 3.14.5.4 Transport for London shall not under Clause 3.14.4 be obliged to:
 - (a) consider objections from Capco Topco pursuant to Clause 3.14.2 and/or 3.14.3; and/or
 - (b) give 2 Working Days notice of details to be published prior to their publication

if to do so would mean that in its opinion it could not or would be unlikely to meet the applicable long stop date for publication as notified in Clause 3.14.5 and/or pursuant to Clause 3.14.1, or (to the extent relevant) it would delay publication and place a relevant TfL Party in breach of any relevant deadline under the Rules.

3.15 Unauthorised disclosure

Any Party shall notify the other Parties as soon as possible after the disclosure to any third party of any information about any Confidential Information in contravention of the requirements of clause 3.1.

3.16 For the avoidance of doubt, as at the date of this Agreement, the Parties:

- 3.16.1 do not believe that JV LTD is a public authority subject to the Rules or to the Transparency Commitment; and
- 3.16.2 subject to Clause 3.16.1 acknowledge that Contract Information to which JV LTD is a party is outside the Transparency Commitment provided that no other TfL Party is also a party to that Contract Information; but
- 3.16.3 accept that in any event the Contract Information within Clause 3.16.2 is subject to the Rules to the extent held by any TfL Party.

4. **PARTIES**{ TC "4 PARTIES" \ 1 }

4.1 Transport for London has entered into this Agreement for and on behalf of the TfL Parties (and warrants that it is duly authorised to do so) and who each agree to be bound by this Agreement.

4.2 Capco Topco has entered into this Agreement for and on behalf of the Capco Parties, for so long as they remain part of Capco Group (and warrants that it is duly authorised to do so) and who each agree to be bound by this Agreement.

5. **NOTICES**{ TC "5 NOTICES" \ 1 }

5.1 Any notice or other communication pursuant to, or in connection with, this Agreement shall be in writing and delivered personally, or sent by pre-paid first class post (air mail if overseas), to the Party due to receive such notice at its registered office from time to time (or to such other address as may from time to time have been notified in writing to the other Parties in accordance with this Clause).

5.2 Any notice by any Party (other than a TfL Party) to a TfL Party shall be to Transport for London and any notice by a Party (other than a Capco Party) shall be to Capco Topco.

5.3 Subject to Clause 5.1, any notice or other communication shall be deemed to have been served:-

5.3.1 Subject to Clause 5.2, if delivered personally, when left at the address referred to in Clause 5.1;

5.3.2 if sent by pre-paid first class post (other than air mail), two days after posting it; and

5.3.3 if sent by air mail, six days after posting it.

5.4 If a notice is given or deemed given at a time or on a date which is not a Working Day, it shall be deemed to have been given on the next Working Day.

6. **INVALIDITY AND SEVERANCE**{ TC "6 INVALIDITY AND SEVERANCE" \ 1 }

If any provision of this Agreement is held to be invalid, unenforceable or illegal, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall remain unaffected. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be invalid, unenforceable or void.

7. **WAIVER**{ TC "7 WAIVER" \ 1 }

7.1 The failure by a Party to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies such Party may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

7.2 The Parties' rights and remedies contained in this Agreement are in addition to, and not exclusive of, any other rights or remedies available at law.

8. **THIRD PARTY RIGHTS**{ TC "8 THIRD PARTY RIGHTS" \ 1 }

Save to the extent expressly set out in this Agreement, a person who is not a Party to this Agreement (such Parties being any TfL Party, any Capco Party and/or JV LTD) shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act. No party may declare itself as a trustee of the rights under this Agreement for the benefit of any third party save as expressly provided in this Agreement.

9. **AMENDMENTS**{ TC "9 AMENDMENTS" \ 1 }

This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each of the Parties (the TfL Parties acting by Transport for London and the Capco Parties acting by Capco Topco).

10. **SUCCESSORS AND ASSIGNS**{ TC "10 SUCCESSORS AND ASSIGNS" \ 1 }

Except as otherwise specified in this Agreement, the provisions of this Agreement shall be binding on and enure to the benefit of the heirs, personal representatives, successors and assigns of the respective Parties to this Agreement.

11. **LAW**{ TC "11 LAW" \ 1 }

11.1 This Agreement shall be governed by and construed in accordance with English law.

11.2 Each Party hereby submits to the exclusive jurisdiction of the English courts to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement and each Party irrevocably waives any objection which it may have to the Courts of England being nominated as the forum to hear and determine any such proceedings and to settle any such disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

12. **COUNTERPARTS**{ TC "12 COUNTERPARTS" \ 1 }

This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts, each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

The Common Seal of **TRANSPORT FOR LONDON**
was affixed to this Deed in the presence of:)
)
)
)

Duly Authorised Signatory

EXECUTED as a deed by
CAPITAL & COUNTIES PROPERTIES PLC
acting by two directors or a director and a
secretary:)
)
)
)

Director

Director/Secretary

Executed as a deed by
Earls Court Partnership Limited
acting by two directors or a director and a
secretary:)
)
)
)

Director

Director/Secretary