



Option and Development Agreement - FOIA Mark up

Transport for London

and

London Underground Limited

and

Crossrail Limited

and

LS 21 Moorfields Development Management Limited

and

LS 21 Moorfields Limited

and

Land Securities Property Holdings Limited

relating to the Development of land at
Moorfields, London EC2

2015

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THIS AGREEMENT is made on

2015

BETWEEN:

- (1) **TRANSPORT FOR LONDON** of Windsor House, 42-50 Victoria Street, London SW1H 0TL ("**TfL**")
- (2) **LONDON UNDERGROUND LIMITED** (No. 01900907) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL ("**LUL**")
- (3) **CROSSRAIL LIMITED** (No. 04212657) whose registered office is at 25 Canada Square, Canary Wharf, London E14 5LQ ("**CRL**")
- (4) **LS 21 MOORFIELDS DEVELOPMENT MANAGEMENT LIMITED** (No. 08072478) whose registered office is at 5 Strand, London WC2N 5AF (the "**Developer**")
- (5) **LS 21 MOORFIELDS LIMITED** (No. 08072492) whose registered office is at 5 Strand, London WC2N 5AF (the "**Tenant**")
- (6) **LAND SECURITIES PROPERTY HOLDINGS LIMITED** (No. 05075022) whose registered office is at 5 Strand, London WC2N 5AF (the "**Guarantor**")

RECITALS

- (A) LUL is the freehold registered owner of the LUL Site.
- (B) Souzel is the registered owner of the Existing Headlease.
- (C) The Tenant has agreed with Souzel to purchase the Existing Headlease and the Supplemental Headlease.
- (D) The City Escalator currently forms part of CP Land, which area (including the airspace above it) will be included in the Supplemental Lease.
- (E) The Developer has agreed to carry out the Developer Works on the terms of this Agreement.
- (F) The Guarantor has agreed to guarantee the Developer's obligations under this Agreement.
- (G) LUL has agreed to grant, and the Tenant has agreed to accept, the Leases of the Demised Premises.
- (H) The First Mayor's Opinion and the First Section 163 Consent have been received in respect of the grant of the Leases, and this Agreement and the terms of the Leases address and satisfy the conditions subject to which the First Section 163 Consent was issued.

IN CONSIDERATION OF THE DEVELOPER'S AND TFL'S RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT TFL, LUL, CRL, THE DEVELOPER, THE TENANT AND THE GUARANTOR AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

[Certain terms have been redacted because they are used in substantive provisions which themselves have been redacted, for the reasons there given.] In this Agreement, the following words and expressions have the following meanings:

(Reason: 2)

"Acceptable Permission" means a Planning Permission (and any related Section 106 Agreement) that:

- (a) is not subject to any condition:
 - (i) which the Developer deems to be unacceptable in its absolute discretion; or
 - (ii) where compliance with such a condition would give rise to a material Tfl Adverse Effect; and
- (b) is consistent with the Draft OSD Works Specification or such development thereof as Tfl has approved in accordance with clause 24;

"ACoP" means the Approved Code of Practice under the CDM Regulations;

"Acquirer" has the meaning given to this word in the definition of Change of Control in clause 1;

"Additional Appointment List" has the meaning given to it in clause 26.2;

"Adjoining Premises" means the premises numbered 1-4 (inclusive) on the plan at Annexure 5 of the Lease;

"Affiliate" means in relation to any company:

- (a) a company which is either a holding company or a subsidiary of such company;
- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary; or
- (c) a Majority Joint Venture Vehicle,

and for these purposes "holding company" and "subsidiary" shall have the respective meanings given to them in section 1159 of the Companies Act 2006;

"Agreed Form of Appointment" means the each of the forms of appointment (Reason: 1) or such other form of appointment agreed between the Developer and Tfl (each acting reasonably in accordance with clause 26.7);

"Agreed Form of Building Contract" means the form of building contract (Reason: 1) or such other form of building contract agreed between the Developer and Tfl (each acting reasonably in accordance with clause 26.6);

"Appointment" means each of the deeds of appointment of the Professional Team to be entered into by the Developer in relation to the Developer Works;

(Reason: 1);

"Approved Accountancy Practices" means:

- (a) one of Deloitte LLP, Ernst & Young UK LLP, KPMG LLP and PricewaterhouseCoopers LLP; or
- (b) such other reputable accountancy practice:
 - (i) with an office in the UK; or

- (ii) which in its written statement and acknowledgement relating to [reason: 2] confirms that for those purposes it submits to the jurisdiction of the courts of England,

as is approved by TfL (such approval not to be unreasonably withheld or delayed);

(Reason: 1);

(Reason: 1);

"Approved Funder" means a funder who:

- (a) is not a Prohibited Person (within paragraphs (b) to (i) of that definition) or a person over whom a Prohibited Person (within paragraphs (c) to (i) of that definition) exercises control within the meaning of Section 1124 of the Corporation Tax Act 2010;
- (b) is a bona fide funder; and
- (c) has provided or who will be providing funding for the Development or a material part of it, whether:
 - (i) directly to the Developer and/or the Tenant; or
 - (ii) to any member of the Developer's Group and/or the Tenant's Group,

and includes a security trustee on behalf of such a funder;

"Approved Specification" means the OSD Works Specification approved in writing by TfL in accordance with clause 24, as varied from time to time in accordance with this Agreement;

"Architect" means (Reason: 1), or such architect as the Developer appoints as the architect for the Developer Works pursuant to clause 26;

"Authority" means the City of London Corporation;

"Building" means each building to be constructed as part of the Development;

"Building Contract" means each building contract for the carrying out of the whole or a Material Part of the Developer Works entered or to be entered into by the Developer with the relevant Building Contractor;

"Building Contract Administrator" means (Reason: 1) or:

- (a) such other properly qualified and experienced building contract administrator; or
- (b) a properly qualified and experienced construction manager,

appointed by the Developer from time to time pursuant to the provisions of clause 26 to, inter alia, certify Practical Completion;

"Building Contractor" means such building contractors as the Developer appoints as a building contractor under a Building Contract for the purposes of any part of the Developer Works pursuant to clause 26;

"Business Day" means any day which is not a Saturday, a Sunday or a public holiday in London;

"CDM Coordinator" means (Reason: 1) or such other properly experienced and qualified person appointed from time to time by the Developer to perform the role of CDM Co-ordinator in accordance with the CDM Regulations for the Developer Works pursuant to clause 26;

"CDM Regulations" means The Construction (Design and Management) Regulations 2007;

"Certificate of Completion" means any certificate or statement of completion to be issued in accordance with a Building Contract;

"Change of Control" means the acquisition (whether by purchase transfer renunciation or otherwise) by any person or entity or body, in the case of the Developer, not forming part of the Developer's Group or, in the case of the Tenant, not forming part of the Tenant's Group (an **"Acquirer"**) of any interest in any shares or in any partnership or other interest in:

- (a) the Developer and/or the Tenant; or
- (b) any person or entity or body holding shares or a partnership or other interest in the Developer and/or the Tenant; or
- (c) (other than Land Securities Group plc or any other company that is a public company) any parent or holding company or companies or any member(s) or trustee(s) of the Developer and/or the Tenant or such person entity or body referred to in (b),

if upon completion of that acquisition the Acquirer together with any Connected Party of that Acquirer would hold or control more than 50% of the total voting rights conferred by all of the shares in the capital of the Developer and/or the Tenant or more than 50% of the partnership interest in the Developer and/or the Tenant or more than 50% of the voting rights in the Developer and/or the Tenant and includes the entry into any binding obligation for such Change of Control save where such binding obligation is conditional on TfL approving (where such approval is required) the disposal by the relevant seller of any interest in the Developer and/or the Tenant (as the case may be);

"City Escalator" means the escalator which provides access from street level to Moorgate Station/Moorfields High Walk;

"Column" means the column shown cross hatched red on the plan labelled Plan 1A attached to the Supplemental Lease;

"Completion Date" means the date twenty (20) Business Days after service of the Option Notice or such other date as is agreed by LUL, TfL, the Developer and the Tenant;

"Conditions of Entry" means (Reason: 2)

"Confidential Information" means the information contained in, disclosed pursuant to or provided in connection with:

- (a) this Agreement; and
- (b) the documents;
 - (i) entered into between the Parties on the same date as this Agreement; and
 - (ii) to be entered into pursuant to this Agreement,

or disclosed further to the operation of the above documents including the fan survey report disclosed by TfL prior to the date of this Agreement;

"Connected Party" means any person or company connected with the Developer or any director of the Developer and "connected" has the same meaning as in Section 346 of the Companies Act 1985 or Section 839 of the Income and Corporation Taxes Act 1988;

"Contractor Parties" has the meaning ascribed to it in clause 6.1;

"CPI" means the Consumer Prices Index published by the Office of National Statistics or any successor ministry or department and being the edition current at the time of the relevant calculation or, if the Consumer Prices Index ceases to be published, then such other index as agreed between the Parties (acting reasonably) which is a generally respected measure of the general increase in the price of consumer goods and services;

"CP Land" means the land which is the subject of compulsory acquisition under the terms of the CP Settlement Agreement;

"CRL Works" means the works at Moorgate/Liverpool Street station to construct the Crossrail tunnel, platforms and corridors, running tunnels, the Station Box, the ventilation shaft, escalator works and the station entrances including the CRL fit out works;

"Crossrail" means the proposed new railway within and through Greater London and connecting Greater London to areas east and west of it;

"Crossrail Licence" means the licence to be granted by the Tenant to CRL for occupation of the Supplemental Lease Premises pursuant to clause 15.1, the form of which is set out in appendix 13;

"Deed of Covenant" means the form of the deed of covenant attached at appendix 14;

"Default Rate" means three per cent per annum above the base rate from time to time of HSBC bank or such other clearing bank nominated by TfL at any time or, if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as TfL may reasonably determine;

"Defects Certificate" means the last certificate of completion of making good of defects issued in accordance with a Building Contract in respect of the OSD Works;

"Defects Liability Period" means the period ending not less than twelve (12) months from the relevant Practical Completion Date;

"Deleterious Materials" means any goods, materials or substances which are themselves or which incorporate substances which are generally known at the time of recommendation, specification or use to be deleterious to health and safety or the durability of the completed Developer Works in the particular circumstances in which they are used or are otherwise not in accordance with British Standards, codes of practice or good building practice or techniques;

"Demised Premises" means the aggregate of the Demised Premises as defined in each of the Leases;

"Demolition Works" means the demolition works for the buildings on the Development Site (and includes demolition and clearance works in relation to the Substation) at the date of this Agreement to be carried out in the sequence and in accordance with the method statement agreed with the relevant Building Contractor and approved by TfL pursuant to clause 24 as the same may be varied from time to time in accordance with the terms of this Agreement;

"Determination Notice" shall have the meaning given to this term in clause 49.2;

"Developer Adverse Effect" means a detrimental impact on or delay to the carrying out or completion of the Developer Works (including, without limitation, increasing the cost of such works (unless such increased cost will be met by TfL));

"Developer No-Fault Breach" means a Material Breach arising from the Developer obtaining and acting upon a TfL Approval or TfL Waiver where there has been an error on the part of TfL in giving such TfL Approval or TfL Waiver save where such error:

(a) could have been identified by the Developer through the relevant matter being checked or verified independently where a reasonable and prudent developer would do so; or

(b) resulted from an error in the contents of the Supplied Information;

"Developer's Area" means the area forming part of the Demised Premises marked as the "Developer's area" on the plan in appendix 27;

"Developer's Group" means Land Securities Group plc (or the ultimate parent of any lawful assignee of the Developer's interest in this Agreement) and its Affiliates;

"Developer's Railway Representative" has the meaning given to it in clause 30.10(a);

"Developer's Representative" means (Reason: 5) or such other person as the Developer may appoint and notify in writing to TfL pursuant to clause 26;

"Developer's Solicitors" means Freshfields Bruckhaus Deringer LLP (Ref: J Fordham) of 65 Fleet Street, London EC4Y 1HS or such other solicitors as the Developer may appoint and notify in writing to TfL;

"Developer Works" means (together) the Demolition Works, the Substructure and Enabling Works and the OSD Works, but excluding any Preliminary Investigations and any Pre-Demolition Works;

"Development" means the over station development to be constructed by the Developer above, adjoining and below the Railway Assets and Premises;

"Development Cost" means the total anticipated hard costs of constructing the Developer Works to a Category A standard pursuant to the Building Contract (if it has been entered into) and/or including the cost of capital contributions paid or to be paid to tenants to the extent that they are to carry out works comprised in a Category A specification (including carpet and floor boxes), including the cost of materials, plant, equipment and other supplies and all labour costs;

"Development Site" means the land demised under the Existing Headlease and that land to be demised pursuant to the Supplemental Lease and any additional land to be demised in the Leases with full title guarantee as shown indicatively at levels 00 and 01 for identification purposes edged red on the plans at appendix 8 and also includes:

(a) the land on which the Substation is located but only for the purpose of carrying out the demolition and clearance works in relation to the Substation; and

(b) any additional areas that are not to be demised with full title guarantee pursuant to the Leases but are shown within the area edged red on such plans for so long as there is no objection by any neighbouring proprietor or occupier or any relevant authority,

Provided That the extent of the Development Site shall not obstruct the front of the Ticket Hall or any access to the Supplemental Lease Premises from Moorfields to carry out the CRL Works;

"Dispute" shall mean any claim dispute or difference of whatsoever nature arising under, or in connection with this Agreement and/or the Licence to Assign and Alter including but not limited to any questions regarding the existence validity construction or termination of this Agreement but not including any dispute or difference as to whether a matter relates to the operation of the Railway Undertaking and/or the Railway Assets and Premises;

"Draft OSD Works Specification" means the draft documents in relation to the OSD Works;

"Electromagnetic Disturbance" means any electromagnetic phenomenon which may degrade the performance of equipment forming part of the Railway Assets and Premises and/or the Railway Undertaking including (without limitation):

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

"EMF Consultant" means (Reason: 1) or such other properly qualified and experienced EMF consultant appointed by the Developer from time to time;

"Employer Act" means a voluntary or negligent act or default by the Developer which is in, or under, the control of the Developer and is not a result of any third party or external pressure, act, interference, obligation to a third party or statutory obligation, other than an act or decision made in good faith with a view to preserving or increasing the value to the Tenant, directly or indirectly, or improving the marketability or saleability of the completed Buildings;

"Employer's Agent" means (Reason: 1) or such other properly qualified and experienced employer's agent appointed by the Developer from time to time pursuant to the provisions of clause 26 to, inter alia, certify Practical Completion;

"Engineer" means Richard Davies or another appropriately qualified engineer appointed or employed by TfL for the purposes of providing professional engineering services to TfL and whose identity and address has been notified to the Developer;

"Engineering Approvals" means approvals from the Engineer required in accordance with clause 24;

"Equal Interest" means being the beneficial owner of 50 per cent of the issued share capital of, or being entitled to exercise 50 per cent of the voting rights in, or 50 per cent of the partnership interest in, or 50 per cent of the units in, the relevant joint venture entity and in any general partner of a partnership which constitutes the relevant joint venture entity by virtue of any powers conferred by the articles of association (or equivalent), shareholders' agreement or any other document regulating the affairs of the joint venture entity;

"Equal Joint Venture Vehicle" means any form of joint venture vehicle whether a limited company, partnership, limited partnership, limited liability partnership, unit trust or otherwise, in which a member of the Developer's Group and/or the Tenant's Group has, or members of the Developer's Group and/or the Tenant's Group together have, an Equal Interest;

"Executive Dispute Procedure" shall mean the provisions set out in clause 49.1 of this Agreement;

"Executives" means:

- (a) (Reason: 5) on behalf of the Developer, the Tenant and the Guarantor; and
- (b) the Managing Director, Finance, Transport for London on behalf of TfL, LUL and CRL or their successors,

or such other persons of equivalent seniority from time to time agreed between the Parties;

"Exempt Information" has the meaning given in the FOIA;

"Existing Headlease" means the lease of parts of the Development Site dated 8 April 1974 between (1) The London Transport Executive and (2) The Prudential Assurance Company Limited, as varied from time to time;

"Existing Raft" means the concrete steel and other structures comprising the existing raft forming part of the premises demised by the Existing Headlease (spanning the Railway Assets and Premises to support the building constructed above), including the waterproofing membrane and protective layer on top of such structure all supporting columns, beams, walls, piles, pile caps and other foundations and any fire protection cladding and other finishes lying beneath and supporting such raft;

"First Mayor's Opinion" means the opinion dated 24 November 2014 given, in response to the application made by TfL in October 2014 (a copy of which has been provided to the Developer prior to the date of this Agreement), by the Mayor of London pursuant to paragraph 12 of schedule 11 of the Greater London Authority Act 1999 that the parts of the Demised Premises not demised (or to be demised) by the Existing Headlease and the Supplemental Lease are not required by TfL for the purposes of the discharge by TfL of any of its functions;

"First Section 163 Consent" means the consent of the Secretary of State dated 16 January 2015 pursuant to section 163 of the Greater London Authority Act 1999 to the grant of the Leases, in response to the application made by TfL in respect of the parts of the Demised Premises covered by the First Mayor's Opinion;

"FOIA" means the Freedom of Information Act 2000;

"FOI Legislation" means the FOIA, all regulations under it and the Environmental Information Regulations 2004;

"Force Majeure" means any one or more of the following (and any event which is consequential thereon):

- (a) fire;
- (b) storm or other exceptionally adverse weather conditions;
- (c) war, hostilities, rebellion, insurrection, military or usurped power or civil war;
- (d) national labour lockouts, strikes or other industrial disputes;
- (e) riot, terrorist action, commotion, disorder;
- (f) decree of government;

- (g) long term non-availability of labour, materials or equipment;
- (h) an event to the extent that it entitles the Building Contractor to an extension of time under the Building Contract, save for such events that are due to an Employer Act; or
- (i) an event of insolvency in respect of:
 - (i) an Approved Contractor that is appointed to undertake the majority of the Development; or
 - (ii) in the event of a construction management procurement by the Developer, an Approved Consultant or an Approved Contractor that is appointed for a Material Part;
- (j) any other causes or circumstances beyond the control of the Developer, the Building Contractor or TfL but not including:
 - (i) changes in market conditions; or
 - (ii) a scarcity or unavailability of funding or of funding at commercially acceptable rates;

"Forward Agreement" means an agreement with a third party whereby the third party agrees to:

- (a) purchase, or take the grant under clause 17.2(c) of, and completes such purchase or grant of one or both of the Leases; and
- (b) if applicable, fund the construction of the Development (or part thereof)

but which does not transfer the right to carry out the Development pursuant to this Agreement;

"Ground Rent" has the meaning given to this expression in the Leases;

"Handover Arrangements" means the arrangements the basic requirements for which are set out in schedule 2;

"Handover Date" means the date on which the Supplemental Lease Premises are available for continuous occupation by the Developer, but subject to CRL's access pursuant to clause 35, and the Crossrail Licence terminating in accordance with its terms, the target for which is as indicatively shown on the Crossrail programme at appendix 23;

"Hazardous Material" means any substance (whether in solid, liquid or gaseous form) which is capable of causing harm to human health or to the environment whether on its own or in combination with any other substance;

"Highways Act" means Highways Act 1980;

"Independent Person" means the independent person appointed to act as specified in clause 49.2;

"Index" means the IPD Quarterly Central and Inner London Index for Office ERV growth (Top Quartile) or if such index shall no longer exist at the Target Date such replacement index as shall be agreed between the Parties (acting reasonably) and which reflects the changes in office rents in central London;

"Information" means any information recorded in any form held by TfL or any TfL Subsidiary or by the Developer or any of its Affiliates on behalf of TfL or any TfL Subsidiary;

"Information Release Schedule" has the meaning given to it in clause 24;

"Information Request" has the meaning given to the expression "request for information" in the FOIA;

"Initial Works" means the Demolition Works and the Substructure and Enabling Works (but not, for the avoidance of doubt, the Preliminary Investigations or the Pre-Demolition Works) or any part of them;

"Initial Works Conditions" means:

- (a) the Planning Date has occurred;
- (b) the Existing Headlease and, if granted, the Supplemental Headlease are in the legal ownership of the Tenant, subject only to completion of registration of the transfer(s) thereof; and
- (c) the Engineering Approvals have been provided in respect of the stage or phase of the Demolition Works and/or the Substructure and Enabling Works (as the context requires) which is then to begin, and in respect of the design of such further works as are required to provide support for the Development;

"Insured Risks" means, subject to clause 37.13, the risks covered by the contractors all risks policy with such amendments to such risks as are approved by TfL where required pursuant to clause 37.10(b);

"Land Securities Group Company" means Land Securities Group plc and its Affiliates;

"Latent Defects Insurance Policy" means the policy covering latent defects in the Developer Works that the Developer has taken, or will take out, with (Reason: 1) or such other insurer(s) notified to TfL in writing;

"Lease" means each lease of the Demised Premises to be granted to the Tenant pursuant to this Agreement the form of which is set out in appendix 7 (together with the Heads of Terms Note) with such amendments as the Parties shall agree (acting reasonably) to reflect the advanced design of the OSD Works in accordance with this Agreement and/or any change in law and Leases shall be construed accordingly;

"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, orders, 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, or bye-laws of any local or statutory authority having jurisdiction over works being carried out by the Developer which have the force of law in the United Kingdom;

"Liability" means any liability whatsoever whether arising from breach of contract, in tort (including negligence), in equity, breach of statutory duty or otherwise and irrespective of whether the same is known or unknown;

"Licence to Assign and Alter" means the licence to assign and alter of even date with this Agreement between (1) LUL, (2) Souzel, (3) the Administrators, (4) the Developer and (5) the Tenant;

"Long Stop Date" means the later of:

- (a) (Reason: 4); and
- (b) the fifth anniversary of the date on which the entire Supplemental Lease Premises is available for continuous occupation by the Developer;

"LUL Head of Engineering" means the Director of Capital Programmes or such replacement as has been notified to the Developer in writing;

"LUL Infrastructure Protection Manager" means the Principal Infrastructure Protection Engineer or such replacement as has been notified to the Developer in writing;

"LUL Site" means the land comprised in Title Numbers NGL706929 and NGL147896;

"LUL Standards" means:

- (a) any document (including those currently known as Category 1 and Category 5 Standards) as produced or varied from time to time (Provided That any variations or new document(s) are applicable to the Railway Undertaking generally but which may be in relation to a particular line or lines) and as are accessible to users authorised by LUL via the LUL's Standards e-library website (which authorisation TfL will ensure is available to the Developer) and which relate to:
 - (i) the operation of the Railway Undertaking and/or design or construction of any part of the Railway Assets and Premises; or
 - (ii) works carried on, over or in the vicinity of the Railway Assets and Premises including, for the avoidance of doubt, Infrastructure Protection-Special Conditions for outside parties working on or near the Railway Undertaking No G0023 Issue A2 July 2011 as varied from time to time; and
- (b) the requirements of CRL which are set out in CRL's developer guidance and notified to the Developer, including:
 - (i) the Information for Developers - January 2014; and
 - (ii) the Addendum to the Crossrail Safeguarding Guide - Information for Developers - January 2014,

as produced or varied from time to time (Provided That any variations or new document(s) are applicable to CRL and/or the CRL Works generally);

"Main Terms" means the terms of this Agreement other than the Site Specific Terms (each as varied from time to time);

"Majority Interest" means being the beneficial owner of more than 50 per cent of the issued share capital of, or being entitled to exercise more than 50 per cent of the voting rights in, or 50 per cent of the partnership interest in, or 50 per cent of the units in, the relevant joint venture entity by virtue of any powers conferred by the articles of

association (or equivalent), shareholders' agreement or any other document regulating the affairs of the joint venture entity;

"Majority Joint Venture Vehicle" means any form of joint venture vehicle, whether a limited company, partnership, limited partnership, limited liability partnership, unit trust or otherwise, in which a member of the Developer's Group (in the case of a joint venture vehicle which has the Developer's interest in the Agreement) or the Tenant's Group (in the case of a joint venture vehicle which has the Tenant's interest in this Agreement) has, or members of the Developer's Group (in the case of a joint venture vehicle which has the Developer's interest in the Agreement) or a member of the Tenant's Group (in the case of a joint venture vehicle which has the Tenant's interest in this Agreement) together have, a Majority Interest;

"Material Breach" means a material breach by the Developer of its obligations under this Agreement which has a serious adverse effect on the operation of the Railway Undertaking or the Railway Assets and Premises, whether or not it occurs by some accident, mishap, mistake or misunderstanding, but excluding any Developer No-Fault Breach;

"Material Changes" comprise:

- (a) any change which decreases the NIA of the Building in aggregate by more than five per cent by reference to the Draft OSD Works Specification; and
- (b) any change which affects the operation of the Railway Undertaking and/or the Railway Assets and Premises;

"Material Part" means those works packages specified in the list set out in appendix 19;

"Mechanical and Electrical Services Engineer" means (Reason: 1) or such other properly qualified and experienced mechanical and electrical services engineer appointed by the Developer from time to time pursuant to clause 26;

(Reason: 2)

"Minimum Rent" has the meaning given to this expression in the Leases;

"Moorgate Exchange Owners" means the proprietors, from time to time, of titles with registered numbers NGL798973, NGL574187, AGL237638 and AGL238449;

"Moorgate Exchange Rights of Light Deed" means a deed in relation to the release of rights of light and air dated 15 July 2011, made between (1) British Telecommunications Plc and others and (2) TfL and LUL.

"Mortgagee" means a mortgagee as defined under the Lease;

"Mutual Deeds" means the four mutual deeds of release of rights of light and air between (1) LUL, (2) TfL (3) Souzel; (4) LS 21 Moorfields Limited and (5) the Administrators dated on or about the date of this Agreement;

(Reason: 2)

"NIA" means net internal area calculated in accordance with the last edition of the RICS Code of Measuring Practice published prior to the date of this Agreement;

"Non-Completion Rent" means an annual rent of (Reason: 4) which shall be increased by reference to any increase in the Index for the period from the date of this Agreement to the Target Date using the following formula:

$$\frac{A}{B} \times (\text{Reason: 4})$$

where:

A is the Index figure applicable as at the Target Date; and

B is the Index figure applicable as at the date of this Agreement

and if there is no such increase in the Index such annual rent shall remain as (Reason: 4) and such sum (as indexed) shall be apportioned between the Buildings as follows:

- (a) larger Building specified in Draft OSD Works Specification – (Reason: 4) per cent; and
- (b) smaller Building specified in Draft OSD Works Specification – (Reason: 4) per cent,

Provided That these percentage figures shall be adjusted to apportion the Non-Completion Rent between the two Buildings based on the NIA of each of the Buildings that are to be constructed pursuant to the Planning Permission and, for the avoidance of doubt, includes any Minimum Rent and/or Ground Rent payable under the Leases;

"Northern Title" means the land to the north of the Development Site, shown edged with red on the plan of Title Number NGL745546 filed at the Land Registry;

"Operator" means the operator of the whole or any part of the Railway Undertaking and/or any of the whole or any part of the Railway Assets and Premises and/or any railway services operated from or running through the Railway Assets and Premises from time to time;

"Option" means the option granted in clause 3.1;

"Option Conditions" means:

- (a) the Planning Date has occurred;
- (b) the Existing Headlease and, if granted, Supplemental Lease are in the legal ownership of the Tenant, subject only to completion of registration of the transfer(s) thereof;
- (c) the Engineering Approvals have been provided in accordance with this Agreement in respect of each of the Demolition Works and the Substructure and Enabling Works (including the design of such further works as are required to provide support for the Development);
- (d) TfL have given approval in principle to the Developer's outline design and outline construction methodology for the Transfer Structure supporting the Development to the extent that this has not been approved at an earlier date as part of the approval of the Draft OSD Works Specification or as part of the approvals referred to at paragraph (c) above; and
- (e) (Reason: 3)

"Option Notice" means the notice in the form set out in schedule 4;

"Option Period" means the period from the date of satisfaction of the Option Conditions to the Long Stop Date;

"OSD Works" means all or any part of the main works to construct the Development as described in the Draft OSD Works Specification and/or the Approved Specification as the same may be varied and/or added to from time to time in accordance with this Agreement and, for the avoidance of doubt, excludes the Preliminary Investigations, the Pre-Demolition Works, the Demolition Works and the Substructure and Enabling Works;

"OSD Works Specification" means the specification and associated documents prepared by the Developer and approved by TfL to the extent required by this Agreement for the construction of the Development to be erected above and beside and under the Railway Assets and Premises such specification and associated documents to comprise the design data and drawings, calculations and specifications, working methods, method statements, programmes, risk assessments, risk management plans, fire strategy and which shall be based on the Draft OSD Works Specification or the most recently approved specification replacing the same;

"Owner" means the owner(s) of the freehold interest in the LUL Site;

"Parties" means the parties to this Agreement (or such of them as the context requires) and **"Party"** means any one or more of them;

"PFI Contract" means LUL's Connect contract for operation and maintenance of communications systems;

"PFI Contractor" means the LUL counterparty under the PFI Contract;

"Planning Act" means the Town and Country Planning Act 1990;

"Planning Agreement" means:

- (a) a Section 106 Agreement;
- (b) an agreement under section 278 of the Highways Act; and/or
- (c) a walkways agreement under section 35 of the Planning Act;

"Planning Application" means:

- (a) any application for an outline or full planning permission and/or as appropriate a conservation consent submitted to the local planning authority by or on behalf of, inter alia, the Developer (including any variations or modifications thereof or any replacement application) in accordance with this Agreement;
- (b) any application made under section 73 of the Planning Act in respect of a Planning Permission or section 19 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of a conservation consent;

"Planning Date" means the first Business Day after the latest of the following dates have occurred with reference to an Acceptable Permission:

- (a) the date which is six weeks from the date of issue of the Acceptable Permission (or if earlier the date after which no Proceedings in respect of the issue may be commenced) (Provided That no Proceedings were commenced in respect of it by such date); or
- (b) in the event that any Proceedings have been commenced in respect of the Acceptable Permission, the date on which such Proceedings are finally determined

and the Acceptable Permission is finally granted or upheld whether after a reference back to the Secretary of State for CLG or the Authority or any other relevant authority (as the case may be);

"Planning Permission" means written and dated notice from the Authority or the Secretary of State for CLG (or otherwise as the case may be) of the issue of an outline or a full planning consent for the Development as varied, supplemented and replaced from time to time;

"PPP Contract" means the relevant public private partnership contract (as the context requires);

"PPP Contractor" means the contractor appointed under the relevant PPP Contract;

"Practical Completion" shall mean practical completion (as certified by the Employer's Agent or Building Contract Administrator in respect of a Building Contract) of the relevant stage of the Developer Works in accordance with the relevant Building Contract, and if there is more than one Building Contract, it shall mean practical completion has been achieved in respect of each such Building Contract (as applicable);

"Practical Completion Date" means the date certified in the final Certificate of Completion issued in respect of a Building Contract as the date on which the final stage of the Developer Works reached Practical Completion and if there is more than one Building Contract it shall be the last of such dates in respect of the Building Contracts;

"Pre-Demolition Works" means the Soft Strip and the works set out in the list attached as appendix 1;

"Preliminary Investigations" has the meaning ascribed to it in clause 6.1;

"Principal Sub Contract" means each sub contract or trade contract relating to a Material Part of the Developer Works, excluding those:

- (a) where TfL agree it is not a Principal Sub Contract; and
- (b) in respect of the Demolition Works and the Substructure and Enabling Works (but excluding therefrom the "piling-substructure" works package);

"Principal Sub Contractors" means the sub-contractors or trade contractors appointed under the Principal Sub Contracts;

"Proceedings" means any form of judicial proceedings, review or legal challenge including any application or appeal to the Court or any other tribunal of competent jurisdiction against or in respect of the decision or omission of the Authority the Secretary of State for CLG the Court or any other tribunal person or forum including without limitation an application for judicial review and the reference of a planning application to the Secretary of State for CLG;

"Professional Team" means each of the following:

- (a) the Architect;
- (b) the CDM Coordinator;
- (c) the Mechanical and Electrical Services Engineer;
- (d) the Quantity Surveyor;
- (e) the Structural Engineer;

- (f) if the procurement route is design and build, the Employer's Agent or if the procurement route is construction management, the Building Contract Administrator;
- (g) any other professional the Developer may appoint in connection with a Material Part of the Developer Works with, where relevant, the approval of TfL pursuant to clause 26, excluding those appointed in respect of the Demolition Works and the Substructure and Enabling Works (save for any professional with a material design responsibility involved with the Substructure and Enabling Works);

"Programme" means the Developer's programme for the Developer Works as the same may be updated from time to time by the Developer subject to compliance with clause 24.15 where required;

"Programming Consultant" means (Reason: 1) or such other properly qualified and experienced programming consultant appointed by the Developer from time to time pursuant to the provisions of clause 28;

"Prohibited Person" means an individual or entity:

- (a) which is not resident in or, in the case of a body corporate, not incorporated in England or Wales, unless a legal opinion in respect of the individual or entity is provided, addressed to TfL in terms reasonably satisfactory to TfL, from a reputable independent law firm qualified in the law of the relevant jurisdiction;
- (b) which enjoys sovereign or state immunity, unless a department, body or agency of the United Kingdom Government;
- (c) which uses funds that are derived from illegal or illegitimate activities;
- (d) which has been convicted of criminal activities, or is or has been involved in organised crime;
- (e) which is named on the Consolidated List of Terrorists maintained by the Bank of England pursuant to any authorising statute, regulations or guideline;
- (f) which is, or professes to be, resident in a nation state which at the relevant time is not recognised by the Government of the United Kingdom;
- (g) which is otherwise prohibited from entering into the proposed transaction pursuant to any applicable law or requirements of any country or governmental authority (including any exchange control regulations applicable thereto);
- (h) with whom TfL or LUL may not lawfully contract, or with whom the established policy of the UK Government is that they should not contract; or
- (i) whose activities would prevent the discharge by TfL, LUL or the Greater London Authority of its or their statutory duties or other legal functions (in the case of TfL and LUL, as a transport operator);

"Project Manager" means (Reason: 5) of Land Securities Group plc or such other properly experienced person appointed or employed by the Developer from time to time (who may be an employee of the Developer);

"Public Authority" means 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 Demised Premises and/or their use and occupation and includes any person or body acting under their authority;

"Quantity Surveyor" means (Reason: 1) or such other properly qualified and experienced quantity surveyor appointed by the Developer from time to time pursuant to clause 26;

"Quarter" has the meaning given to this expression in the Leases;

"Quarter Day" has the meaning given to this expression in the Leases;

"Railway Assets and Premises" means:

- (a) the whole or any part or parts of the railway infrastructure, track, buildings, works, conducting media, lifts, escalators, tunnels, structures, plant, apparatus and equipment; and
- (b) all other things serving or used, controlled or enjoyed in connection with the Railway Undertaking from time to time,

being those assets and premises indicatively shown on the plan in appendix 22 but excluding any interest in those assets and premises held by an entity other than TfL, LUL, a TfL Subsidiary or the Operator;

"Railway Emergency" means an event of emergency which poses an immediate threat to the safety of the Railway Assets and Premises or the Railway Undertaking;

"Railway Undertaking" means the railway undertaking or network operated by TfL or any successor to TfL's function;

"Reinstatement Cost" means the cost, allowing for inflation during the period of reinstatement, of:

- (a) debris removal, demolition, site clearance and complete reinstatement of the Developer Works, assuming their total destruction;
- (b) all the Professional Team's design, legal and other professional fees;
- (c) obtaining all Statutory Consents required for (a) above; and
- (d) VAT on the costs set out in (a), (b) and (c) above;

"Rent Review Specification" means the rent review specification in respect of the buildings existing on the Development Site as demised (or to be demised) under the Existing Headlease and Supplemental Lease (including the relevant part of any buildings demolished prior to the date of this Agreement) (Reason: 4);

"Requisite Consents" means all consents, planning permissions, party wall awards, building and other licences and consents of government, local and any other authority necessary for the carrying out of the relevant works and all consents, so far as the same may be necessary, of the owners and occupiers of any adjoining or adjacent premises affected by the relevant works;

(Reason: 3)

"RPI" means the Retail Prices Index published by the Office of National Statistics or any successor ministry or department and being the edition current at the time of the relevant calculation or, if the Retail Prices Index ceases to be published, then such other index as agreed between the Parties (acting reasonably) which is a generally respected measure of the general increase in retail prices;

"Schedule of Condition" has the meaning given to it in clause 24.12;

"Secretary of State" means The Secretary of State for Transport;

"Secretary of State for CLG" means the Secretary of State for Communities and Local Government or any successor to his functions under the Planning Act and including any inspector or other person or body appointed by him to carry out his responsibilities;

"Section 106 Agreement" means any agreement required by a competent authority to be entered into as a precondition to the grant of Planning Permission (including a unilateral undertaking for the purposes of the Planning and Compensation Act 1991);

(Reason: 4)

"Sectional Completion" means practical completion (as certified by the relevant contract administrator in respect of a Building Contract) of a section of the Developer Works in accordance with the relevant Building Contract;

"Site Specific Terms" means the terms of this Agreement which are shown deleted in the version of this Agreement set out in appendix 9 which the Developer considers fall within the exemptions from disclosure in the FOI Legislation applicable as at the date of this Agreement;

"Soft Strip" means the removal of the non-structural elements of the buildings on the Development Site;

"Station" means the station forming part of the Railway Assets and Premises and known as (or to be known as) Moorgate Underground Station and Liverpool Street Crossrail Station;

"Station Box Works" has the meaning given to this expression in clause 9.3;

"Station Interface Plan" means the station interface plan to be created pursuant to clause 17.9 which shall be based on the template set out in appendix 10;

"Station Box" means the station box shown in the specification and plans attached at appendix 25;

"Station Box Top" means the roof of and surface finishes of the Station Box;

"Statutory Consents" means any statutory approvals, consents, licences or permissions required from any local or other competent authority to enable the Developer lawfully to carry out and complete the Developer Works or to reinstate them following their damage or destruction and includes the approval of reserved matters under the Planning Permission;

"Structural Engineer" means (Reason: 1), or such other duly qualified Structural Engineer appointed by the Developer from time to time pursuant to clause 26;

"Substation" means the electricity transformer chamber referred to in the schedule to the deed of grant dated 21 August 1990 between (1) BP Properties Limited and (2) Lazard Brothers and Co. Limited, part of which is located within the Northern Title;

"Substructure and Enabling Works" means the works to enable the construction and support of the Development save for the parts of those sections which relate to demolition (which has been approved by TfL), as amended from time to time pursuant to this Agreement;

"Sub-Surface Railway Regulations" means the Fire Precautions (Sub-Surface Railway Stations) (England) Regulations 2009 or any other relevant regulations made under Article 24 of the Regulatory Reform (Fire Safety) Order 2005;

"Super Pile" has the meaning given to this expression in the Leases;

"Super Pile Warranties" has the meaning ascribed to it in clause 8.1;

"Supplemental Lease" means the supplemental lease to be granted by LUL to the Tenant pursuant to clause 15.1, the form of which is set out in appendix 21;

"Supplemental Lease Premises" means the premises to be demised by the Supplemental Lease;

"Supplemental Mayor's Opinion" means an opinion given, in response to an application made by TfL following the First Mayor's Opinion, by the Mayor of London pursuant to paragraph 12 of schedule 11 of the Greater London Authority Act 1999 that the parts of the Demised Premises not demised (or to be demised) by the Existing Headlease and the Supplemental Lease are not required by TfL for the purposes of the discharge by TfL of any of its functions;

"Supplemental Section 163 Consent" means the consent of the Secretary of State pursuant to section 163 of the Greater London Authority Act 1999 to the grant of the Leases, in response to an application made by TfL following the First Section 163 Consent;

"Supplied Information" means the information or other materials supplied by, or on behalf of, the Developer to TfL as part of the process of obtaining a TfL Approval or TfL Waiver;

"Surveyor" means such reputable professional appropriately qualified to prepare the Schedule of Condition;

"Tenant" means:

- (a) prior to the grant of the Leases, LS 21 Moorfields Limited (Company Number 08072492) or such party to whom the Existing Headlease is assigned and to whom the Tenant's interest in this Agreement has been assigned in accordance with this Agreement; and
- (b) from the grant of the Leases, shall be the tenant or tenants (as the case may be) to whom the Leases are granted and their permitted assignees and, for the purposes of the grant of the Leases, the "Tenant" may include:
 - (i) a member of the Tenant's Group;
 - (ii) an Equal Joint Venture Vehicle in which a member of the Tenant's Group has the Equal Interest;
 - (iii) an entity that would constitute an approved assignee of the Lease and has been approved where necessary in accordance with clause 10 of the Lease and, for the avoidance of doubt, includes a purchaser or funder under a Forward Agreement; and
 - (iv) an entity that would constitute an approved assignee of this Agreement and has been approved in accordance with clause 45,

Provided That, notwithstanding the foregoing, the Tenant may not be a Prohibited Person at the time of entry into the Leases or on any assignment of this Agreement or the Leases to the Tenant;

"Tenant's Group" means Land Securities Group plc (or the ultimate parent of any lawful assignee of the Tenant's interest in this Agreement) and its Affiliates;

"Term Commencement Date" means the Completion Date;

"TfL Adverse Effect" means a detrimental impact on, or to, the operation of the Railway Undertaking or the Railway Assets and Premises (including, without limitation, by increasing the cost of such operation);

"TfL Approval" means any approval, agreement, authority, licence, determination, acceptance or consent required, pursuant to this Agreement, to be obtained from TfL which shall be in the form of a letter (which may be issued electronically), and which may be subject to reasonable conditions where TfL is obliged to act reasonably, from TfL addressed to the Developer confirming that TfL accepts or has no objection to or no further comment on the proposals set out in the document(s) referenced in such letter;

"TfL Contractor" means Tube Lines, a PFI Contractor or any contract counterparty to TfL who was a PFI Contractor or a PPP Contractor;

"TfL Delay" means any delay caused by TfL, LUL, CRL, a TfL Contractor or any TfL Subsidiary;

"TfL's Internal Time Costs" means the proper cost of time spent by TfL's own engineering staff and other advisers properly engaged by such engineering staff to advise it on matters related to the Developer Works pursuant to the provisions of this Agreement, which costs will be calculated using the Schedule of Rates for Infrastructure Protection Work for London Underground effective from 1 April 2014 and increased annually in line with RPI increases for each financial year to February;

"TfL Policy Clauses" means the TfL policy clauses (in relation to cycle safety and lorry standards only) set out in appendix 6;

"TfL's Representative" means the Managing Director Finance of Transport for London or such other person as TfL may appoint and notify in writing to the Developer;

"TfL's Solicitors" means Ashurst LLP of Broadwalk House, 5 Appold Street, London EC2A 2HA (Ref: JGC/TRA12.00036) or such other solicitors as TfL may appoint and notify in writing to the Developer;

"TfL Subsidiary" means a subsidiary of TfL whether wholly owned or otherwise and whether directly or indirectly owned;

"TfL Waiver" means a waiver in writing from TfL as regards strict compliance with the terms of this Agreement granted at the request of the Developer;

"TfL Works" means the allocation of the Substructure and Enabling Works agreed in accordance with clause 11.9;

"Ticket Hall" means the part of the Station Box comprising the ticket hall structure at street level as shown on the plans attached as appendix 25;

"Title Matters" means the matters listed in schedule 1;

"Transfer Structure" means the steel trusses (including associated Queen post structures and the eastern truss structure) constructed or to be constructed above the Existing Raft and supporting the superstructure of the Development, as detailed in section 4 of appendix 4 (which has been approved by TfL);

"Transparency Commitment" means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which TfL is committed to publishing its contracts, tender documents and data from invoices received;

"Tube Lines" means Tube Lines Limited whose registered office is at Windsor House, 42-50 Victoria Street, London, SW1H 0TL (company number 03923425);

"VAT" means value added tax at the rate from time to time payable and includes any successor or equivalent tax payable from time to time;

"VATA" means the Value Added Tax Act 1994;

"VAT Election" means an election to waive the exemption from VAT in relation to an interest in property;

"Warranties" means collateral warranties (Reason: 1) as are required to be procured in accordance with clause 26.16, and Warranty shall mean any such collateral warranty;

"Works Information" means 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 and other matters as the Engineer may reasonably require) to the extent not already provided by the Developer to TfL or as annexed to this Agreement.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) the clause headings do not affect its interpretation;
- (b) unless otherwise indicated, references to clauses and schedules are to clauses of and schedules to this Agreement and references in a schedule to a Part or paragraph are to a Part or paragraph of that schedule;
- (c) references to any statute or statutory provision include references to:
 - (i) all Legislation; and
 - (ii) any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;
- (d) references to the Development Site, LUL Site and Demised Premises include any part of each of them (as applicable);
- (e) if there is more than one Developer or more than one Guarantor, the obligations which they undertake can be enforced against them all jointly or against each individually;
- (f) subject to the operation of clause 45.8, the party whose interest would be in immediate reversion under the terms of the Lease had the same been granted (the **"Legal Landlord"**) from time to time may by written notice to the Developer from time to time confirm that the whole or some of the Legal Landlord's rights and obligations which relate to the Railway Undertaking have been transferred to a third party and may direct the Developer to deal with that party as agent for the Legal Landlord in relation to such right or obligation until future notice but not so as to absolve the Legal Landlord from any obligation owed to the Developer;
- (g) if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected;

- (h) the words "**include**" and "including" shall be deemed to be followed by the words "without limitation";
- (i) any covenant by a party not to do any act or thing shall include an obligation not knowingly to permit or suffer such act or thing to be done;
- (j) where there is any conflict between the Main Terms and the Site Specific Terms then the Site Specific Terms shall prevail;
- (k) the words "**operation of**" shall:
 - (i) where used in relation to the Railway Undertaking, be deemed to be preceded by the words "safe, efficient and economic"; and
 - (ii) where used in relation to the Railway Assets and Premises, be deemed to mean the "safe, efficient and economic operation and maintenance of";
- (l) reference to "**safe**" or "**safety**" shall be deemed to include the safety of staff, passengers, visitors and members of the public generally on and around the Railway Assets and Premises;
- (m) no requirement for TfL to act reasonably or not unreasonably to withhold a consent acceptance or approval, nor any stipulation that a conclusion or decision by TfL is to be reached on a reasonable basis, shall diminish TfL having absolute discretion:
 - (i) in relation to matters relating to safety of the Railway Undertaking or the Railways Assets and Premises;
 - (ii) where TfL has to comply with a statutory obligation; or
 - (iii) where the relevant matter relates to the operation of the Railway Undertaking or the Railway Assets and Premises,

Provided That where TfL has absolute discretion under (i), (ii) or (iii) above, or the decision of TfL is said to be final, TfL covenants to exercise such discretion or make such decision in a proper manner, without seeking to obtain a commercial advantage, and by reference to its statutory duties, and promptly to provide proper reasons for its decision and Provided Further That this shall not detract from TfL's right to require compliance with LUL Standards in the carrying out of the Developer Works, the Pre-Demolition Works and the Preliminary Investigations and the consequential effects on the Railway Assets and Premises;
- (n) subject to clause 29, where there is any conflict between the LUL Standards and any term of this Agreement which relates to:
 - (i) a matter which is required by this Agreement to be the subject of an Engineering Approval; or
 - (ii) the inspection and/or maintenance of the Existing Raft,

then the LUL Standards shall prevail;
- (o) any review, inspection or supervision carried out and any comment, observation, specification, consent, approval, acceptance, non-objection or instruction issued by or on behalf of TfL (whether before or after the date of this Agreement) in respect of any matter relating to the Development:
 - (i) shall be carried out or issued solely for the protection of the Railway Assets and Premises and the Railway Undertaking without any liability to the

Developer but shall not release TfL from any obligation or liability arising under or in connection with this Agreement; and

- (ii) shall not release the Developer from any obligation or liability arising under or in connection with this Agreement, except where the Developer has obtained and acted upon a TfL Approval or TfL Waiver,

Provided That:

- (iii) such exception from the Developer's liability shall not apply in respect of any matter that has arisen where the Developer acted upon a TfL Approval or TfL Waiver that contained an error where such error:
 - (A) could have been identified by the Developer through the relevant matter being checked or verified independently, where a reasonable and prudent developer would do so; and/or
 - (B) resulted from any error in the contents of the Supplied Information; and
- (iv) TfL shall (following the issue by TfL of a TfL Approval) only revoke or amend any such comment, observation, specification, consent, acceptance, non-objection, approval or instruction issued by or on behalf of TfL where it is required to do so by law;

(p) the singular includes the plural and vice versa.

- 1.3 Where obligations are placed on TfL under this Agreement it may procure that all or part of such obligations are carried out by any of LUL, CRL, any TfL Subsidiary and any Operator (but not so as to absolve TfL from any obligation or liability to the Developer or the Tenant).
- 1.4 For the avoidance of doubt, where an approval, agreement, authority, licence, determination, acceptance or consent is required from TfL, LUL, CRL, any TfL Subsidiary or any Operator pursuant to this Agreement, the Parties agree that TfL will be the point of contact and is authorised to provide such approval, agreement, authority, licence, determination, acceptance or consent on behalf of the aforementioned entities.
- 1.5 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.6 Where reference is made to the provisions of the Lease or terms of the Lease are said to apply to this Agreement such provisions and any necessary definitions or interpretation provisions from the Lease shall be deemed to be incorporated in this Agreement in order to make such provisions enforceable.
- 1.7 The carrying out of the Preliminary Investigations, the Pre-Demolition Works and the Developer Works shall be governed only by this Agreement, the terms of which shall override any terms of the Leases, the Existing Headlease and the Supplemental Lease which might otherwise have applied, and in particular, clause 3.1 to clause 3.4 inclusive, clause 4.10(d), clause 5.1 to clause 5.11 inclusive, clause 5.16(b), clause 6 and Schedule 5, clause 17 and clause 18 of the Leases shall be suspended until the issue of the Certificate of Completion under the relevant Building Contract.
- 1.8 The Tenant's ability to assign and otherwise deal with the Leases shall where there is any conflict between this Agreement and the Leases be governed by this Agreement prior to the Practical Completion Date.

1.9 Nothing in the Lease shall prevent the proper carrying out of the CRL Works and the TfL Works and the proper occupation in accordance with this Agreement of the Supplemental Lease Premises in order to carry out the same.

2. **MAYOR'S OPINION, SECTION 163 CONSENT**

2.1 The Parties agree that the conditions subject to which the First Section 163 Consent was issued are addressed and satisfied by this Agreement and the terms of the Leases.

2.2 If requested by the Developer, TfL shall submit such applications and take such other steps as may reasonably be required by the Developer to obtain Supplemental Mayor's Opinions and Supplemental Section 163 Consents for any proposals not covered by the First Mayor's Opinion and First Section 163 Consent as a result of change in the design of the Development that has been approved by the Engineer in accordance with the terms of this Agreement.

2.3 TfL shall:

(a) use all reasonable endeavours to obtain, in accordance with usual practice and without prejudice to its proper exercise of statutory and delegated functions, any Supplemental Mayor's Opinions and Supplemental Section 163 Consents applied for pursuant to clause 2.2 as soon as reasonably possible;

(b) keep the Developer informed as to progress of the applications for any applications for Supplemental Mayor's Opinions and Supplemental Section 163 Consents, including by advising the Developer as soon as practicable if a re-submission is, or may be, required; and

(c) notify the Developer as soon as practicable of the issue of any Supplemental Mayor's Opinion and Supplemental Section 163 Consents.

2.4 (Reason: 4)

3. **OPTION**

3.1 In consideration of the sum of one pound (£1) paid by the Tenant to LUL (receipt of which is hereby acknowledged) LUL hereby grants to the Tenant the option during the Option Period of calling for the grant of one (1) or two (2) Leases of the Demised Premises, in accordance with clause 3.3 and clause 17.

3.2 The Option shall be protected by the registration of a unilateral notice in the register of LUL's title to the LUL Site, for which the Tenant shall make an application to the Land Registry within twenty (20) Business Days of this Agreement.

3.3 The Option shall be exercisable by the Tenant sending the Option Notice to TfL after the satisfaction of the Option Conditions and before the expiry of the Option Period.

3.4 Following the service of the Option Notice in accordance with clause 3.3 the Leases shall be granted in accordance with clause 17.

3.5 If the Option is not exercised before the expiry of the Option Period to the extent the same is in its possession and not protected by any confidentiality provisions (and where such provisions exist the Developer shall use reasonable endeavours to secure the necessary consent) the Developer will provide to TfL at the Developer's cost as soon as reasonably practicable after the expiry of the Option Period:

(a) copies of all title information in relation to the LUL Site;

- (b) copies of all reports and surveys of which the Developer has the benefit in relation to the Development Site;
- (c) copies of all Planning Applications and related drawings and other materials submitted therewith and all correspondence with the planning authority; and
- (d) all design drawings, specifications and other design information for the Development;

all in a suitable digital storage medium and format approved by TfL (acting reasonably).

3.6 Within ten (10) Business Days after:

- (a) the expiry of the Option Period without the Option having been exercised; or
- (b) the earlier termination of this Agreement, and subject to the Tenant acquiring the interest of Souzel in the Existing Lease:
 - (i) LUL (as landlord) and the Tenant shall enter into a rent review memorandum in respect of the Existing Headlease agreeing that the rent payable thereunder has increased on a retrospective basis from 24 June 2015 to (Reason: 4) per annum;
 - (ii) the Tenant shall pay LUL the shortfall in the rent under the Existing Headlease being (Reason: 4) per annum for the period from 24 June 2015 to the expiry of the Option Period or earlier termination of this Agreement (but no interest shall be payable thereon);
 - (iii) LUL and the Tenant shall (or shall procure that the then registered proprietors of the landlord and tenant's interest in the Existing Headlease shall) forthwith thereafter enter into a variation of the Existing Headlease and the Supplemental Lease to provide for the addition to the definition of "Annual Rack Rental Value" in the Existing Headlease of a further rent review assumption that the buildings identified in the Rent Review Specification exist on the premises demised by the Existing Headlease and Supplemental Lease (and therefore ignoring any prior demolition of any of such buildings) as at the date of any rent review that occurs prior to such buildings having been replaced with a new development; and
 - (iv) LUL and the Tenant shall enter into a variation of the Existing Headlease to exclude from the demised premises under the Existing Headlease the parts of the northern wall of the Ticket Hall constructed as part of the CRL Works and to provide for a right of support for the roof of the Ticket Hall from the whole of the northern wall of the Ticket Hall such deed to be in a form to be agreed between LUL and the Tenant (both acting reasonably).

4. **SATISFACTION OF OPTION CONDITIONS**

- 4.1 Following the date of this Agreement, the Developer shall seek to obtain all Requisite Consents (to TfL's satisfaction in relation to matters that affect the operation of the Railway Undertaking or Railway Assets and Premises) in order to bring the Development Site to a stage at which the Development is ready to be implemented.
- 4.2 Without prejudice to clause 4.1, the Developer shall from the date of this Agreement use the endeavours which an experienced developer would take at the relevant time in light of the Programme and the progress of the Development to satisfy the Option Conditions as soon as reasonably practicable and commercially prudent thereafter.

- 4.3 In addition to the Developer's obligation at clause 4.2, the Developer or the Tenant (as the case maybe) shall:
- (a) comply with its obligations in clause 5 with a view to procuring that the Planning Date occurs as soon as reasonably possible and within a commercially prudent period after the date of this Agreement;
 - (b) (Reason: 4)
 - (c) take such steps as an experienced and commercially prudent developer would take (in order to be able to undertake the Developer Works in accordance with the Programme) to obtain the approvals referred to at paragraphs (c) and (d) of the Option Conditions; and
 - (d) (Reason: 3)
- 4.4 (Reason: 3)
- 4.5 (Reason: 4)

5. **PLANNING PERMISSION**

- 5.1 As soon as commercially sensible following the date of this Agreement the Developer shall, at its own cost, prepare a Planning Application for Planning Permission for the Development as described in the Draft OSD Works Specification and shall:
- (a) submit the same to the local planning authority; and
 - (b) provide a copy of the Planning Application to TfL.
- 5.2 The Developer shall proceed diligently with its application(s) for the Planning Permission and will use endeavours which an experienced developer wishing to secure an Acceptable Permission at the earliest practicable time would take at the relevant time in light of the Programme and the progress of the Development to obtain an Acceptable Permission (together with any associated Planning Agreement) as soon as commercially sensible.
- 5.3 The Developer shall keep TfL fully and regularly informed of the progress of its application(s) for Planning Permission and/or negotiations of any Planning Agreement and/or the progress of any Proceedings.
- 5.4 The Developer shall be responsible for all costs incurred in the application for and pursuit of the Planning Permission.
- 5.5 Within ten (10) Business Days of receipt of any Planning Permission (and associated Planning Agreement) the Developer shall forward a copy to TfL, together with a notice stating whether or not it accepts the same as an Acceptable Permission.
- 5.6 If the Developer gives notice that it believes an Acceptable Permission has been granted (as contemplated under clause 5.5), within twenty (20) Business Days of receipt of that notice (provided that such period shall be reduced to ten (10) Business Days where the Developer has provided TfL with the final form of each of the draft conditions applicable to such Planning Permission and the relevant draft Planning Agreement not less than ten (10) Business Days prior to the date of such Planning Permission):
- (a) TfL will give notice to the Developer stating whether or not it accepts the same as an Acceptable Permission and must:

- (i) act reasonably (save in respect of any matter that may cause a material TfL Adverse Effect) and take into consideration the parameters of an Acceptable Permission as defined in this Agreement; and
 - (ii) give reasons if it does not accept the Planning Permission as an Acceptable Permission;
 - (b) if no notice is given by TfL, the Developer shall be entitled to give TfL a further notice requesting a response and if TfL fails to respond within five (5) Business Days of receipt of such further notice then such Planning Permission shall be deemed to be an Acceptable Permission.
- 5.7 In the event that TfL gives notice to the Developer stating it does not agree that the Planning Permission is an Acceptable Permission:
- (a) the Developer and TfL will consult in good faith with a view to resolving the disagreement;
 - (b) following (a), the Developer may:
 - (i) submit a revised Planning Application, or other application, to the local planning authority and the procedure set out in clauses 5.1 to 5.6 will repeat until an Acceptable Permission is obtained; or
 - (ii) if the Parties are unable to resolve the disagreement (save where the disagreement relates to a material TfL Adverse Effect), refer the matter to dispute resolution procedures for determination in accordance with clause 49.
- 5.8 LUL shall, at the Developer's request, enter into any Planning Agreement where it is in a form that has been approved by TfL and LUL, such approval not to be unreasonably withheld or delayed and shall be given if such Planning Agreement is:
- (a) either on terms that LUL has no obligations thereunder and is a party only for the purpose of giving its consent to the Development and the terms of the Agreement; or
 - (b) contains an indemnity from the Developer and the Guarantor in terms reasonably satisfactory to LUL in respect of any Liability which LUL may incur under such agreement.
- 5.9 If the Section 106 Agreement and the proposed conditions to be attached to the Planning Permission are determined to comprise an Acceptable Permission then:
- (a) the Parties (or such of them as shall be required by the Authority) shall enter into the Section 106 Agreement in order to obtain the Planning Permission; and
 - (b) the Planning Permission shall forthwith upon its grant be deemed to be an Acceptable Permission.
- 5.10 Subject to their duties and so as not to fetter their discretion or powers as statutory consultees and the safety and security of the Railway Assets and Premises and the operation of the Railway Undertaking, TfL and LUL:
- (a) will not take any action, including submitting or supporting any planning application for commercial development on any property in the vicinity of the Demised Premises (save for the Adjoining Premises) which may materially prejudice any application for Planning Permission made pursuant to this Agreement;

- (b) must not object to any application for Planning Permission made pursuant to this Agreement; and
- (c) may in their absolute discretion support any application for Planning Permission made pursuant to this Agreement.

6. **RIGHT OF INSPECTION AND ENTRY**

6.1 At any time after the date of this Agreement, the Developer may serve written notice on TfL requesting that the Developer, persons authorised by the Developer from time to time and/or their respective contractors, agents and relevant professionals (the "**Contractor Parties**") be permitted access to the Railway Assets and Premises in order to carry out surveys, tests, inspections and investigations and other works, including boreholes, trial pits, and other enablement and preliminary investigations relating to, and in advance of, the Developer Works (the "**Preliminary Investigations**"), and TfL shall permit such access subject to the Developer and such person accessing (as the case may be):

- (a) complying, and procuring that the Contractor Parties comply with all health and safety requirements in respect of the Railway Assets and Premises;
- (b) (save to the extent that such interference is agreed pursuant to clause 6.2) not interfering, and procuring that the Contractor Parties shall not interfere with the operation of the Railway Undertaking or Railway Assets and Premises or the CRL Works or the TfL Works (nor issue any instructions in connection therewith);
- (c) providing TfL with reasonable prior written notice of the date on which it and the Contractor Parties wish to take such access but there is no guarantee that access can be provided on such date and such access shall require to be booked through LUL's normal procedure for booking access to operational property;
- (d) agreeing that TfL and/or its representatives may accompany it and the Contractor Parties (if required by TfL) when on site (and TfL shall make such persons reasonably available);
- (e) agreeing to perform any other proper requirement of TfL to ensure the safety and security of the Railway Assets and Premises and the continued operation of the Railway Undertaking as well as the safety and continuing progress of the TfL Works and the CRL Works;
- (f) by reason of such access not otherwise adversely impacting the cost of (unless in relation to the TfL Works the Developer agrees to meet any additional cost) or TfL's or CRL's (as the case may be) programme for continuing and completing the TfL Works and the CRL Works, and the Developer acknowledges that the CRL Works shall have priority over the Preliminary Investigations and the Developer Works;
- (g) ensuring that the Preliminary Investigations will not have a TfL Adverse Effect;
- (h) making good any physical damage caused to the Railway Undertaking and the Railway Assets and Premises without delay and to the reasonable satisfaction of TfL but always in accordance with the relevant LUL Standards applicable pursuant to clause 29; and
- (i) promptly paying all proper costs in relation to how such access affects the operation of the Railway Undertaking and Railway Assets and Premises including TfL's supervision and monitoring of the Contractor Parties.

6.2 The Developer, persons authorised by the Developer from time to time and TfL shall use reasonable endeavours to consult with each other and (acting reasonably) to agree an appropriate method of joint access and side by side working that is safe, efficient and

practical so as to satisfy the above conditions, Provided That side by side working shall only be accommodated where there is no TfL Adverse Effect. For the avoidance of doubt:

- (a) no access shall be given to the Developer or such persons or the Contractor Parties until such method of joint access and working shall be agreed; and
- (b) TfL is required to consider and respond to a request by the Developer to agree such method of joint access and working in a timely fashion and provide reasons for any refusal of a proposal or delay.

6.3 To the extent reasonably required in order to comply with the Programme, the Developer may, at any time after the date of this Agreement, be permitted access to the Railway Assets and Premises for the purpose of carrying out the Pre-Demolition Works, and clause 6.1 shall apply to that access mutatis mutandis.

7. **ELECTROMAGNETIC DISTURBANCE MITIGATION**

7.1 Prior to the commencement of the Developer Works, TfL and the Developer will co-operate and work together to undertake the following mitigation measures in respect of the Electromagnetic Disturbance:

- (a) the Developer will commission to be carried out, by the EMF Consultant, a survey to measure the current Electromagnetic Disturbance levels at sample locations on the Development Site and will provide a copy of the survey report to TfL as soon as practicable thereafter;
- (b) following the survey having been completed, the Developer will commission a desktop study to be undertaken to assess the risk of Electromagnetic Disturbance between the Railway Assets and Premises/Railway Undertaking and the Development Site (and vice versa) and will provide a copy of the desktop report to TfL as soon as practicable thereafter; and
- (c) the Parties will work together, acting reasonably (save where a TfL Adverse Effect may be caused), to agree any arrangements which must be implemented by the Developer within the Demised Premises (whether or not recommended by the survey and/or the desktop study) in order to mitigate the risk of Electromagnetic Disturbance between the Railway Assets and Premises/Railway Undertaking and the Development Site (and vice versa).

8. **CRL WORKS**

8.1 CRL agrees that, in relation to the Super Pile:

- (a) the Developer will be kept regularly informed and is given reasonable opportunity to make inspections in respect of construction of the Column and the Super Pile (which inspections shall be dealt with in accordance with clause 6) and that the Column will be completed and that it will use reasonable endeavours to procure that any defects rectification provisions in relation to the Column and the Super Pile (to the extent they are still enforceable) are exercised in accordance with the contract dated 13 March 2012 between CRL and Laing O'Rourke Construction Limited ("**Contract C502**"), and shall provide the Developer with a copy of:
 - (i) the sub construction certificate recording completion of the works; and
 - (ii) the certificate relating to the making good of defects in relation to the Column and Super Pile,

as soon as reasonably practicable after each such certificate has been issued;

- (b) on the grant of the Supplemental Lease, CRL shall deliver to the Developer (or the Tenant, if the Developer so requests and CRL is able (acting reasonably) to procure the same) collateral warranties from:
 - (i) Laing O'Rourke Construction Limited (or any replacement contractor) in respect of the Column;
 - (ii) BAM Nuttal Limited and Kier Construction Limited, the contractors in respect of the Super Pile; and
 - (iii) Mott Macdonald Limited, a designer of the Super Pile,

in the forms attached at appendix 24 subject to such amendments as may be agreed between CRL and the Developer, each acting reasonably (the "**Super Pile Warranties**") Provided That it shall be reasonable for CRL not to agree any such amendments where CRL has used reasonable endeavours to procure that the relevant provider of the Super Pile Warranty agree to the amendment, without success;
- (c) CRL will comply in all material respects with the contracts relating to the Super Pile and the Column (but, in each case, only to the extent they relate to the Super Pile and the Column) and shall use reasonable endeavours to procure the due performance of the obligations of the contractors listed in clause 8.1(b) with their respective contracts relating to the Super Pile and the Column (but, in each case, only to the extent they relate to the Super Pile and the Column);
- (d) CRL will not amend the contracts to which the Super Pile Warranties relate or settle any disputes in relation to the same in such a way as would materially reduce the strength of the Super Pile Warranties without the consent of the Developer (such consent not to be unreasonably withheld or delayed);
- (e) if, following the grant of the Supplemental Lease, the Developer (or the Tenant, if the Developer so requests on behalf of the Tenant) requires that the Super Pile Warranties be provided to an Approved Funder and notifies CRL in writing to that effect, CRL shall as soon as reasonably practicable thereafter procure delivery of such Super Pile Warranties to and in favour of the Approved Funder Provided That such Approved Funder is providing funding for the Development to the Developer and/or the Tenant or to any member of the Developer's Group and/or the Tenant's Group; and
- (f) CRL shall at the cost of the Developer deliver to the Developer such relevant extracts of technical documentation reasonably requested which relate to the design and construction of the Super Pile and Column and use reasonable endeavours to provide such further related information as the Developer may reasonably request including the certificate relating to the making good of defects.

9. STATION BOX

- 9.1 CRL agrees that it will consult with the Developer regarding any proposed variations to the external appearance or load bearing capacity of the Ticket Hall evidenced by the drawings and specification in appendix 25 and have reasonable and proper regard to any representations made by the Developer in relation to such variations.
- 9.2 The Developer agrees that it is not entitled to any right of support (whether express or implied) from the Ticket Hall for the benefit of the Developer Works but such agreement shall not prevent the carrying out of the Developer Works in accordance with this Agreement.

- 9.3 In the event that any of the Developer Works are to interface with, or directly affect, the Station Box or the ability to repair and maintain the Station Box ("**Station Box Works**"), the Station Box Works will be subject to compliance with the following:
- (a) prior to commencement of the Station Box Works, the Developer, LUL and CRL (each acting reasonably) shall consult with each other in order to agree an appropriate method statement for the carrying out of the Station Box Works which is safe, efficient and practical and which will not give rise to a TfL Adverse Effect;
 - (b) the Station Box Works shall not adversely affect the rights of LUL and/or CRL against contractors or professionals in respect of the design and construction of the Station Box (or to the extent they do so, the Developer shall indemnify LUL and CRL against all Liabilities arising directly out of the Station Box Works on the same terms mutatis mutandis as clause 39) and LUL and CRL will permit the Developer to participate in any negotiations with its relevant contractors and professionals in order to mitigate its Liabilities under this clause and with the aim of allowing the Station Box Works to proceed;
 - (c) prior to or as part of carrying out the Station Box Works, the Developer shall provide drainage connections to take water away from the Station Box;
 - (d) where the Developer carries out and completes the Station Box Works, it will for so long as the Station Box Works are in place:
 - (i) not injure or otherwise adversely impact the state and condition of the Station Box Top or the Station Box;
 - (ii) provide shelter for that part of the Station Box Top covered by the Station Box Works and protect (and not damage) the water proofing membrane on the Station Box Top; and
 - (iii) subject to LUL complying with the Conditions of Entry, permit LUL to access the Supplemental Lease Premises for the purposes of carrying out day to day maintenance of the Ticket Hall and other parts of the Station Box Top ("**DDM Works**"), except where such compliance would have a detrimental impact on, or to, the safety of the Railway Undertaking or the Railway Assets and Premises Provided That:
 - (A) paragraph (b) of the Conditions of Entry shall be subject to clause 9.3(e) and clause 9.3(f); and
 - (B) paragraph (f) of the Conditions of Entry need not be complied with to the extent that such compliance would prevent such access and the conduct of the DDM Works;
 - (e) LUL shall bear all of the costs of the DDM Works (other than the cost of repairing the waterproof membrane if damaged by the Developer), save for those properly incurred solely or partly because the Station Box Works have been carried out, which shall be paid to LUL by the Developer within twenty (20) Business Days of written demand. The Developer shall at LUL's reasonable request carry out or assist with the carrying out of DDM Works;
 - (f) LUL shall have the right, on giving reasonable prior written notice to the Developer, which shall not be less than:
 - (i) ten (10) Business Days save in the case of a Railway Emergency; or
 - (ii) not less than twelve (12) months in respect of works which will require the full closure of the Lobby Area (as defined in the Lease),

to require the Developer to remove the Station Box Works (or such part of the Station Box Works as is reasonably necessary) so that it may undertake major repairs or DDM Works to the Station Box. LUL will take reasonable endeavours to minimise the period in which the Station Box Works and Lobby Area (as defined in the Lease) are thereby rendered unusable by the Developer; and

- (g) LUL shall on the Developer's reasonable request provide the Developer with any reasonable information that it has in its control in relation to the Station Box Top and/or the structure of the Ticket Hall which impacts the Station Box Works.

9.4 The Developer shall indemnify LUL in respect of any costs losses charges or expenses incurred as a result of LUL being unable to recover any amounts under any collateral warranties or third party rights which would otherwise have been available to it as a result of the Station Box Works having been carried out Provided That the provisos in clause 39.1 shall apply mutatis mutandis.

9.5 The Developer is to be given a reasonable opportunity to inspect the parts of the Station Box Top on which the Station Box works are to be carried out and the Ticket Hall on the sectional completion of the relevant parts of the CRL Works and at other times (acting reasonably) to:

- (a) verify that the relevant parts of the Station Box Top and/or the structure of the Ticket Hall which impacts the Station Box Works has been constructed in accordance with the information provided to the Developer pursuant to clause 9.3(g); and

- (b) ensure and procure compliance with its Programme,

and CRL shall use reasonable endeavours to procure that the Developer receives such information in relation to the relevant parts of the Station Box Top and the Ticket Hall as it may reasonably request from time to time.

9.6 The Developer shall as part of the OSD Works install cladding to the northern and southern external elevations of the Ticket Hall in accordance with the Approved Specification.

10. CITY ESCALATOR AND WALKWAY ARRANGEMENTS

10.1 The Parties acknowledge that:

- (a) there exists an arrangement or understanding between the Authority and TfL and CRL in respect of the City Escalator ("**Existing Arrangement**");
- (b) the City Escalator interfaces with the Station Box and the Development Site;
- (c) as part of the CRL Works, CRL intends to install a replacement for the City Escalator, including the associated canopy, cladding and other structures as shown in the specification and plans attached at appendix 25 (the "**CRL Escalator**");
- (d) in order to facilitate the Developer Works, the City Escalator (or the CRL Escalator) must be replaced, extended and repositioned ("**Repositioned City Escalator**"); and
- (e) the Repositioned City Escalator will take support from the Station Box Top but not the Ticket Hall.

10.2 TfL, CRL and the Developer will (as soon as reasonably practicable after the date of this Agreement) use reasonable endeavours to negotiate a new arrangement with the

Authority in respect of the Repositioned City Escalator as outlined in clause 10.3, which arrangement will replace the Existing Arrangement ("**New Arrangement**").

- 10.3 The New Arrangement shall take the form of an agreement between LUL, CRL, the Developer (or Tenant) and the Authority and will address (among other matters reasonably agreed between the Parties):
- (a) the timing for the installation of the Repositioned City Escalator (with a view to agreeing that it can be installed in lieu of the CRL Escalator, and at as late a stage as practically possible, or in any event at a time which is consistent with the intended programme for the Developer Works);
 - (b) the cost of the works associated with the Repositioned City Escalator, which costs shall be borne by the Developer;
 - (c) the specification for the Repositioned City Escalator;
 - (d) the details of the adjoining walkway, including the details of any temporary closure of the walkway in the event that the Repositioned City Escalator is not replaced immediately following the removal of the City Escalator;
 - (e) a programme for the removal of the City Escalator and the construction of the Repositioned City Escalator;
 - (f) consent by TfL and/or CRL (as the case may be) to the work which will be required to be undertaken affecting the Station Box Top (but not the Ticket Hall) to support the Repositioned City Escalator;
 - (g) surface water drainage in relation to the Repositioned City Escalator, in particular drainage infrastructure to be constructed underneath the Repositioned City Escalator; and
 - (h) any other the interface matters as between the Repositioned City Escalator and the Developer Works/CRL Works.
- 10.4 CRL will deal with any requests for approval required in respect of the Repositioned City Escalator and comply with the equivalent obligations on TfL under this Agreement in providing and withholding those approvals.
- 10.5 In relation to clause 10.3(g), the Parties further acknowledge that surface water from the CRL Escalator and the Repositioned City Escalator will need to drain (at the top of such escalators) from and through the Development Site and (at the bottom of such escalators) from and through the Railway Assets and Premises, for so long as each such escalator is in place. TfL, LUL, CRL and the Developer will (as soon as reasonably practicable after the date of this Agreement) use reasonable endeavours to agree, in addition to a design and technical solution for such drainage arrangements, such variations and amendments to the Existing Headlease and the Lease as may be necessary to document the consequential respective rights and reservations.
11. **DEMOLITION WORKS AND SUBSTRUCTURE AND ENABLING WORKS**
- 11.1 TfL, LUL, CRL and the Developer shall collaborate with each other to endeavour to agree an optimum programme for the conduct of the Demolition Works and Substructure and Enabling Works prior to the commencement of the Option Period which programme will include the anticipated Handover Date. This programme may be updated by agreement between the Developer and TfL from time to time..
- 11.2 If the Developer proposes to start any of the Developer Works when the CRL Works are ongoing (including the Station Box) the Developer:

- (a) will work with CRL and the contractor(s) undertaking the CRL Works to agree side by side working arrangements with the Developer (acting reasonably) and CRL shall request such contractor to liaise with the Developer with a view to agreeing such working arrangements (acting reasonably); and
 - (b) will keep TfL and CRL advised of progress with agreeing such arrangements.
- 11.3 TfL, LUL, CRL and the Developer shall collaborate with each other with the aim of:
- (a) bringing forward the date on which the parts of the Development Site the subject of the Crossrail Licence may be handed over to the Developer to commence the Demolition Works, the Substructure and Enabling Works and the OSD Works in such parts; and
 - (b) securing the Engineering Approvals required for each of the Demolition Works, the Substructure and Enabling Works and the OSD Works as soon as reasonably practicable.
- 11.4 Notwithstanding clause 11.1, clause 11.2 and clause 11.3, TfL, LUL, CRL and the Developer acknowledge that the CRL Works take priority over the Developer Works, but this does not negate CRL's obligation to collaborate as required under the terms of this Agreement.
- 11.5 The Developer shall, prior to the conduct of the Demolition Works and Substructure and Enabling Works:
- (a) satisfy as soon as reasonably practicable the Initial Works Conditions having regard to any programme agreed pursuant to clause 11.1; and
 - (b) procure that plans and areas in respect of the buildings existing on the Development Site as demised (or to be demised) under the Existing Headlease and Supplemental Lease (including the relevant part of any buildings demolished prior to the date of this Agreement) are produced.
- 11.6 Notwithstanding clause 11.5, the Developer may commence the Pre-Demolition Works and the Preliminary Investigations on the basis of clause 6, prior to the satisfaction of the Initial Works Conditions in accordance with clause 11.5(a), but subject to the Developer complying with the provisions of this Agreement applicable to the design and conduct of the Developer Works in relation to the Preliminary Investigations and the Pre-Demolition Works, including clause 24 to clause 27 (inclusive), clause 29 to clause 31 (inclusive) and clause 37.
- 11.7 Notwithstanding anything else in this Agreement, during the Preliminary Investigations and Pre-Demolition Works:
- (a) the Developer will only need to effect public liability insurance cover for the normal level of cover that a competent contractor would maintain in respect of such works which shall be not less than TEN MILLION POUNDS (£10 million) in respect of each and every occurrence; and
 - (b) Warranties will not need to be provided prior to such works taking place Provided That no permanent works are taking place on the Railway Assets and Premises.
- 11.8 Prior to the grant of the Leases, the Developer shall be entitled (but not obliged) to carry out all or any part of the Demolition Works and the Substructure and Enabling Works in accordance with the programme agreed pursuant to clause 11.1 and otherwise in accordance with this Agreement (subject to any delay caused by an event of Force Majeure and/or any TfL Delay).

- 11.9 TfL may identify those parts of the Substructure and Enabling Works which comprise signalling, communications and other sensitive works (including works which require to be undertaken by any contractor pursuant to a PFI Contract or for safety reasons) which TfL wishes itself to carry out (the "**TfL Works**") by providing reasonable prior written notice to the Developer and in any event TfL shall use reasonable endeavours to provide such notice at a time which ought reasonably to ensure compliance with the Programme. TfL shall take account of the Developer's reasonable representations and the Parties will use reasonable endeavours to agree the scope of the TfL Works. TfL shall provide the Developer with a cost estimate and programme in relation to carrying out the TfL Works (or such part thereof) which shall be pre-agreed between TfL and the Developer (acting reasonably) and which TfL shall use reasonable endeavours to comply with.
- 11.10 The Developer shall be responsible for the proper costs of TfL carrying out the TfL Works and such costs shall be recoverable in one or more of the following ways:
- (a) where required by specific contractors, by providing the costs upfront so that TfL is in funds for the relevant element of the TfL Works;
 - (b) by way of interim payments for each element of the TfL Works; or
 - (c) following completion of the TfL Works,
- subject always to TfL providing invoices for and reasonable evidence of such costs.
- 11.11 Any costs payable by TfL to a TfL Contractor for services provided in connection with or as a consequence of this Agreement for the TfL Works, shall not be subject to the test of being proper but shall be those costs TfL is required to pay to a TfL Contractor under the relevant contract (subject to TfL exercising its rights and obligations under such contract dutifully and diligently) Provided That to the extent possible TfL will act in a commercially prudent manner in negotiating the costs.
- 11.12 The Parties agree that the Developer may commence carrying out the Demolition Works prior to the Planning Date where an Acceptable Permission has been received by the Developer, notwithstanding that Proceedings may be ongoing in respect of such Planning Permission.
- 11.13 TfL shall permit the Developer at any reasonable time by prior arrangement with TfL or TfL's Representative and without causing a TfL Adverse Effect to enter at its own risk such part of the Railway Assets and Premises as is within TfL's control and is properly required (in the opinion of TfL) in order to inspect and view the state and progress of the TfL Works.
- 11.14 In exercise of its rights under clause 11.13, the Developer shall:
- (a) not impede or obstruct the progress of the TfL Works;
 - (b) not issue any instructions to TfL's building contractors or any workmen employed at the Railway Assets and Premises by or on behalf of TfL or TfL's professional team but will address any requirement, comment or complaint only to TfL or TfL's Representative; and
 - (c) comply with any reasonable requests of TfL's building contractors and TfL in relation to access to the Railway Assets and Premises, including as to health, safety and security.
- 11.15 During the period prior to the grant of the Leases, the Developer shall permit TfL at any reasonable time by prior arrangement with the Developer or the Project Manager or the Building Contactor and without causing a Developer Adverse Effect to enter any part of the Development Site, at its own risk in order to inspect and view the state and progress

of the Developer Works and generally to check whether the Developer Works will adversely affect the operation of the Railway Undertaking and/or the Railway Assets and Premises.

- 11.16 In exercise of its rights under clause 11.15, TfL shall:
- (a) not impede or obstruct the progress of the Developer Works;
 - (b) not issue any instructions to the Building Contractors or any workmen employed at the Development Site or the Professional Team but will address any requirement, comment or complaint only to the Developer or the Project Manager; and
 - (c) comply with any reasonable requests of the Building Contractors and the Developer in relation to access to the Development Site, including as to health, safety and security.
- 11.17 If there is any pause between the conduct of elements or phases of the Developer Works the Developer shall ensure that the Development Site is made safe at all times and shall take appropriate steps to protect the Railway Assets and Premises and the operation of the Railway Undertaking to the reasonable satisfaction of TfL.
- 11.18 As part of the approval process for the Substructure and Enabling Works, the Developer confirms that it shall allow LUL temporary occupation of such parts of the Developer's Area (or such other suitable alternative area(s) as agreed between the Parties) for such periods as are reasonably required by LUL to enable the Substructure and Enabling Works to be completed. Within the period of not more than 6 months after the date of this Agreement, the Parties must collaborate (acting reasonably but at the Developer's cost including TfL's Internal Time Costs) to agree the process and documentation for LUL's occupation of the parts of the Developer's Area (or such other area(s) as agreed between the Parties) and the relevant part of the Substructure and Enabling Works shall not commence until this has been agreed and documented.

12. **HANDOVER DATE**

TfL and CRL shall:

- (a) keep the Developer regularly informed of progress of the CRL Works and give the Developer as much notice as reasonably possible of the Handover Date; and
- (b) co-operate with the Developer in accordance with clauses 11.1 to 11.3 and subject to clause 11.4.

13. **REDACTED (REASON: 2)**

14. **EXISTING HEADLEASE**

14.1 **Consent to assignment of Existing Headlease**

LUL hereby confirms that it consents to the assignment to the Tenant of the Existing Headlease. The Developer shall provide TfL with prior written notice of such assignment and forthwith after the assignment shall provide TfL with a certified copy of the completed document effecting the assignment with the commercially sensitive financial information redacted.

14.2 **LUL's powers under Existing Headlease**

From the date of this Agreement until the surrender of the Existing Headlease in accordance with clause 16 or, if earlier, the termination of this Agreement:

- (a) LUL agrees not to exercise its rights under the Existing Headlease, so as to do or permit or allow any action or thing which:
 - (i) may interfere with the efficient and economic conduct and completion of any element of the Preliminary Investigations, the Pre-Demolition Works and/or the Developer Works by the Developer in compliance with the terms of this Agreement, including the terms of any Approval;
 - (ii) may interfere with anything else which the Developer is permitted to do under this Agreement; or
 - (iii) is inconsistent with the obligations on its part and on the part of TfL and/or CRL contained in this Agreement and/or contained in any Approval,

but the foregoing is without prejudice to LUL or TfL's rights pursuant to the provisions of this Agreement;
- (b) LUL agrees not to exercise its rights under the Existing Headlease so as to do or omit to do or permit or allow any action or thing which may impose a total load of more than 5kN/m² on the Existing Raft;
- (c) LUL acknowledges that the conduct of the Preliminary Investigations, the Pre-Demolition Works and/or the Developer Works and any related enforcement action against the Developer will be governed by this Agreement and not the terms of the Existing Headlease;
- (d) LUL agrees to grant to the Developer and/or the Tenant as necessary, to the extent not already granted by the Existing Headlease, all rights which it is legally able to grant (including, but not limited to, licences to operate in and occupy land outside of the premises demised by the Existing Headlease) and which are necessary in order to allow the Developer to conduct and complete any of the Pre-Demolition Works and the Developer Works in accordance with this Agreement and the terms of any TfL Approval but only to the extent that this is consistent with the process for approval and conduct of the Preliminary Investigations, the Pre-Demolition Works and/or the Developer Works in this Agreement; and
- (e) LUL agrees to provide to the Developer a copy of all notices served on Souzel in respect of the Existing Headlease.

14.3 **Rent review**

LUL agrees that from completion of the assignment of the Existing Headlease to the Tenant until:

- (a) the expiry of the Option Period without exercise of the Option; or
- (b) (if earlier) termination of this Agreement,

it shall not initiate any rent review process nor seek to exercise any rent review powers or rights under the Existing Headlease and, thereafter, clause 3.6 shall apply.

14.4 **Express variations of Existing Headlease**

The Parties agree that the Existing Headlease is hereby varied (or deemed as between the parties to be varied) as follows:

- (a) Clause 2(J) of the Existing Headlease shall be varied by the addition of the following words at the beginning of the clause: "Subject to LUL not imposing a total load of more than 5kN/m² on the Existing Raft".

- (b) Nothing in clause 3.21(b) of the Existing Headlease shall preclude the grant of an agreement for a lease of up to 25 years without the consent of LUL.
- (c) Upon surrender of the Existing Headlease and, if applicable, the Supplemental Lease in accordance with clause 16 and schedule 3 of this Agreement, the provisions of clause 3(10) of the Existing Headlease, in relation to yielding up, will not apply.
- (d) Clause 5(2) of the Existing Headlease shall be varied by the addition of the following words at the end of the clause: "Provided That the Lessee or any mortgagee of this Lease does not:
 - (i) make the payment; and/or
 - (ii) commence (or procure commencement of) the remedy of such failure by the Lessee to observe and perform the covenants, provisos and conditions contained in this Lease (and having commenced remedy of such failure, proceed as soon as practicable thereafter to complete or procure completion of such remedy),

within one month (for making a payment) or within two (2) months (for other failures) in either case of receipt of written notice from the Executive to the Lessee and any mortgagee of this Lease specifying the alleged failure to make payment or observe and perform the covenants, provisos and conditions contained in this Lease and requiring the same to be remedied. For the avoidance of doubt, the commencement of the remedy of a failure by the Lessee to observe and perform the covenants, provisos and conditions contained in this Lease may be evidenced by the Lessee or any mortgagee of this Lease seeking any approvals or consents (or procuring that such approvals or consents are sought) required under this Lease or otherwise, in order to remedy the breach."

15. SUPPLEMENTAL LEASE

- 15.1 On or at any time after the date of the assignment to the Tenant of (a) the Existing Headlease and (b) (if Souzel have exercised their option to call for the Supplemental Lease under the CP Settlement Agreement) the right to be granted the Supplemental Lease pursuant to such option, and subject to the Tenant having given to LUL and CRL not less than ten (10) Business Days' prior written notice, LUL and TfL will grant to the Tenant (and the Developer will join in) the Supplemental Lease and immediately thereafter the Tenant will grant to CRL (and the Developer and LUL will join in) the Crossrail Licence. LUL shall give such assistance as is reasonably and properly required by the Tenant in preparing additional or replacement demise plans for the Supplemental Lease and in answering any requisitions from the Land Registry in connection with the registration of the Supplemental Lease.
- 15.2 LUL covenants with the Tenant that it will not do, or cause to be done, anything that would encumber the Supplemental Lease Premises, or prevent or restrict the grant of the Supplemental Lease as contemplated under clause 15.1, Provided That the foregoing shall not prevent the use of the Supplemental Lease Premises for the CRL Works between the date of this Agreement and the grant of the Supplemental Lease and the Crossrail Licence.
- 15.3 In respect of the Crossrail Licence:
 - (a) CRL confirms that in relation to the tenancy to be created by the Crossrail Licence and prior to entering into this agreement:
 - (i) the Tenant served on CRL a notice dated 30 January 2015 complying with the requirements of section 38A(3) of the Landlord and Tenant Act 1954;

- (ii) CRL or a person duly authorised by CRL made a statutory declaration (the "**Statutory Declaration**") complying with the requirements of schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.
- (b) Where the Statutory Declaration was made by a person other than CRL CRL confirms that the declarant was duly authorised to make the Statutory Declaration on the CRL's behalf.
- (c) The Tenant and CRL agree that sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 will be excluded in relation to the tenancy to be created by the Crossrail Licence.

16. **SURRENDER OF EXISTING HEADLEASE AND SUPPLEMENTAL LEASE**

16.1 The Parties agree to comply (or procure compliance) with their respective obligations in schedule 3 in relation to the surrender of the Existing Headlease and, if applicable, the Supplemental Lease. The Tenant shall procure compliance with the obligations in schedule 3 of the Existing Tenant (as defined in schedule 3).

16.2 **Exclusion of the Landlord and Tenant Act 1954**

- (a) The Tenant confirms that in relation to the tenancy created by the Existing Headlease and, if applicable, the Supplemental Lease and prior to entering into this agreement:
 - (i) LUL and TfL served on the Tenant a notice dated 30 January 2015 complying with the requirements of section 38A(4) of the Landlord and Tenant Act 1954;
 - (ii) the Tenant or a person duly authorised by the Tenant made a statutory declaration (the "**Statutory Declaration**") complying with the requirements of schedule 4 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.
- (b) Where the Statutory Declaration was made by a person other than the Tenant, the Tenant confirms that the declarant was duly authorised to make the Statutory Declaration on behalf of the Tenant.
- (c) LUL, TfL and the Tenant agree that the tenancy created by the Existing Headlease and Supplemental Lease shall be surrendered as provided in this agreement.

17. **AGREEMENT FOR LEASES**

17.1 Not more than 6 months after the date of this Agreement the Parties will consult and endeavour to agree (acting reasonably), the amendments to the form of Lease to create the two Leases based solely on the heads of terms note attached at appendix 7.

17.2 **Grant of Leases**

- (a) Subject to the exercise of the Option under clause 3, and subject to and in consideration for:
 - (i) the surrender of the Existing Headlease and, if applicable, the Supplemental Lease; and
 - (ii) the assumption by the Developer of its obligations under clause 28.1,

LUL shall (or shall procure that the Owner shall) and, if applicable TfL shall, and (subject to clause 17.2(c)) the Tenant shall on the Completion Date enter into the Leases. If the Tenant is a Land Securities Group Company, it is agreed (for the avoidance of doubt) that no Guarantor shall be required upon grant of the Leases.

- (b) (Reason: 4)
- (c) The Developer may alternatively require that either or both of the Leases be granted to an entity to which the Lease or Leases could be assigned pursuant to clause 10 thereof (subject to the prior written consent of LUL having been obtained to the extent required).

17.3 **Term Commencement Date**

The term of the Leases shall commence on the Term Commencement Date and end on the date two hundred and fifty (250) years thereafter.

17.4 **Rent and Outgoings Commencement**

The Ground Rent and all other outgoings will commence to be payable on the Term Commencement Date.

17.5 **No Demise**

Pending completion of the grant and acceptance of the Leases, this Agreement shall not operate at law or in equity as a demise of the Demised Premises but (subject to clause 17.6) the terms of the Leases shall apply from the Completion Date as if they had been granted (without prejudice to the operation of the Existing Headlease and Supplemental Lease, but provided that rent shall not be payable under the Leases in respect of any period for which it is payable under the Existing Headlease).

17.6 **Interim operation of Lease provisions**

Without prejudice to clause 1.7 and clause 1.8, from the date of this Agreement until the Completion Date, the terms of the Leases shall apply to the extent only that the terms are required in order for the Parties to comply with their obligations under this Agreement, including (for the avoidance of doubt) any terms which are required to enable :

- (a) the proper carrying out of the Pre-Demolition Works, Preliminary Investigations, TfL Works and CRL Works; and
- (b) the proper occupation of the Development Site in order to carry out the Pre-Demolition Works, Preliminary Investigations, TfL Works and CRL Works in accordance with this Agreement (and the Developer is deemed to have been granted a licence to occupy the Development Site on those terms),

and, to the extent of any inconsistencies between the terms of this Agreement, the Leases and the Existing Headlease, the terms of this Agreement shall prevail, followed by the terms of the Leases.

17.7 **No dealings**

LUL covenants with the Tenant that it will not do, or cause to be done, anything that would encumber the Demised Premises or prevent or restrict the grant of the Leases as contemplated under this clause 17, Provided That the foregoing shall not prevent the use of the Supplemental Lease Premises for the CRL Works between the date of this Agreement and the grant of the Supplemental Lease and the Crossrail Licence.

17.8 **Plans and Lease amendments**

It is acknowledged by the Parties that the plans annexed to the form of Leases are indicative only and show the extent of the proposed premises for the relevant documents based on the Draft OSD Works Specification. As and when the precise boundaries and division in the respective demises between the two Leases are established the Parties shall work together to identify and implement in a tax efficient manner such amendments as are necessary to the Leases and the plans to reflect the relevant details of the advanced design of the Development, both prior to grant of the Leases in accordance with clauses 17.1 and 17.2, and after grant (when amendments may be reflected in one or more surrenders of part and/or supplemental leases, in order to reflect:

- (a) the Development as built; and
- (b) the grant of one (1) or two (2) Leases as reflected in the Option Notice,

Provided That any amendments have received the prior written approval of the Engineer as required by this Agreement before the relevant Developer Works were undertaken), and the external boundaries of the demise at and above the level of the Existing Raft shall not change on account of not being built on. LUL shall give such assistance as is reasonably and properly required by the Tenant in preparing additional or replacement demise plans for the Leases and in answering any requisitions from the Land Registry in connection with the registration of the Leases.

17.9 **Station Interface Plan**

TfL will, in conjunction with the Developer, (each acting reasonably) agree and create the Station Interface Plan containing details of the management and operational interfaces between the Station and the Development and the Developer shall at all times maintain and keep TfL informed of the current contact details of a contact person available at all times in respect of the Development.

18. **COMPLETION**

The grant of the Leases shall be completed at the London offices of TfL's Solicitors (or at such other place as the Parties shall reasonably agree) on the Completion Date.

19. **NEIGHBOURLY AGREEMENTS**

19.1 LUL in its capacity as freeholder of the LUL Site (and TfL where it holds a property interest in the LUL Site) will, at the Developer's request, enter into any agreement reasonably required by the Developer with the owners and occupiers of properties adjoining or neighbouring the Development Site in order to release rights of light, provide for crane oversailing or scaffolding or the grant, variation or release of any other rights reasonably required to facilitate the Development, Provided That:

- (a) such agreement is in a form previously approved by LUL and, if applicable, TfL (such approval not to be unreasonably withheld or delayed);
- (b) any costs properly incurred by TfL and LUL are met by the Developer;
- (c) the Developer indemnifies TfL and LUL in respect of all Liability it may incur under such agreement (on terms consistent mutatis mutandis with clause 39); and
- (d) the discharge of TfL's and LUL's statutory duties in relation to the Railway Assets and Premises and the Railway Undertaking are not thereby fettered.

19.2 TfL and LUL will not, and will procure that any TfL Subsidiary will not, in respect of any premises in which it acquires an interest following the date of this Agreement:

- (a) attempt to injunct the progress of the Development on the basis of a rights of light claim; or
- (b) object to a section 237 scheme with the Authority in respect of the Development,

Provided That the parties agree the above restrictions shall not adversely affect or impact the quantum of compensation that may otherwise be payable by the Developer and/or the Tenant to TfL, LUL or any TfL Subsidiary in respect of any rights of light enjoyed by such premises.

20. **TITLE**

20.1 **Registered Title**

The title to the Owner's interest in the Demised Premises is registered at the Land Registry under Title Numbers NGL706929, NGL147896, AGL255468 and AGL262624 and comprises official copies of the Register (including a copy of each title plan) of those titles, which can be inspected by the Developer pursuant to section 66 of the Land Registration Act 2002.

20.2 **Deduction of Title**

- (a) TfL undertakes to use reasonable endeavours, as soon as reasonably practicable, to complete (if not already completed) and register the transfer effecting the surrender of its interest in the Supplemental Lease Premises to LUL at the Land Registry, and to procure that the associated title is closed and merged with LUL's freehold title.
- (b) Subject to the requirements in clause 20.2(a) being complied with, title to the Demised Premises having been deduced to the Tenant's Solicitors (as the Developer hereby admits), TfL shall be under no obligation to provide further evidence of its title or its ability to grant the Leases, and the Tenant shall be deemed to have accepted such title and shall not raise any enquiries or requisitions thereon nor make any objections in respect thereof after the date hereof except where the subject matter of the enquiry or requisition is registered at the Land Registry or the Central Land Charges Register after the date hereof.

20.3 **Restriction on Title Numbers NGL706929 and NGL147896**

- (a) The Developer and the Tenant acknowledge that there are restrictions on each of the proprietorship registers for Title Numbers NGL706929 and NGL147896 which require that the Deed of Covenant be entered into by the Tenant on completion or transfer of the Supplemental Lease and the Leases. The Tenant undertakes to execute and deliver the Deed of Covenant to LUL simultaneously with:
 - (i) the completion of the Supplemental Lease; and
 - (ii) the completion of the Leases.
- (b) Notwithstanding the terms of any Deed of Covenant delivered pursuant to clause 20.3(a) or the Moorgate Exchange Rights of Light Deed, LUL hereby acknowledges, confirms and agrees that:
 - (i) it (and not the Tenant) shall be under an obligation to comply with the covenants and obligations in the Moorgate Exchange Rights of Light Deed:
 - (A) in so far as those covenants and obligations (or compliance therewith) exclusively relate to the freehold interest in the land or

property registered under the title numbers NGL706929 and NGL147896;

- (B) in so far as those covenants and obligations (or the compliance therewith) relate to any land or property within title numbers NGL706929 and NGL147896 but outside of the Demised Premises or the land or property demised by the Supplemental Lease; or
 - (C) at any time following expiry or determination of the term of either of the Leases in respect of the land demised by the Lease that has expired or determined;
- (ii) it shall (and LUL further covenants that it shall), where requested to do so by the Moorgate Exchange Owners (acting reasonably), enter into documents deeds or other instruments with the Tenant and/or the Moorgate Exchange Owners in order to document the position agreed at clause 20.3(b)(i) above but subject to the approval of the form of such documents, deeds or other instruments by LUL (such approval not to be unreasonably withheld or delayed).

20.4 **Registration**

The Tenant will:

- (a) as soon as reasonably practicable, apply to the Land Registry to register against Title Numbers NGL706929, NGL147896, AGL255468 and AGL262624 (as applicable):
 - (i) the Leases (but in any event within two (2) months following completion of the Leases); and
 - (ii) in the case of NGL706929 and NGL147896 the following restriction to give effect to the operation of clause 45.8 relating to dealings by LUL with its freehold title:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by LS 21 Moorfields Limited (No. 08072492 of 5 Strand, London WC2N 5AF) or their conveyancer."

and LUL must provide all necessary consents and applications in respect of the registration of the restriction referred to at (ii) above and reasonable assistance to answer any requisitions;

- (b) within one (1) month of completion of each registration give notice in writing, together with official copies with title plans of the entries for all registered titles affected by such registration to TfL; and
- (c) as soon as reasonably practicable after grant of the Leases apply to the Land Registry to cancel and remove the restriction referred to in clause 20.4(a)(ii).

20.5 **Notice of Registration**

If at any time, any application is made to the Land Registry to note or register (whether pursuant to clause 20.4 above or otherwise) this Agreement, the Leases, or any interests rights or covenants contained in the Leases or this Agreement (or any document supplemental to them):

- (a) the Tenant and TfL (each acting reasonably) will consult and agree the content of forms EX1 and/or EX1A which will be included with any such application, together with the appropriate fee and the accompanying document(s) edited accordingly; and
- (b) where the right or interest is not compulsorily registrable in its own right, protect such right or interest by way of unilateral notice only and not send or permit to be sent a copy of the document(s) creating that right or interest to the Land Registry.

20.6 **Removal of Notice**

The Tenant shall forthwith remove any entry made against Title Numbers NGL706929 and NGL147896 or any entry on the Land Charges Register or otherwise in respect of this Agreement on the completion and registration of the Leases or if this Agreement is validly terminated.

21. **MATTERS AFFECTING DEMISED PREMISES**

21.1 The Demised Premises are let subject to, and with the benefit of, the following matters so far as they relate to the Demised Premises and are still subsisting and capable of taking effect at the Completion Date:

- (a) the Title Matters;
- (b) any matters contained or referred to in the Leases;
- (c) save as released by the Mutual Deeds all rights of way, light and air, support, drainage and other rights, easements, quasi easements, liabilities and public or private rights whatsoever and any liability to repair or contribute to the repair of sewers, drains, pipes, party structures and other like matters;
- (d) all overriding interests as set out in schedule 1 or schedule 3 (as appropriate) and sections 11(4)(c) and 90 (as amended by schedule 12) of the Land Registration Act 2002 and the Land Registration (Transitional Provisions) (No. 2) Order 2003;
- (e) all Local Land Charges (whether or not registered before the date of this Agreement) and all matters capable of registration as Local Land Charges (whether or not actually registered);
- (f) all notices served and orders, demands, proposals or requirements made by any local or other public or competent authority;
- (g) all actual or proposed orders, directions, plans, notices, instruments, charges, restrictions, conditions, agreements or other matters arising under any statute relating to town and country planning and any laws and regulations intended to control or regulate the construction, demolition, alteration or change of use of land or buildings or to preserve or protect the environment;
- (h) the lease of 31 Moorfields dated 7 August 2014 between (1) Souzel; (2) CRL; (3) the Administrators; (4) LS 21 Moorfields Limited and (5) LUL;
- (i) the Crossrail Licence; and
- (j) all matters subject to which the Existing Headlease and, if applicable, the Supplemental Lease are surrendered, save where such matter arises out of a breach by LUL of clause 15.2, clause 17.7 and/or clause 45.8.

21.2 **Searches and Enquiries**

The Tenant acknowledges that it has made all searches, enquiries and inspections (other than physical and intrusive inspections and surveys) which a prudent tenant would make and takes subject to any matters which are or would be revealed.

21.3 **Notice**

Subject to TfL surrendering its interest in the Supplemental Lease Premises to LUL and the associated title being closed, the Tenant shall be deemed to take with full knowledge and notice of the matters aforesaid and shall not raise any objection or requisition whatsoever in respect of the same.

21.4 **TfL undertaking**

TfL hereby undertakes that, as soon as reasonably practicable after written request from the Tenant, it will provide to the Tenant details of any matters affecting the Demised Premises (as set out in clause 21.1) of which it has become aware after the date of this Agreement.

22. **TFL COSTS AND PAYMENT FOR SUPER PILE**

22.1 If the sum of (Reason: 4) has not been paid to LUL under the Supplemental Lease for the use of the Super Pile, the Tenant shall pay such sum to LUL upon the grant of the Leases.

22.2 The Developer shall pay to TfL, within twenty (20) Business Days of receipt of written demand (and valid VAT invoice addressed to the Developer) the proper costs (including TfL's Internal Time Costs) and irrecoverable VAT thereon incurred by TfL properly and directly after the date of this Agreement until the issue of the last certificate of making good defects in relation to the Developer Works:

- (a) relating to the checking, approving, inspecting, testing and monitoring of the Developer Works so far as they relate to, or impact on, the Railway Assets and Premises or the Railway Undertaking (including approval of all drawings, specifications, calculations, method statements and programmes) in accordance with this Agreement;
- (b) in relation to the supervision by its employees or contractors of the Developer Works on or adjacent to the Railway Assets and Premises;
- (c) relating to the provision of staff or other measures as TfL may properly consider necessary or desirable for the operation of the Railway Undertaking or the Railway Assets and Premises as a result of, or to enable, the Developer Works;
- (d) relating to the approval of the Building Contract, any Principal Sub Contracts and the Appointments and the identity of the Building Contractor, Principal Sub Contractors and the Professional Team to the extent necessary under this Agreement;
- (e) relating to the obtaining of any other necessary approvals or consents from TfL and LUL in respect of the Developer Works in accordance with this Agreement;
- (f) in providing such safety induction or training to the Developer or its agents, employees, contractors or suppliers as may be properly required by the relevant LUL Standards applicable pursuant to clause 29 or otherwise properly required by TfL in relation to persons working on or near the Railway Assets and Premises;
- (g) in providing appropriate project management (as required) for the overall co-ordination and management of the various departments and the contractors of TfL

affected by and actively involved in the enabling works arising out of the Developer Works;

- (h) relating to TfL entering into any third party agreements in respect of the Development at the request of the Developer; and
- (i) other costs and expenses properly incurred by TfL as a result of the Developer Works and pursuant to the provisions of this Agreement.

22.3 TfL and the Developer shall agree (acting reasonably) a reasonable cap (including an appropriate contingency) on the costs payable by the Developer where possible for each phase of work. If the scope of work for any phase changes an appropriate increase in the cap will be agreed between TfL and the Developer (acting reasonably). Notwithstanding the foregoing TfL shall not be obliged to agree a cap for any costs payable to a PFI Contractor or PPP Contractor or other LUL counterparty where the level of costs has been set in a pre-existing contract.

22.4 The costs payable by the Developer pursuant to clause 22.2 shall include the proper costs incurred by TfL as a result of engaging external advisers, contractors or consultants for services provided in connection with or as a consequence of this Agreement or the Developer Works.

23. **REDACTED (REASON: 4)**

24. **DESIGN DEVELOPMENT AND WORKS INFORMATION**

24.1 Each of the Parties acknowledges that:

- (a) as at the date of this Agreement, the Draft OSD Works Specification sets out the currently agreed specification for the OSD Works (but for the purpose of the safety of the Railway Undertaking and Railway Assets and Premises only to the extent it contains the information in appendices 2, 3 and 4 and in addition those parts of the Stage C+ report (revision A, 17/10/14) relating to Smoke/Vent System Proposal (revision A, 16/10/14) and Electromagnetic Survey Summary (revision A, 16/10/14) are approved in principle subject to further design development in accordance with LUL Standards and the issues raised by LUL prior to the date of this Agreement being satisfactorily addressed); but
- (b) TfL have approved the information attached at appendix 2, appendix 3 and appendix 4 but only to the extent necessary for the purpose of satisfying Initial Works Condition (c) and Option Conditions (c) and (d), but that the Developer may need further to satisfy those conditions if required as a result of design development; and
- (c) thereafter (in any event) the Developer will need to carry out further design development in respect of the works which were the subject of Initial Works Condition (c) and Option Conditions (c) and (d) in order to achieve an Approved Specification.

24.2 The Developer agrees that it will not commence any element of the Developer Works until it has received TfL's approval of the Works Information (as required under this Agreement) for that element of the Developer Works.

24.3 The Developer is to prepare written statements outlining the principles of the design and the methods to be used in carrying out each material element of the Developer Works (the "**Concept Design Statement**") which shall be consistent with the Draft OSD Works Specification, and is to submit each Concept Design Statement with a request for approval in principle by the Engineer. Subject to receiving such approval, the Developer is to design

and execute the Developer Works in accordance with such approved Concept Design Statement.

- 24.4 The Parties agree that when the Concept Design Statement is submitted to the Engineer, together with a request for approval pursuant to clause 24.3, the Engineer shall within thirty (30) Business Days of its submission (or such period as shall be agreed between the Developer and the Engineer) either:
- (a) confirm no objection to the Concept Design Statement; or
 - (b) specify (with reasons) any objections (and may, but shall not be obliged to, suggest what changes might be required so that the Engineer can approve the Concept Design Statement), in which event the Developer shall revise and resubmit the Concept Design Statement and the provisions of this clause 24.4 shall apply again, save that the period for responding to the submission shall be ten (10) Business Days following re-submission.
- 24.5 The Developer is to prepare a timetable specifying when the Developer will release the various elements of the Works Information for which TfL's consent is needed which timetable is to be approved by TfL (such approval not to be unreasonably withheld or delayed having regard to the fact that various drafts thereof have been exchanged prior to the date of this Agreement) ("**Information Release Schedule**"). The Information Release Schedule may be updated from time to time by the Developer subject to the approval of the Engineer (such approval not to be unreasonably withheld or delayed).
- 24.6 The Developer shall submit to the Engineer the Works Information in accordance with the Information Release Schedule. The Parties agree that when information or documentation is submitted to the Engineer, together with a request for approval, following approval of the Concept Design Statement, TfL shall procure that the Engineer shall within twenty (20) Business Days of its submission (or such period as shall be agreed between the Developer and the Engineer) either:
- (a) confirm that he has no objection to the Works Information; or
 - (b) specify (with reasons) any objections (and may, but shall not be obliged to, suggest what changes might be required so that the Engineer can approve the Works Information), in which event the Developer shall revise and resubmit the Works Information and the provisions of this clause 24.5 shall apply again, save that the period for responding to the submission shall be ten (10) Business Days following re-submission.
- 24.7 Where a submission is made by or on behalf of the Developer which contains substantial omissions such that it is not possible properly to evaluate the content of the submission the Engineer shall alert the Developer to that fact and on the next re-submission of that submission the deadline for response by the engineer shall be twenty (20) Business Days (not ten (10) Business Days).
- 24.8 If the Engineer fails to respond to a request for approval pursuant to clause 24.3 or clause 24.4 or clause 24.5 within the specified period the Developer may on expiry of the relevant period escalate its request for approval by written notice to the LUL Infrastructure Protection Manager who shall have ten (10) Business Days from the receipt of the Developer's notice to respond in the stead of the Engineer.
- 24.9 If the LUL Infrastructure Protection Manager fails to respond within the period specified in clause 24.8, the Developer may escalate its request for approval by written notice to the LUL Head of Engineering who shall have ten (10) Business Days from the receipt of the Developer's notice to respond in the stead of the LUL Infrastructure Protection Manager and the Engineer.

24.10 The Developer agrees that it will provide TfL with more detailed aspects of the OSD Works:

- (a) before the Initial Works commence; and
- (b) before the OSD Works commence.

If, in detailing such aspects, there are additions, developments or changes to the Draft OSD Works Specification, the Developer shall submit the revised OSD Works Specification to TfL for approval, such approval not to be unreasonably withheld or delayed save where the OSD Works would or would be likely to affect the structural integrity or operation of the Railway Assets and Premises or the operation of the Railway Undertaking, in which case such approval may be withheld in the absolute discretion of the Engineer (subject always to clause 1.2(m)).

24.11 The Developer is to procure and deliver to the Engineer for his written approval prior to the commencement of the Developer Works (such approval not to be unreasonably withheld or delayed) the Construction Phase Plan (as defined in the CDM Regulations) (prepared in accordance with the recommendations of ACoP) and procure and deliver to TfL as soon as practicable following final completion of the OSD Works (but not later than two (2) months after that date) a copy of the Health and Safety File prepared maintained and completed and updated as required by the CDM Regulations and ACoP.

24.12 The Developer is not to commence any of:

- (a) the Demolition Works;
- (b) the Substructure and Enabling Works; and
- (c) the OSD Works,

without first procuring (TfL being entitled to require that access is on an accompanied and supervised basis) that the Surveyor undertakes, at the Developer's cost, a non-intrusive schedule of condition in respect of any part of the Railway Assets and Premises likely to be affected by the relevant phase of works ("**Schedule of Condition**") and provides a copy of such Schedule of Condition to the Engineer within five (5) Business Days of the Schedule of Condition being issued by the Surveyor, Provided That where two or more of these phases of the Developer Works are carried out as a continuous process of delivery, without any pause between such phases, a Schedule of Condition will not be required before the commencement of a subsequent phase. The Developer shall procure that the Surveyor provides a duty of care letter to TfL in a form to be approved by TfL (acting reasonably).

24.13 The Developer shall forthwith make good to the reasonable satisfaction of TfL any physical damage caused to the Railway Assets and Premises during the conduct of each phase of the Developer Works in order to restore the Railway Assets and Premises to their prior condition as evidenced by the Schedule of Condition and shall obtain TfL's approval in accordance with this clause 24 and comply with LUL Standards in respect of such works of making good in accordance with this Agreement.

24.14 The specification which results from the approval process mentioned in this clause 24 will (once approved by TfL to the extent required) be the Approved Specification, including for the purposes of clause 24.1(c).

24.15 If the Developer proposes a material change to the Programme in respect of the Developer Works it must (insofar as it is likely to affect the TfL Works or the Railway Assets and Premises or TfL's resourcing for the purposes of managing this Agreement) consult with TfL as to that change as soon as reasonably practicable and have reasonable regard to any reasonable representations made by TfL to the Developer in writing and, in

any event, must still provide for the Developer Works to be completed by the Anticipated PC Date.

- 24.16 The Parties agree that this Agreement shall be treated as deemed consent under Section 3(3)(a) of the Party Wall etc Act 1996 for the carrying out of the Developer Works.

25. **VARIATIONS**

- 25.1 TfL may not change the TfL Works without the consent of the Developer (such consent not to be unreasonably withheld or delayed) in respect of any amendments which adversely affect or are likely to adversely affect the Development, the Demised Premises, the cost of the TfL Works and/or extend the programme for completion of the TfL Works.

- 25.2 Notwithstanding clause 25.1, it is acknowledged by the Developer that TfL may effect such changes to the TfL Works to avoid a TfL Adverse Effect Provided That TfL has first consulted with the Developer regarding any proposed amendment and had reasonable and proper regard to any representations made by the Developer in relation such amendment.

- 25.3 The Developer may not change the Approved Specification nor (once the same have been approved by TfL) each Concept Design Statement or the Works Information without the consent of TfL in respect of any amendments which adversely affect or are likely adversely to affect the operation of the Railway Undertaking or the Railway Assets and Premises. TfL's approval shall be at its absolute discretion (subject always to clause 1.2(m)) and:

- (a) the approval process shall follow the approval procedure in clause 24;
- (b) TfL shall give reasons if it refuses to approve any amendments;
- (c) the Developer may revise and re-submit its request for approval; and
- (d) the Parties will agree a suitable timeframe for TfL to respond following receipt of a complete package of information required by TfL to deal with the application for approval of such amendments.

- 25.4 The Developer may not make other Material Changes to the Approved Specification nor (once the same have been approved by TfL) each Concept Design Statement or the Works Information without the consent of TfL, such approval not to be unreasonably withheld or delayed.

26. **APPOINTMENT OF THE BUILDING CONTRACTOR AND THE PROFESSIONAL TEAM FOR THE DEVELOPER WORKS**

- 26.1 The Developer has appointed or intends to appoint or employ consultants and/or contractors from the list of consultants and/or contractors set out in appendix 17 (the "**Appointment List**"). The Appointment List shall be deemed approved by TfL and the Developer shall be entitled to appoint any of the consultants and/or contractors on the Appointment List in accordance with clauses 26.6 and 26.7. It is agreed that the Developer may elect to adopt construction management as a procurement route for the purpose of carrying out the Developer Works.

- 26.2 If the Developer intends to appoint or employ any consultants and/or contractors as a member of the Professional Team or as a Building Contractor who are not named on the Appointment List, the Developer shall submit to TfL the names of the consultants and/or contractors whom it intends to appoint or employ (the "**Additional Appointment List**"). TfL shall be entitled with reasonable grounds and within ten (10) Business Days of receipt of an Additional Appointment List to require the Developer to remove a consultant and/or contractor from the Additional Appointment List, in which event the Developer shall not

appoint such consultant and/or contractor, Provided That it shall not be unreasonable grounds for TfL to require the removal of a contractor or a consultant to be appointed as architect or the mechanical and electrical services engineer or structural engineer or any other key member of the Professional Team who TfL consider is not appropriate to appoint having regard to their experience of:

- (a) developing buildings in central London of a similar size to the Development; and
- (b) developing buildings over stations and in the vicinity of an operational railway.

If TfL fails to issue a request to remove a consultant and/or contractor within ten (10) Business Days of receipt of an Additional Appointment List, the Additional Appointment List shall be deemed approved and the Developer shall be entitled to appoint any of the consultants and/or contractors on such Additional Appointment List.

26.3 Any consultant and/or contractor named on the Appointment List or approved in accordance with clause 26.2 shall be an **"Approved Consultant"** or **"Approved Contractor"** as the case may be.

26.4 Each Building Contract and Appointment for the Developer Works to be entered into by the Developer must be with an Approved Consultant or an Approved Contractor.

26.5 The Developer shall no later than the date of commencement of each relevant section of the Developer Works:

- (a) enter into a Building Contract in relation to such parts of the Developer Works commenced and within ten (10) Business Days thereafter deliver to TfL a copy of such Building Contract certified by a solicitor as a true copy of the original (subject to a right for the Developer to redact commercially sensitive information contained within);
- (b) use reasonable endeavours which an experienced developer would take at the relevant time in light of the Programme and the progress of the Development to procure that on entering into a Building Contract, the Building Contractor shall in relation to the relevant part of the Developer Works execute in favour of and deliver to each of TfL, CRL and LUL a Warranty Provided That the relevant part of the Developer Works shall not commence until the Warranties from the relevant Building Contractor have been delivered;
- (c) procure that any guarantor of each Building Contractor's and of each of the relevant Professional Team member's (as the case may be) obligations under the Building Contract or Appointment will also guarantee the relevant Building Contractor's or relevant Professional Team member's (as the case may be) obligations under the Warranty; and
- (d) include within the tender requirements in respect of each Building Contract or Appointment a requirement for the relevant Building Contractor or relevant Professional Team member (as the case may be) to maintain professional indemnity cover on terms compliant with clause 26.8(e) or clause 26.8(f) (as the case may be).

26.6 (Reason: 1)

26.7 (Reason: 1)

26.8 The forms of any proposed Building Contract and any Appointments:

- (a) are to be executed as a deed with a twelve (12) year limitation period;

- (b) shall require the Approved Consultant or Approved Contractor to provide a Warranty in favour of each of TfL, LUL and CRL;
- (c) shall require the Approved Consultant or Approved Contractor to procure a Warranty in favour of each of TfL, LUL and CRL from each Principal Sub Contractor;
- (d) shall not contain any financial cap on the liability of:
 - (i) the Approved Contractor; or
 - (ii) the Approved Consultant,

which is lower than the level of professional indemnity insurance cover required in accordance with this clause 26.8;
- (e) shall require an Approved Contractor with design responsibilities to maintain professional indemnity cover, both during the carrying out of the relevant part of the Developer Works and for a period of twelve (12) years after the Practical Completion Date, in relation to the obligations and duties under the Building Contract in respect of such part of the Developer Works in a sum of not less than (Reason: 1);
- (f) shall require each member of the Professional Team to maintain professional indemnity cover, both during the carrying out of the relevant part of the Developer Works and for a period of twelve (12) years after the date of completion of the services under the relevant Appointment in relation to the obligations and duties under the relevant Appointment in respect of such part of the Developer Works in the following sums: (Reason: 1)
- (g) in respect of any proposed Building Contract only, shall include as a pre-condition to the certification of practical completion under the Building Contract that the requirements of clauses 31 and 32 have been satisfied;
- (h) in respect of the Building Contract and the Appointment for the Employer's Agent or Building Contractor Administrator only, shall include a clause which has the effect of requiring the relevant Building Contractor or the Employer's Agent or Building Contractor Administrator to comply with any TfL Instruction (properly issued in accordance with clause 26.9), such clause:
 - (i) to have immediate effect upon execution of the relevant Building Contract or Appointment without any further steps being required; and
 - (ii) to not be capable of variation or waiver without the written consent of TfL where such variation or waiver would have an adverse impact on the rights afforded to TfL under that clause;
- (i) shall include, in the case of a Building Contract, the TfL Policy Clauses; and
- (j) shall include:
 - (i) in the case of a Building Contract, the right for TfL and CRL to have their logos on hoardings in areas where there are Railway Assets and Premises; and
 - (ii) an obligation to comply with, and not to put the Developer in breach of, the Developer's obligations under this Agreement to the extent applicable to the relevant part of the Developer Works or the services under the relevant Appointment.

- 26.9 Upon the happening of a Railway Emergency, the Engineer may, where it has not been possible immediately to contact the Developer, or at the same time as contacting or attempting to contact the Developer, issue an instruction directly to the Employer's Agent and/or the Building Contractor for the implementation of such works as are properly required for the purposes of addressing the Railway Emergency (a "**TfL Instruction**") Provided That:
- (a) a copy of any TfL Instruction must be provided to the Developer as soon as practicable after it is issued; and
 - (b) no instruction to the Building Contractor or any member of the Professional Team, other than a TfL Instruction, shall be given by the Engineer, TfL, LUL or Crossrail.
- 26.10 The Developer shall supply to TfL a broker's certificate confirming the professional indemnity cover of the Building Contractor or relevant Professional Team member on the date of this Agreement or, if later, as soon as is reasonably practicable following the date of the Building Contract or Appointment.
- 26.11 If the employment of any Approved Contractor or Approved Consultant is determined, the Developer shall procure entry into a new Building Contract or Appointment with any Approved Contractor or Approved Consultant as soon as reasonably practicable and the provisions of clauses 26.5 to 26.10 (inclusive) shall apply to such new Building Contract or Appointment.
- 26.12 The Developer shall deliver to TfL within ten (10) Business Days after the exchange thereof a copy of the new Building Contract or Appointment entered into in accordance with clause 26.11, certified as a true copy of the original.
- 26.13 At TfL's reasonable request (and for the avoidance of doubt, it shall be reasonable for TfL to make such a request on more than one occasion throughout the term of this Agreement), the Developer shall provide to TfL a list of all members of the Professional Team.
- 26.14 The Developer shall use reasonable and commercially prudent endeavours to procure:
- (a) the due performance and observance of the obligations of the Professional Team and the Building Contractor with respect to the Development; and
 - (b) compliance by its consultants and contractors, agents and sub-contractors with all Legislation which may affect the Demised Premises or which relate to the Railway Undertaking or Railway Assets and Premises and which affect or may affect the design or construction of any OSD Works,
- and where the Developer (having used reasonable and commercially prudent endeavours) is unable to procure such due performance and observance and/or such compliance the Developer may procure the same from an alternative consultant and/or contractor and the provisions of clauses 26.1 to 26.10 (inclusive) shall apply in connection with any such new Building Contract or Appointment.
- 26.15 The Developer may not:
- (a) waive, release, nor estop itself from enforcing or seeking redress for any breach of any Building Contract or Appointment to the extent the same would prejudice (other than in a non-material way) TfL's ability to recover under any of the Warranties provided or to be provided in relation to the Developer Works;
 - (b) do or omit to do anything which would entitle any member of the Professional Team or the Building Contractor to treat its Appointment or the Building Contract as terminated by breach; or

- (c) receive any commissions, inducements, or pecuniary or other advantages at any time arising from the appointment of the members of the Professional Team or the Building Contractor.

26.16 (Reason: 1)

26.17 (Reason: 1)

26.18 If the Tenant or Developer takes out a Latent Defects Insurance Policy then such policy will be effected in the joint names of the Tenant or the Developer (as the case may be) and LUL (inter alia). The Developer shall provide LUL with a true and complete copy of such policy within ten (10) Business Days of effecting such cover.

27. **OSD WORKS IMPLEMENTATION**

- (a) The Developer shall not commence the OSD Works until the Option is validly exercised in accordance with clause 3.3.
- (b) Prior to commencing each and every stage or phase of the Developer Works, the Developer is to obtain all Requisite Consents for the Developer Works, including approvals, consents, permissions and licences (including any required under the Highways Act 1980) of any Public Authority that may from time to time be necessary to enable the Developer lawfully to commence and to carry out that stage or phase of the Developer Works.
- (c) If the Schedule of Condition contained a recommendation that further investigations are required, the Developer shall arrange at its own cost for such of those further investigations as TfL may properly require.
- (d) The process of procuring the carrying out of a condition survey is also to be repeated (on an accompanied and supervised basis if reasonably required by TfL) at the Developer's cost immediately following completion of the OSD Works and, where reasonably requested by the Developer or by TfL, at appropriate interim points during the course of the Developer Works.

28. **PROGRAMME**

28.1 In consideration for the grant of the Leases under clause 17.2 above, and subject to any delay caused by an event of Force Majeure and/or a TfL Delay and subject to obtaining all Requisite Consents, the Developer shall, following the grant of the Leases:

- (a) start and diligently progress the Development to completion in accordance with the provisions of this Agreement; and
- (b) without prejudice to limb (a) above, progress in accordance with the terms of this Agreement such part of the Developer Works as the Developer has not previously carried out at its discretion under clause 11.8.

28.2 Without prejudice to clause 28.1, the Developer shall appoint the Programming Consultant in accordance with clause 26 to revise the Programme for submission prior to service of the Option Notice. The Programming Consultant shall be appointed by the Developer on the basis that the relevant professional practice owes a duty of care to TfL (pursuant to a duty of care letter in substantially the form attached as appendix 29 with any amendments thereto which have been approved by TfL (acting reasonably)).

28.3 (Reason: 2)

28.4 (Reason: 2)

28.5 (Reason: 2)

29. **LUL STANDARDS**

29.1 The LUL Standards which will apply under this Agreement are as follows:

- (a) generally, the LUL Standards that are in force at the time a relevant approval is given by TfL; and
- (b) where the Developer is required to procure compliance with the LUL Standards in respect of any part of the Developer's Works, the Preliminary Investigations or the Pre-Demolition Works (the "**Works**") and an approval, agreement, authority, licence, determination, acceptance or consent (the "**Approval**") is provided by TfL under this Agreement, the LUL Standards that were in force at the time that the Approval was provided, save that where six (6) months or more has elapsed from the date of the Approval to the date of commencement of the relevant part of the Works (and commencement shall include the utilisation of the Approval either in the design, manufacture, ordering of any materials or any other implementation of such part or in respect of any part which relates to and/or may have an impact on such relevant part), then the Developer shall resubmit the relevant Concept Design Statement and the relevant Works Information to allow TfL to confirm whether the LUL Standards have changed and, if they have, to carry out such approval process again in respect of the LUL Standards application.

30. **MANNER OF CARRYING OUT THE DEVELOPER WORKS**

30.1 The Developer shall procure that the Developer Works:

- (a) are carried out in a manner which does not cause any injury, loss or danger to the Railway Undertaking and the Railway Assets and Premises; and
- (b) create the minimum reasonably practical disruption, interference and nuisance to:
 - (i) the Railway Undertaking and/or Railway Assets and Premises; or
 - (ii) TfL or its officers, servants, agents or persons making use of the Railway Assets and Premises,

Provided That the disruption, interference or nuisance is as envisaged when the Works have been approved by TfL or the Engineer under the terms of this Agreement.

30.2 The Developer is to carry out or procure the carrying out of the Developer Works entirely at its own expense.

30.3 The Developer shall, at its own cost and expense procure that the execution of the Developer Works and each and every part of them is carried out:

- (a) in a good and workmanlike manner and free from any material defect;
- (b) using the reasonable skill and care in procuring the design and construction of the Developer Works as would be expected of a developer which is experienced in the development of buildings of the size, location and type of the Buildings;
- (c) free from Deleterious Materials;
- (d) using good quality materials of their several kinds and (where specified) as set out in the Approved Specification; and

- (e) in accordance with the Approved Specification;
- (f) in accordance with the requirements of the insurances arranged under clause 37;
- (g) in accordance with the Building Contract;
- (h) with all due diligence so as to carry out and complete the Developer Works and achieve the Practical Completion Date by the Anticipated PC Date as extended under clause 28.4;
- (i) in accordance with the Planning Permission and the Requisite Consents;
- (j) in compliance with all Legislation which shall affect the execution and carrying out of the Developer Works;
- (k) in accordance with the CDM Regulations;
- (l) in accordance with all relevant codes of practice and British and European Standards at the date hereof;
- (m) in accordance with the relevant local authority's Considerate Contractor's Scheme;
- (n) without adversely affecting the structural integrity of the Existing Raft;
- (o) for those parts of the Developer Works which relate to and/or may have an impact on the Railway Assets and Premises or Railway Undertaking, in accordance with the relevant LUL Standards applicable pursuant to clause 29; and
- (p) in accordance with the obligations contained in this Agreement,

Provided That the Developer shall have no liability to TfL, LUL or CRL pursuant to this Agreement to the extent that any defects, shrinkages or other faults arise in the Developer Works as a result of any of the TfL Works and/or any defects in the CRL Works in the vicinity of the Developer Works, save that the Developer remains responsible for forming its own view of the suitability of the Ticket Hall to support the relevant part of the Developer Works and shall remain liable for any defects, shrinkages or other faults in the Developer Works arising out of any inadequacy of such support.

30.4 Subject to compliance by the Developer with the obligations contained in this Agreement and (for those parts of the Developer Works which relate to and/or may have an impact on the Railway Assets and Premises or Railway Undertaking) the relevant LUL Standards applicable pursuant to clause 29 and the proper requirements and instructions of the Engineer, LUL grant by way of licence only to the Developer and the Contractor Parties access over the parts of the Railway Assets and Premises agreed as part of the approval of the relevant Works Information, for the purpose of conducting the relevant elements of the Developer Works beneath the Existing Raft and, in relation to such elements of the Developer Works, the Developer shall comply with its obligations in clause 6 as if the references to Preliminary Investigations were to the Developer Works.

30.5 Upon entering the Development Site and/or any part of the Railway Assets and Premises the Developer will itself, and will use reasonable endeavours to procure that its contractors agents advisers and workmen will, at all times use reasonable endeavours to:

- (a) comply in all respect with the provisions of the Works Information approved pursuant to clause 24 as the same may be added to amended or varied from time to time as permitted by this Agreement;
- (b) keep free and unobstructed all escape routes in relation to the Development Site and procure that all vehicles visiting the Development Site in connection with the

Developer Works go directly to the unloading points properly designated in writing to the Developer for such purpose from time to time by TfL (to the extent that the unloading points affect Railway Assets and Premises) and leave the Development Site promptly upon unloading being completed;

- (c) comply in all respects with the requirements of TfL notified in writing to the Developer in respect of the security and protection of the Development Site and make arrangements reasonably satisfactory to TfL for the security and protection of the Developer Works and the materials being used in relation thereto;
 - (d) (save to the extent and degree expressly authorised under this Agreement by reason of approval of the Developer Works) not damage or cause or permit its servants agents or contractors or any other persons to damage the TfL Works or the Railway Assets and Premises and in particular not interfere or permit such persons to interfere with or do or permit to be done by any such persons any act or thing which may adversely affect any installation forming part of the TfL Works or the carrying out or completion thereof and not to make or instruct to be made by any such persons any connections with or to such installation (other than any which form part of the Developer Works) without the prior written approval of TfL to such connections;
 - (e) comply in all respects with Legislation in respect of health and safety and the proper safety requirements of TfL;
 - (f) not obstruct or cause or permit to be obstructed (save during the proper carrying out of any part of the Developer Works to the same) the means of access to:
 - (i) plant machinery and equipment installed as part of the TfL Works;
 - (ii) any service ducts and risers serving the Railway Assets and Premises; and
 - (iii) any part of the TfL Works; and
 - (g) comply with the relevant LUL Standards applicable pursuant to clause 29 (for those parts of the Developer Works which relate to and/or may have an impact on the Railway Assets and Premises or Railway Undertaking) and clause 42 and in the case of any conflict between the standards and requirements referred to in this clause 30 then the Developer shall consult with TfL and TfL shall determine which standards or requirements shall prevail and such determination shall be final and binding.
- 30.6 The Developer is not to do any act matter or thing in connection with any Developer Works which would or might constitute a breach of any Legislation affecting the Railway Undertaking and/or the Railway Assets and Premises or which might vitiate in whole or in part any insurance effected in respect of the Railway Undertaking and/or Railway Assets and Premises. TfL will on reasonable written request provide a written summary of the relevant terms of such insurance to the Developer.
- 30.7 It is agreed that in respect of the Developer Works the Developer shall be the only "client" for the purposes of the CDM Regulations. The Developer shall comply with all its obligations as "client" under the CDM Regulations in relation to the Developer Works.
- 30.8 The Developer Works shall at all times be at the Developer's risk and, save as expressly provided in this Agreement, TfL shall have no responsibility or liability in respect thereof or be under any obligations to insure the same.
- 30.9 TfL gives no warranty to the Developer that the Demised Premises are suitable for the Developer Works.

30.10 **Developer's Railway Representative**

- (a) At all times whilst carrying out any Developer Works the Developer is to nominate or appoint a suitably graded trained and experienced employee or other representative (who may be the person fulfilling the role of Project Manager) who is identified to and approved by the Engineer (such approval not to be unreasonably withheld or delayed) as the designated "Developer's Railway Representative" (the **"Developer'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 Programme, plant and materials and general health and safety matters, to be the day-to-day contact for TfL and to communicate to the Building Contractor any instructions properly given by the Engineer in accordance with the terms of this Agreement. The Developer is to procure that such person (or any alternate appointed and approved in accordance with this clause 30.10(a)) shall be available on site during the Building Contractor's normal working hours and shall be available by telephone 24 hours a day throughout the duration of the Developer Works.
- (b) In the event TfL has material problems communicating with and/or receiving co-operation from the Developer's Railway Representative as a result of the Developer's Railway Representative's default (where TfL is entitled to such communication and/or co-operation pursuant to this Agreement) TfL shall be entitled (after consultation with the Developer) to require that the Developer replace the Developer's Railway Representative.

30.11 The Developer is to procure that in carrying out the Developer Works:

- (a) proper provision is made for the security and protection of the Railway Assets and Premises likely to be affected by the Developer Works and for the protection of any materials, plant and equipment and if required by TfL the Developer is to provide the Engineer with suitable site accommodation within the Developer's Area or Development Site;
- (b) proper precautions are taken for the safety of all persons upon or in the vicinity of the Railway Assets and Premises likely to be affected by the Developer Works including maintaining such hoardings, fences, security patrols, safeguards and arrangements of lighting the Developer Works and other security measures as TfL or any competent statutory or other authority may properly consider necessary or desirable in the interest of public safety or the safety of employees or passengers of TfL or other persons upon the Railway Assets and Premises likely to be affected by the Developer Works or (if TfL shall provide any of these) repay to TfL the proper costs of so doing; and
- (c) proper provision is made for the support of land, buildings and boundaries above, adjoining or below the Railway Assets and Premises likely to be affected by the Developer Works and for the protection of all services benefiting land adjoining or near to the Railway Assets and Premises,

and if requested TfL will use reasonable endeavours to indicate which parts of the Railway Assets and Premises are likely to be affected by the carrying out of the Developer Works for the purposes of this clause 30.11 Provided That the Developer:

- (a) has fully informed TfL of what works it is intending to do in the vicinity of the Railway Assets and Premises; and
- (b) has undertaken its own assessments of the impact of such work on the Railway Assets and Premises and provided the results from such assessments to TfL.

30.12 The Developer shall (in each case at its own cost):

- (a) subject to clause 30.12(e), and by way of indemnity only, procure that the rights and interests of third parties are not infringed by the carrying out of the Developer Works;
- (b) subject to clause 30.12(e), and by way of indemnity only, comply with any agreements, deeds, documents, rights, easements, exceptions, reservations and covenants, restrictive or otherwise, affecting:
 - (i) the Development Site and the Railway Assets and Premises; or
 - (ii) the title to the LUL Site or the Railway Assets and Premises,

Provided That in relation to agreements, deeds, documents, rights, easements, exceptions, reservations and covenants, restrictive or otherwise, affecting the Railway Assets and Premises or the title to the Railway Assets and Premises, such matters have been notified to the Developer or disclosed as part of the title deduction process;

- (c) not permit any encroachment or easement to be made or acquired against or over the Railway Assets and Premises or the Development Site;
- (d) secure necessary access to or use of any land not owned by TfL and required temporarily or permanently in connection with any Developer Works;
- (e) unless these will be the subject of indemnity insurance or the Leases are to be assigned to a Section 237 Assignee, and where commercially sensible to do so, negotiate the terms of 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 Development Site or the Railway Assets and Premises which would be infringed by or prevent or impede the carrying out of the Developer Works (and LUL will if reasonably required to do so by the Developer join in such agreements subject to LUL approving the form of any such agreement (such approval not to be unreasonably withheld or delayed) and being indemnified to its/their reasonable satisfaction against any Liability which they may thereby incur on terms consistent mutatis mutandis with clause 39;
- (f) 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 and for any road closure or traffic diversions as may be necessary for the carrying out of any Developer Works in such a manner as not to render TfL in any way liable in respect thereof Provided Always That the Developer shall not interfere with the access to or any of the utilities or conduits which serve the Railway Assets and Premises without the prior written approval of the Engineer (such approval shall be in his absolute discretion) and that TfL may elect to carry out at the Developer's expense any such temporary or permanent modification or diversion of TfL's own services or works arising from the Developer Works.

30.13 Unless otherwise properly required by the Engineer or agreed in writing, the Developer is, prior to or within a reasonable time following Practical Completion of the Developer Works or earlier vacation of the site of the Developer Works and to the reasonable satisfaction of the Engineer, to reinstate any of the Railway Assets and Premises and any TfL Works, plant and machinery damaged by the execution of the Developer Works to the state and condition found upon entry or as near thereto as possible having regard to the carrying out of the Developer works. Such reinstatement is to comply with the relevant LUL Standards applicable pursuant to clause 29.

30.14 The Developer shall throughout the period of the carrying out of the Developer Works permit TfL to inspect the progress and manner of execution of the Developer Works at all reasonable times and subject to the reasonable and proper safety requirements imposed by the Developer and/or the Building Contractor and so that no instructions shall be given or represented as made to any person engaged in carrying out the Developer Works.

30.15 (Reason: 2)

31. DEVELOPER WORKS: INSPECTION, MEETINGS, INFORMATION

31.1 The Developer is to make available or procure the availability for inspection by the Engineer at all reasonable times copies of all registers, forms and certificates that the Developer, its contractors, agents or sub-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 any Developer Works which may affect the Railway Assets and Premises.

31.2 The Engineer shall be entitled to:

- (a) inspect the progress and manner of execution of the OSD Works at all reasonable times (save in the case of a TfL Adverse Effect having been caused in which case the Engineer will require immediate access) and subject to the reasonable and proper safety requirements imposed by or on behalf of the Developer; and
- (b) to make representations to the Developer and the Developer's Railway Representative regarding the OSD Works which may affect the Railway Assets and Premises,

Provided That (save as otherwise provided in this clause 31) no instructions shall be given or representation made to any person engaged in carrying out the OSD Works, and Provided That any such access shall not obstruct or delay the progress of the OSD Works.

31.3 The Developer, its consultants, contractors, agents and sub-contractors may be required by the Engineer to remove from any Developer Works any scaffold, material, plant and machinery or equipment which the Engineer (acting properly) considers may cause damage or be a hazard to the Railway Undertaking and/or Railway Assets and Premises and which does not comply with the details of the OSD Works previously approved by the Engineer.

31.4 If in the course of the Developer Works the Developer shall:

- (a) execute any work which the Engineer shall on reasonable grounds consider imperfect; or
- (b) make any deviation of substance from the materials approved by the Engineer,

which in each case the Engineer properly considers may adversely affect the Railway Assets and Premises the Developer shall as soon as reasonably practicable upon written notice from the Engineer requiring it so to do take steps to remedy the same and if the Developer fails to commence and thereafter diligently proceed to rectify the same for the period of twenty-five (25) Business Days after such notice (or immediately in the case of a Railway Emergency) then the provisions of clause 50 shall apply.

31.5 The Developer is to keep the Engineer regularly informed of all material measures taken and stages reached by the Developer in performing its obligations, the progress of and material problems or delays affecting the Developer Works and shall on request supply promptly to TfL 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 Developer Works to the extent that they are relevant to the operation of the Railway

Assets and Premises, and if requested TfL or the Engineer will indicate which parts of the Railway Assets and Premises it considers are likely to be affected for the purposes of this clause 31.5 Provided That the Developer:

- (a) has fully informed TfL of what works it is intending to do in the vicinity of the Railway Assets and Premises; and
- (b) has undertaken its own assessments of the impact of such work on the Railway Assets and premises and provided the results from such assessments to TfL.

31.6 The Developer is to hold regular site meetings and use reasonable endeavours to procure that the Building Contractor, the Project Manager and members of the Professional Team attend such meetings to review or plan progress or deal with any other matter relating to the carrying out of the Developer Works.

31.7 The Developer is to:

- (a) give TfL not less than five (5) Business Days' written notice of any site meetings called under clause 31.6 at which matters which affect the Railway Undertaking (being the Demolition Works, the Piling, Transfer Structure and cladding comprised in the Developer Works) will be discussed unless it has been agreed that site meetings will be held at regular intervals on dates and at times agreed in advance;
- (b) permit TfL, the Project Manager and the Engineer, if they so desire, to attend and participate in those site meetings;
- (c) permit TfL, the Project Manager and the Engineer to make representations in connection with the Developer Works (insofar as they affect the Railway Undertaking); and
- (d) supply TfL, the Project Manager and the Engineer with copies of minutes of the site meetings, whether or not they attend, insofar as matters affecting the Railway Undertaking are dealt with.

31.8 In respect of any representations made by TfL, the Project Manager or the Engineer under this clause 31 the Developer is to:

- (a) take proper account of them;
- (b) procure that the members of the Professional Team and the Building Contractor take proper account of those representations; and
- (c) notify TfL and the Engineer of any observations made by the members of the Professional Team or the Building Contractor on representations made by TfL, or the Engineer.

31.9 Where the Parties, acting reasonably, believe that it would be useful to have a meeting between the Engineer, the Developer and/or the Developer's Railway Representative and/or the Building Contractor and/or a Professional Team member and/or a Principal Sub Contractor (as may be appropriate) in relation to the Developer Works, the Parties shall act reasonably to facilitate such meeting as soon as reasonably practicable.

31.10 The Developer is promptly to notify TfL of any notice it receives from any Public Authority or from any adjoining owner relating in any way to the Station, the Development Site or any OSD Works (insofar as it also affects the Railway Undertaking) and must supply a copy of every such notice to TfL within five (5) Business Days after receipt of it.

32. **CERTIFICATES OF COMPLETION AND SECTIONAL COMPLETION OF THE DEVELOPER WORKS**

- 32.1 When the Developer considers that the Developer Works are complete, the Developer shall instruct the Employer's Agent or Building Contract Administrator to inspect the Developer Works with a view to the issue of the Certificate of Completion and any certificates of Sectional Completion in accordance with the terms of the Building Contract for the Developer Works. The Developer is to give the Engineer not less than five (5) Business Days' prior written notice of the date and time, when the Employer's Agent or Building Contract Administrator will carry out this inspection.
- 32.2 TfL and the Engineer will be entitled to accompany the Employer's Agent or Building Contract Administrator on the inspection of the Developer Works and to make representations on the proposal to issue the Certificate of Completion or any certificate of Sectional Completion and the Developer is to procure that the Employer's Agent or Building Contract Administrator takes proper account of any representations made by them but the Employer's Agent or Building Contract Administrator shall not be bound by the Engineer's representations.
- 32.3 The Developer is to use reasonable and commercially prudent endeavours to enforce the obligation on the part of the relevant contractor to make good during the Defects Liability Period any snagging works and any other defects in the Developer Works that are notified to the Developer during the Defects Liability Period and which may affect the Railway Assets and Premises and where the Developer (having used reasonable and commercially prudent endeavours) is unable to procure performance of such obligation by the relevant contractor the Developer may procure the same from an alternative contractor and the provisions of clauses 26.1 to 26.10 (inclusive) shall apply in connection with any such new Building Contract.
- 32.4 The Developer is to serve a copy of the Certificate of Completion or the certificate of Sectional Completion (as applicable) on TfL and the Engineer as soon as reasonably practicable (and in any event within five (5) Business Days) after the date of the inspection of the Developer Works.
- 32.5 TfL must, within five (5) Business Days of the later of the Certificate of Completion being served on TfL and the Engineer pursuant clause 32.4 and receipt by TfL of a written request from the Developer, provide to the Developer a statement certifying that Non-Completion Rent is not, or has ceased to be, payable under the terms of this Agreement. This will be requested by the Developer separately for each Lease.

33. **FOLLOWING PRACTICAL COMPLETION**

- 33.1 The Developer shall within twenty (20) Business Days after the Practical Completion Date at its own expense deliver to TfL such of the following as apply:
- (a) save insofar as they have previously been supplied, certified copies of the Building Contract and the Appointments in connection with the carrying out and completion of the Developer Works; and
 - (b) save insofar as they have previously been supplied, the Warranties in respect of the OSD Works;
 - (c) copies of the maintenance and operators' manuals and manuals of all materials and supplies and spares list used; and
 - (d) other documentation reasonably and properly required by TfL which relates to the operation of the Railway Assets and Premises to the extent the same is, or ought reasonably to be, within the possession or control of the Developer.

- 33.2 Any item noted by the Employer's Agent or Building Contract Administrator on a Certificate of Completion as requiring rectification or completion shall be rectified or completed by the Developer (or the Developer shall procure that it be rectified or completed) within the period reasonably specified in the Certificate of Completion and if the Developer fails to do so within such period and such failure may have a TfL Adverse Effect TfL shall have the right itself to carry out the rectification or completion (subject to compliance with the Conditions of Entry, except where such compliance would have a detrimental impact on, or to, the safety or security of the Railway Undertaking or the Railway Assets and Premises) and the Developer shall pay to TfL on demand all proper costs incurred by TfL as a result Provided That paragraph (f) of the Conditions of Entry need not be complied with to the extent that such compliance would prevent such access and the exercise of the right afforded by this clause 33.2.
- 33.3 Within four weeks of Practical Completion the Developer will provide to TfL at the Developer's cost to the extent they are in the Developer's possession or control:
- (a) copies of all title information in relation to the LUL Site;
 - (b) copies of all reports and surveys of which the Developer has the benefit in relation to the Development Site;
 - (c) copies of all Planning Applications and related drawings and other materials submitted therewith and all correspondence with the planning authority; and
 - (d) all design drawings, specifications and other design information for the Development,
- all in a suitable digital storage medium and format approved by TfL (acting reasonably).

34. **AS BUILT DRAWINGS**

Within four weeks of the issue of the Certificate of Completion the Developer is to deliver free of cost to TfL for record purposes two complete sets (one set in hard copy and another set in an electronic format) of as-built drawings, health & safety information in accordance with the CDM Regulations, maintenance and operation information and an Energy Performance Certificate and recommendation report. The Developer shall procure that TfL is granted a royalty-free licence to use such information for all purposes connected with the Demised Premises, the Railway Undertaking and/or the Railway Assets and Premises.

35. **ENTRY BY CRL TO THE PREMISES**

- 35.1 From the expiry of the Crossrail Licence until the issue of the last certificate of making good defects under the relevant CRL Works contract(s) relating to the Ticket Hall, the Developer shall upon receipt of reasonable notice (save in the case of a Railway Emergency) permit CRL and its consultants and contracting team to enter upon the Supplemental Lease Premises in order to enable CRL to make good any snagging items and to remedy any defects in the Ticket Hall (including those identified and notified to the Developer during the defects liability period under the relevant CRL Works contract(s), but not yet remedied) Provided That:
- (a) no instructions shall be given or representations made to any person engaged in carrying out the Developer Works;
 - (b) any such access shall not unnecessarily obstruct or delay the progress of the Developer Works beyond that which is necessary to effect such making good;
 - (c) CRL shall itself, and procure that any consultant or contractor entering the Supplemental Lease Premises shall, comply with the Conditions of Entry, except

where such compliance would have a detrimental impact on, or to, the safety or security of the Railway Undertaking or the Railway Assets and Premises or would expose CRL to any claims from its consultants and/or contractors or would fetter the rights of any of CRL's consultants and/or contractors pursuant to the relevant appointment or CRL Works contract; and

- (d) CRL shall have the right, on giving reasonable prior written notice to the Developer (which shall not be less than ten (10) Business Days save in the case of a Railway Emergency), where the works required to remedy snagging items and defects could not have been reasonably conducted otherwise, to require the Developer to remove the Station Box Works (or such part of the Station Box Works as is reasonably necessary) so that such snagging items may be made good and such defects remedied and if the Developer fails to do so, CRL shall be entitled to effect such removal at the cost of the Developer which shall be payable within ten (10) Business Days of written demand with reasonable evidence of such cost Provided That:
 - (i) the cost is properly incurred by CRL; and
 - (ii) if the works to remedy snagging items and defects could reasonably be conducted without removing the Station Box Works but this results in any additional costs for CRL (when compared with the position where the Station Box Works are removed at the Developer's expense) such additional cost shall be payable on the same basis stated above in relation to the cost of removal of the Station Box Works.

36. **SITE USE AND HANDOVER ARRANGEMENTS**

- 36.1 TfL, CRL and the Developer, each acting reasonably and in good faith shall seek to agree (and shall use reasonable endeavours to procure that their respective contractors seek to agree) the Handover Arrangements (addressing all of the issues noted in schedule 2 and such other matters as TfL, CRL and the Developer agree to be relevant including the timing and duration of their application) as soon as reasonably practicable following the date hereof.
- 36.2 TfL, CRL and the Developer shall each comply and shall procure compliance by their respective employees, agents, contractors and professional consultants with the requirements of the Handover Arrangements.
- 36.3 The Parties agree that, notwithstanding that the Handover Arrangements shall be agreed as required by this Agreement, they shall apply from the Handover Date.
- 36.4 CRL shall keep the Developer regularly informed with regard to progress of the CRL Works and shall in particular keep the programme at appendix 23 updated and supply the Developer promptly with a copy of any such update.
- 36.5 No Party shall do or omit to do anything that would cause any Hazardous Material to escape, leak or be spilled on the Development or to migrate to or from such premises.

37. **INSURANCE**

- 37.1 During the period from the commencement of the carrying out of the Developer Works until the expiry of the Defects Liability Period, the Developer is to insure at its own cost the Developer Works (or procure the same to be insured) under a "contractors all risk" policy:
 - (a) in respect of the composite interests and in the joint names of, inter alia, the Developer and TfL;

- (b) in its Reinstatement Cost;
 - (c) against the Insured Risks;
 - (d) with an insurance office that is reputable and of sufficient financial standing to meet possible claims on the date on which such policy is taken out; and
 - (e) on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover.
- 37.2 The Developer is to procure that such other insurances required under the Building Contract for the Developer Works are maintained in accordance with that Building Contract and the Developer shall not waive or vary that Building Contract in such a way as to adversely affect the insurance coverage.
- 37.3 The Developer is to use reasonable endeavours to notify TfL within five (5) Business Days of any material change in the insurances procured by the Developer under clauses 37.1 or 37.2 (but without prejudice to its ongoing obligations under these clauses).
- 37.4 The Developer is at TfL's reasonable request to provide TfL as soon as reasonably possible with:
- (a) a copy of a certificate confirming the insurances being maintained under clauses 37.1 and 37.2 and evidence for the payment of the premium for the insurances;
 - (b) details of any policy terms, exclusions or extensions relating to the Developer Works; and
 - (c) evidence of all renewals.
- 37.5 If the Developer Works are damaged or destroyed by any of the Insured Risks prior to Practical Completion:
- (a) the Developer is as soon as practicable to take all actions required to ensure the operation of the Railway Undertaking and Railway Assets and Premises continues without any adverse effect;
 - (b) the Developer is to seek TfL's consent to the rebuilding, repair or other proposals of the Developer for the Developer Works on terms consistent with this Agreement, such consent to be provided on terms consistent with this Agreement;
 - (c) the Developer is to use reasonable and commercially prudent endeavours to promptly obtain the maximum payment of insurance moneys;
 - (d) subject to receipt of TfL's consent under paragraph (b) and the insurer's approval to commence the relevant works, the Developer shall use reasonable and commercially prudent endeavours to procure that the Building Contractor (or such replacement contractor appointed in accordance with this Agreement) rebuilds, repairs or otherwise reinstates the Developer Works and the Demised Premises in accordance with the terms of this Agreement and the Building Contract;
 - (e) the issue of the Certificate of Completion shall not take place unless and until the necessary rebuilding, repairing and reinstating of the Developer Works and the Demised Premises has been completed;
 - (f) if the moneys received in respect of such insurance are insufficient for the purpose of rebuilding, repairing or reinstating the Developer Works and the Demised Premises, the Developer is to make good any deficiency out of its own money save to the extent the deficit is caused by TfL, CRL, LUL or a TfL Subsidiary unless the

deficit relates to the breach of an insurance policy provision of which TfL has not had notice.

- 37.6 (Reason: 2)
- 37.7 If the Developer does not insure or procure all or any of the insurances required by this clause 37 or fails to produce reasonable evidence that such insurances are in force, TfL may:
- (a) itself effect such insurance cover as it may consider prudent and the reasonable cost of so doing together with TfL's reasonable management and administrative costs for so doing will be payable by the Developer to TfL on written demand; or
 - (b) require the Developer forthwith to make the Development Site safe and immediately thereafter to cease carrying out any works on the Development Site until reasonable evidence that such insurances are in force has been produced to TfL.
- 37.8 Once the Practical Completion Certificate has been issued the Developer and TfL shall comply with the obligations as to insurance set out in the Leases, but without prejudice to the requirement for the insurance policies to be effected pursuant to clauses 37.1 and 37.6 to continue in existence until the Defects Certificate is issued.
- 37.9 The obligations on the Developer to procure or maintain insurances pursuant to this clause 37 shall cease upon the date on which the Defects Certificate is issued (but without prejudice to liability for any antecedent breach).
- 37.10 (Reason: 2)
- 37.11 (Reason: 2)
- 37.12 From the inception of such policies the Developer shall (or shall procure that) the financial standing of the relevant insurer or insurers is monitored and shall notify TfL of any adverse change to such financial standing as soon as practicable after becoming aware of such change. The Developer shall keep TfL fully informed of any proposals to address any such adverse change and will confirm promptly to TfL when any such proposals are implemented.
- 37.13 If insurance cover against acts of terrorism requires to be effected on an annually renewable basis and the full level of cover required by the provisions of this Agreement is not available in the London insurance market, the Developer shall use reasonable endeavours to effect such insurance cover or procure that such insurance cover is effected at the highest level available in the London insurance market Provided That effecting such insurance does not, in the Developer's reasonable opinion, render the Development unviable. The Developer shall consult with TfL prior to renewing such cover.
- 37.14 TfL shall not knowingly do anything, and shall use reasonable endeavours not knowingly to permit anything to be done, which renders or would render any of the policies of insurance referred to in this clause 37 void or voidable, subject to TfL having been made aware of the relevant policy provisions, provided that the Developer shall pursue whatever claim it still has in its own right under the relevant policies of insurance notwithstanding any breach of, and before making a claim against, TfL under this clause 37.14.
- 37.15 The Developer shall not knowingly do anything, and shall use reasonable endeavours not knowingly to permit anything to be done, which renders or would render any of the policies of insurance referred to in this clause 37 void or voidable provided that TfL shall pursue whatever claim it still has in its own right under the relevant policies of insurance notwithstanding any breach of, and before making a claim against, the Developer under this clause 37.15.

38. LIMITATION OF LIABILITY

38.1 The Developer is not to be relieved of liability for any breach of its obligations in this Agreement by:

- (a) completion of the Leases;
- (b) the consent or approval of TfL to any matter under this Agreement, whether or not this Agreement expressly requires the consent or approval of TfL, but excluding any breach arising (or which may otherwise have arisen) from the Developer obtaining and acting upon a TfL Approval or TfL Waiver, Provided That such exclusion shall not apply in respect of any such breach that has arisen where the Developer acted upon a TfL Approval or TfL Waiver that contained an error where such error:
 - (i) could have been identified by the Developer through the relevant matter being checked or verified independently, where a reasonable and prudent developer would do so; and/or
 - (ii) resulted from any error in the contents of the Supplied Information;
- (c) the issue of the Certificate of Completion or the absence of any objection by TfL to its being issued or the terms which it contains (Provided That, for the avoidance of doubt, the issue of the Certificate of Completion shall be final);
- (d) the making good of defects by the Building Contractor under the terms of the Building Contract;
- (e) the right of the Developer, TfL, LUL or CRL to make a claim against the Building Contractor or members of the Professional Team;
- (f) any delay or neglect by TfL in enforcing the terms of this Agreement or any time allowed by TfL for their performance; or
- (g) any legal limitation, immunity, disability, incapacity or other circumstances relating to the Developer, whether or not known to TfL.

38.2 Without prejudice to TfL's obligations to make good physical damage where otherwise provided by the terms of this Agreement, TfL shall not be liable by way of indemnity or otherwise in respect of any loss (including consequential economic loss), damage or delay to the Developer, its employees contractors, agents or sub-contractors or any other person resulting from:

- (a) any approval by TfL of the Developer Works or of any documentation in connection with any Developer Works, save where such loss arises as a result of negligence or wilful default however, for the avoidance of doubt, TfL will not be liable (in the context of this clause 38.2(a)) in respect of any TfL's negligence where the matter resulting in the loss ought reasonably to have been independently verified by the Developer;
- (b) any stoppage of or disruption or delay to the Developer Works as a consequence of TfL properly exercising its rights under and in accordance with the provisions of this Agreement;
- (c) a recommendation, requirement or condition properly made by TfL in respect of the Developer Works in accordance with the provisions of this Agreement; or
- (d) the Developer, its employees, contractors, agents or sub-contractors being prevented or delayed from entering upon or being properly required to vacate the

Development Site by reason of any emergency or exigency, regulation or operation relating to the Railway Undertaking or the Railway Assets and Premises,

Provided That

- (e) TfL shall use its reasonable endeavours to minimise such loss, damage or delay suffered by the Developer consistent with ensuring the safe and secure operation of the Railway Undertaking and with the discharge of its statutory duties; and
- (f) nothing in this Agreement shall affect any liability of TfL or CRL under the Crossrail Act 2008 or at common law in respect of any physical damage caused to the Developer Works or the Demised Premises by the CRL Works.

38.3 No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

38.4 Subject to the Developer having procured the delivery of all Warranties in favour of TfL and LUL and CRL required pursuant to clause 26.16 and put in place the Latent Defects Insurance Policy, the Developer will only be liable to TfL and/or LUL under this Agreement for any defective works or for a breach of clause 30.3 until the later of:

- (a) the expiry of the Defects Liability Period; and
- (b) the date on which any defective works identified by the Employer's Agent or Building Contract Administrator (as applicable) or TfL (and in the latter case thereafter confirmed by the Employer's Agent or Building Contract Administrator (as applicable)) and notified to the Developer during the Defects Liability Period are remedied.

38.5 The obligations and liabilities of the Developer under this Agreement are personal and shall not bind the Tenant and any covenants on the part of the Developer which would otherwise be implied by law are hereby expressly excluded.

38.6 (Reason: 2)

38.7 (Reason: 2)

38.8 (Reason: 2)

39. **DEVELOPER'S INDEMNITY**

39.1 Subject always to the caps on liability in clause 38.6, the Developer is to be responsible for and to indemnify and hold harmless TfL, LUL, CRL and each wholly owned TfL Subsidiary and their employees and agents ("**Indemnified Parties**") against all costs, claims, loss, demands or liability actions, charges, proceedings, expenses and damages (including any TfL Internal Time Costs) (together, "**Losses**") incurred or suffered by them in respect of any of the following matters:

- (a) any injury to any person or physical damage to the Demised Premises or the Railway Assets and Premises resulting from any breach or non-performance of the Developer's obligations under this Agreement or any act, default or negligence of the Developer;
- (b) (Reason: 2)
- (c) any charges payable in respect of any Planning Permission implemented by the Developer in respect of the Development;

- (d) any breach of Legislation; and
- (e) any breach of:
 - (i) any obligation of the Developer to afford or allow CRL (or its contractors or consultants) access to the Supplemental Lease Premises to carry out the CRL Works, including any related snagging or defect rectification works, pursuant to the terms of this Agreement and the Crossrail Licence; or
 - (ii) any side by side working arrangements which may be agreed between the Developer and the contractor(s) undertaking the CRL Works pursuant to clause 11.2,

Provided Always That:

- (f) the Indemnified Parties must provide reasonable evidence of the quantum of any Losses and that the same have been actually incurred and were properly incurred;
- (g) the Indemnified Parties shall take reasonable steps to mitigate any Losses save where such steps may cause a TfL Adverse Effect;
- (h) (save insofar as the Indemnified Parties were acting in accordance with and in the proper exercise of their rights and obligations under this Agreement) the Developer's liability shall be reduced to the extent that the Indemnified Parties have contributed to the act or default which gave rise to the Developer's liability under this clause;
- (i) the Indemnified Parties shall notify the Developer in writing as soon as reasonably practicable of any matter which may give rise to liability under this indemnity and shall keep the Developer duly informed in relation to any claims which arise therefrom and shall supply copies of relevant documents and correspondence save such as are the subject of bona fide confidentiality undertakings or which are privileged;
- (j) the Indemnified Parties shall (at the Developer's cost) take such action as the Developer may reasonably request and which shall be reasonable to take to avoid, resist, dispute, appeal, compromise or defend any such matter save insofar as:
 - (i) such action may have a TfL Adverse Effect; or
 - (ii) court proceedings have been issued or are threatened and such proceedings would, in the reasonable opinion of TfL, be likely to have a material detrimental impact on the reputation of TfL; and
- (k) the Indemnified Parties shall not admit liability, settle or compromise any such matter without first obtaining the Developer's approval in writing (such approval not to be unreasonably withheld or delayed), save where failure to admit liability, settle or compromise may adversely affect the operation of the Railway Undertaking. Where the Developer fails to respond to a request for such approval within ten (10) Business Days of receipt of a request, the approval shall be deemed to have been given for the purposes of this clause.

39.2 The Parties acknowledge that if the Developer Works result in a PPP Contractor being unable to comply with its works or services performance targets and obligations under the terms of the relevant contract with TfL such that TfL is unable to impose or recover any damages abatement or payment deduction under the relevant contract, TfL's loss in such circumstances shall be recoverable under the indemnity in this clause 39 and shall include an amount equal to any damages abatement or payment deduction which TfL would otherwise have been able to impose or recover from the relevant contractor Provided That

TfL shall take reasonable steps to mitigate the amount thereby payable, save where such steps are likely to cause a TfL Adverse Effect.

- 39.3 The due date for the making of a payment by the Developer under clauses 39.1 and 39.2 will be the date falling ten (10) Business Days after TfL has served notice on the Developer demanding such payment (and complying with the requirements in clause 39.1(f)), unless a bona fide dispute as to a material element of the sums in question is then ongoing Provided That:
- (a) if following settlement of the dispute the sum due remains the same the due date for calculating interest shall be ten (10) Business Days after service of such notice (with evidence as mentioned in clause 39.1(f)); and
 - (b) to the extent any sum is not in dispute the due date for calculating interest on the sum not disputed shall be ten (10) Business Days after service of such notice (with evidence as mentioned in clause 39.1(f)).
- 39.4 Except as required by law, all payments by the Developer under clauses 39.1 and 39.2 will be made free and clear of all deductions and withholdings in respect of taxation.

40. **VALUE ADDED TAX**

- 40.1 For the purposes of this clause 40 the expressions "**supply**" "**taxable supply**" "**input tax**" and "**VAT invoice**" shall bear the same meanings as they do in the VATA. References in this Agreement 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 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).
- 40.2 LUL warrants to the Developer and the Tenant that:
- (a) it is registered with VAT registration number 756277008;
 - (b) it has validly made a VAT Election in respect of the following buildings, parts of buildings and/or land (the "**Option to Tax**");
 - (c) it has not revoked any of the Option to Tax pursuant to paragraph 23 of schedule 10 to the VATA and will not do so; and
 - (d) it will use its reasonable endeavours to recover whether by repayment or credit any input tax which it may incur in relation to any costs for which it has a right of reimbursement pursuant to clause 22.
- 40.3 The Tenant warrants to LUL that:
- (a) the Tenant is registered with VAT registration number 844 1063 49;
 - (b) the Tenant has validly made, or will prior to the Completion Date make, a VAT Election which will have effect on the Completion Date; and
 - (c) the Tenant's VAT Election has been, or will prior to the Completion Date be, notified in writing to HM Revenue and Customs and has not been and will not be revoked.
- 40.4 Unless expressly stated to the contrary in this Agreement, any amount stated as payment for a supply made under this Agreement is exclusive of any VAT chargeable on that payment.

40.5 **Payment of VAT and Invoices**

Where, pursuant to the terms of this Agreement, a Party (for the purposes of this clause 40, the "**Supplier**") makes or is deemed to make a supply to another Party (for the purpose of this clause 40, 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 the other consideration payable for such supplies pay to the Supplier a sum equal to the amount of such VAT subject to the Supplier having provided the Recipient with a VAT invoice in respect of such supply and if the Supplier fails to do so the Recipient shall not be obliged to pay to the Supplier a sum equal to such VAT until three (3) Business Days after receipt of the VAT invoice.

40.6 **Reimbursement of VAT**

Where, pursuant to the terms of this Agreement, a Party (for the purposes of this clause 40, the "**Payer**") is required to pay, repay or reimburse another Party (for the purpose of this clause 40, the "**Payee**") for any cost, fee, charge, disbursement or expense (or any proportion of it) incurred by the Payee, the Payer shall also reimburse the Payee for any part of such costs, fee, charge, disbursement or expense (or proportion of it) which represents VAT that the Payee is not entitled to recover (whether by way of credit, repayment or otherwise).

41. **CONSTRUCTION INDUSTRY DEDUCTION SCHEME**

41.1 Where a Party concludes (acting reasonably) that the provisions of Chapter III of Part III of the Finance Act 2004 (in this clause 41.1, the "**Act**") and the Income Tax (Construction Industry Scheme) Regulations 2005 (in this clause 41.1, the "**Regulations**") (together, the "**Construction Industry Scheme**") apply to payments (in this clause 41.1, "**Contract Payments**") to be made by it (in this clause 41.1, the "**Contractor**") under this Agreement to another Party (in this clause 41.1 the "**Sub-Contractor**") and notifies the Sub-Contractor accordingly, then:

- (a) the Contractor and the Sub-Contractor shall comply with the provisions of the Construction Industry Scheme;
- (b) the Sub-Contractor shall provide the Contractor with such information about the Sub-Contractor as is required by the Contractor to verify with the Commissioners of HM Revenue and Customs whether the Sub-Contractor is registered for gross payment or for payment under deduction or is not registered for the purposes of the Construction Industry Scheme;
- (c) the Sub-Contractor shall provide the Contractor with sufficient information to enable the Contractor accurately to calculate any deduction applicable under the Construction Industry Scheme to any Contract Payments due under this Agreement from the Contractor to the Sub-Contractor. The Contractor shall not be liable to reimburse the Sub-Contractor for any over deduction arising as a result of the Sub-Contractor's failure to provide such information promptly or to provide sufficient information;
- (d) the Sub-Contractor shall indemnify the Contractor and keep it indemnified (in each case on an after tax basis) against any loss, damage, cost or expense incurred by the Contractor arising out of any breach by the Sub-Contractor of its obligations under this clause 41.1 or under the Construction Industry Scheme, in particular against any default surcharge or interest payment due under the Regulations but excluding all loss of profits and revenues and other consequential economic losses and Provided Always That the Contractor shall take all reasonable steps to mitigate any Liabilities covered by the indemnity in this clause 41.1(d) on the same terms as the provisos in clause 39.1;

- (e) in accordance with the Regulations, the Contractor shall submit a monthly return to the HM Revenue and Customs if the Contractor makes Contract Payments or what would be Contract Payments under the Construction Industry Scheme but for section 60(4) of the Act; and
- (f) in accordance with the Regulations, the Contractor shall pay HM Revenue and Customs all amounts that he was liable under section 61 of the Act to deduct on account of tax from the Contract Payments during the relevant tax period.

42. SAFETY OF TFL'S RAILWAY UNDERTAKING

42.1 The Developer acknowledges that matters or concerns relating to the safety and security of the Railway Undertaking and/or the Railway Assets and Premises and of passengers and persons employed in connection with the Railway Undertaking and/or the Railway Assets and Premises are paramount and that TfL's rights (including those set out in this clause 42 in relation to such matters or concerns) may override other express or implied provisions of this Agreement, Provided That in exercising those rights TfL shall:

- (a) not seek to gain commercial advantage (but TfL shall not be prevented from acting properly in a way where the primary purpose was not to gain commercial advantage but which coincidentally provides a commercial benefit to TfL and this shall not detract from TfL's right to require compliance with LUL Standards in the carrying out of the Developer Works, the Pre-Demolition Works and the Preliminary Investigations and the consequential effects on the Railway Assets and Premises);
- (b) act in accordance with clause 42.5 and 42.6;
- (c) (where entry to the Development Site is necessary) comply with the Conditions of Entry, except where such compliance would have a detrimental impact on, or to, the safety or security of the Railway Undertaking and/or the Railway Assets and Premises; and
- (d) not be entitled to deprive the Developer of the use of the Development Site (or part thereof) (save where the Developer is in breach of any of its obligations under this Agreement) unless TfL has agreed to compensate the Developer appropriately for such loss.

42.2 Notwithstanding anything else contained in this Agreement, the Developer agrees and accepts that, in the event of any conflict between the Developer Works and the operation of the Railway Undertaking and/or the Railway Assets and Premises including but without prejudice to the generality of the foregoing:

- (a) the programming or timing of any of the Developer Works or any part thereof; and
- (b) the possession of or access to any part of the Development Site located within the Station; and
- (c) the design or method of carrying out of any of the Developer Works or any part thereof,

the proper requirements of TfL shall prevail and, in relation to any question as to whether anything to be done in connection with the Developer Works may affect the operation of the Railway Undertaking and/or the Railway Assets and Premises, the decision of TfL shall be final (without prejudice to the proviso in clause 1.2(m) and, for the avoidance of doubt, the Developer may refer any dispute with regard to compliance with clause 1.2(n) to the Court for determination).

42.3 TfL shall not be liable to the Developer for any costs or expenses incurred by or any loss or damage or other liability suffered by the Developer as a result of a proper decision

given by TfL pursuant to this Agreement after due consideration and provision of reasons on any question relating to the operation of the Railway Undertaking and/or the Railway Assets and Premises.

- 42.4 The Developer shall not knowingly cause TfL to be in breach of any Legislation.
- 42.5 In relation to all matters that arise in relation to a conflict between the operation of the Railway Undertaking and/or the Railway Assets and Premises and the carrying out of the Developer Works, TfL shall keep the Developer fully informed and alert the Developer of the conflict as soon as reasonably practicable. To the extent possible TfL will use reasonable endeavours to agree an alternative approach to the Developer Works so as to avoid any conflict between the operation of the Railway Undertaking and/or the Railway Assets and Premises and the Developer Works and cause the minimum practicable disruption and delay to the Developer Works.
- 42.6 The Parties shall at all times act in good faith towards each other having regard to the respective interests of the Developer and TfL.

43. TFL WORKS AND TFL CONTRACTOR/TUBE LINES

- 43.1 It is acknowledged that certain aspects of the TfL Works are required to be performed by a TfL Contractor pursuant to the terms of the relevant PPP Contract or PFI Contract or by any other TfL nominated contractor at the Developer's cost Provided That TfL will use reasonable endeavours to assist the Developer to minimise such cost.
- 43.2 It is agreed that prior to the commencement of the TfL Works, TfL and the Developer shall consult with one another to establish whether any proposed works forming part of the TfL Works shall be carried out by a TfL Contractor as TfL Works, it being acknowledged that the final decision as to which of the TfL Works are to be carried out by a TfL Contractor rests to be determined by TfL pursuant to the relevant PPP Contract or PFI Contract where appropriate.
- 43.3 TfL shall use reasonable endeavours to procure that the TfL Works are carried out in accordance with the programme for the TfL Works prepared pursuant to clause 11.9 (subject to any delay caused by an event of Force Majeure).

44. NON-WARRANTY AND STATE AND CONDITION

44.1 State and Condition

Save in respect of the Super Pile, the Developer acknowledges that (without prejudice to its right to carry out further inspections and surveys on the terms of this Agreement):

- (a) it has inspected the Development Site and has formed its own view as to its suitability for its own purposes and has entered into this Agreement solely on the basis of such inspection the Developer's own judgement and the terms hereof and not in reliance wholly or partly upon any representation whether written oral or implied made by or on behalf of TfL save (with reference to clause 21.2) for replies given in writing by TfL's Solicitors in response to written enquiries in respect of the Demised Premises by the Developer's Solicitors including in particular those in relation to the application of the powers afforded to Crossrail under sections 6 and 7 of the Crossrail Act 2008, Provided That this clause shall not exclude any liability for fraudulent misrepresentation;
- (b) TfL gives no warranty or representation as to the state and condition of the Railway Assets and Premises; and
- (c) the Developer shall have no claim against TfL in relation to the state and condition of the Development Site.

45. **DEALINGS AND CHANGE OF CONTROL**

45.1 **Assignment by the Developer to a third party**

- (a) Until the issue of the last certificate of making good defects in relation to the Developer Works this Agreement is incapable of being assigned, held on trust or in any way being dealt with by the Developer and/or the Tenant save as set out in this clause 45.
- (b) On or following:
 - (i) satisfaction of the conditions at paragraphs (a) and (b) of the Option Conditions (Provided That the Developer may satisfy paragraph (b) of the Option Conditions by requiring a simultaneous transfer of the Existing Headlease by Souzel direct to the assignee of the Tenant's interest in this Agreement); and
 - (ii) either the satisfaction of the conditions at paragraphs (c), (d) (Reason: 3) of the Option Conditions or the Developer having taken such steps to satisfy such conditions as an experienced and commercially prudent developer should have taken in order to undertake the Developer Works in accordance with the Programme,

and either:

- (iii) prior to the commencement of the Demolition Works; or
- (iv) following completion of the Demolition Works but prior to the commencement of the Substructure and Enabling Works; or
- (v) following completion of the Substructure and Enabling Works but prior to the commencement of the OSD Works,

and subject to clause 45.5, the Developer and the Tenant or the Tenant may assign their or its respective interests in this Agreement to an Acceptable Assignee, save where there has been an occurrence of a Material Breach (which has not been rectified or made good) unless the proposed assignee of the Developer covenants with TfL to remedy such breach in the deed of covenant referred to in clause 45.6.

45.2 **Assignment or novation to a member of the Developer's / Tenant's Group**

- (a) The Developer and/or the Tenant may, at any time, assign each of their respective interests under this Agreement or, by written notice to TfL, require its or their rights and obligations hereunder to be novated to any member (or members if each interest is being separately assigned or novated) of the Developer's Group (in the case of the interest of the Developer), the Tenant's Group (in the case of the interest of the Tenant) or to an Equal Joint Venture Vehicle (in respect of the relevant interest depending on whether the Developer or Tenant or members of their respective groups are a party to such vehicle) which has appointed the Developer or a member of the Developer's Group to be its development or project manager and to be the Developer's Representative under this Agreement Provided That:
 - (i) any entity to which such interests, rights and obligations will be assigned or novated is otherwise an Acceptable Assignee; and
 - (ii) if there is a guarantor of the entity to which the Agreement will be assigned or novated in order for it to be an Acceptable Assignee, such guarantor shall

not prior to such assignment or novation be the guarantor of the entity from which the Agreement will be assigned or novated).

- (b) Subject to the requirements for a valid novation in accordance with clause 45.2(a) being satisfied, and subject to receipt of a deed of covenant in accordance with clause 45.6, TfL, LUL and CRL shall, pursuant to any such novation, release the outgoing Tenant and/or Developer from its obligations under this Agreement, such release to be in a form approved by the Tenant and/or the Developer (as the case may be), each acting reasonably.

45.3 **Charging**

- (a) The Developer and/or the Tenant may only grant a charge over, or assign by way of security, their respective interests in this Agreement as part of a bona fide funding transaction to an Approved Funder.
- (b) The Developer and the Tenant shall not seek to grant such a charge, or assign by way of security, the purpose of which is to avoid complying with the controls on assignment in this clause 45.
- (c) The Developer shall:
 - (i) provide prior notice of the grant of such a charge, or of such assignment, to TfL; and
 - (ii) within ten (10) Business Days after granting the charge, or making of the assignment, the Developer shall provide TfL with written confirmation of such grant or assignment.
- (d) For the avoidance of doubt, nothing in this clause 45.3 will:
 - (i) prevent the entry by the Developer and/or the Tenant into a Forward Agreement in accordance with clause 45.5(a) or the funding by an Approved Funder of that Forward Agreement in accordance with clause 45.5(b); or
 - (ii) restrict the rights of an Approved Funder under clause 45.9.

45.4 **Change of Control/Anti-avoidance**

- (a) If a Change of Control is proposed in respect of the Developer and/or the Tenant, that party shall forthwith notify TfL of the relevant details of such proposed Change of Control ten (10) Business Days before it occurs, including sufficient details of the Acquirer so that TfL may check whether it is a Prohibited Person, and within ten (10) Business Days after the Change of Control the Developer and/or the Tenant shall provide TfL with written confirmation thereof.
- (b) If the Acquirer (as defined in the definition of Change of Control in clause 1) is a Prohibited Person the Guarantor shall procure that the Change of Control does not occur, or if it has occurred, at TfL's request the Developer and/or the Tenant (as the case may be) must forthwith procure the assignment or novation of this Agreement to an entity who is an Acceptable Assignee.
- (c) The Developer and Tenant shall act in the utmost good faith in relation to its obligations in this clause 45.
- (d) The Developer, the Tenant and the Guarantor shall not seek to avoid the controls on assignment in this clause 45 by any act giving rise to a Change of Control.

- (e) No Change of Control may occur when the Developer or Tenant is not permitted to assign their respective interests in this Agreement pursuant to clause 45.1.

45.5 **Forward Agreement**

Nothing in this clause 45 shall restrict:

- (a) the Developer and/or the Tenant at any time from entering into a Forward Agreement with or requiring the grant or assignment of the Leases pursuant to a Forward Agreement to a person who would be a permitted assignee under clause 10 of the Leases Provided That the Forward Agreement shall not involve the transfer of the Tenant's interest in the Development to the purchaser under the Forward Agreement until the Leases have been or are provided to be granted in accordance with clause 17.2; or
- (b) at any time, the grant of security to an Approved Funder of the purchaser under a Forward Agreement.

45.6 **Deed of Covenant on Assignment or Novation**

- (a) The Developer shall procure that any party to whom the Developer:
 - (i) assigns its interest in this Agreement in accordance with this clause 45, shall on or before such assignment enter into a deed in favour of TfL, LUL and CRL (in a form approved by TfL, acting reasonably and without unreasonable delay); or
 - (ii) novates its interest in this Agreement in accordance with this clause 45, shall on or before such novation enter into a deed with TfL, LUL and CRL (in a form approved by TfL, acting reasonably),

in which such party covenants to undertake the obligations of the Developer and to observe and perform the provisions of this Agreement applicable to the Developer and the Developer shall provide TfL with a copy of any deed effecting the assignment or novation within five (5) Business Days of the completion thereof.

- (b) The Tenant shall procure that any party to whom the Tenant:
 - (i) assigns its interest in this Agreement in accordance with this clause 45 or to whom the Existing Headlease or either or both of the Leases are assigned or who is nominated to be the tenant under either or both of the Leases shall on or before such assignment or grant enter into a deed in favour of TfL, LUL and CRL (in a form approved by TfL, acting reasonably and without unreasonable delay); or
 - (ii) novates its interest in this Agreement in accordance with this clause 45, shall on or before such novation enter into a deed with TfL, LUL and CRL (in a form approved by TfL, acting reasonably),

in which such party covenants to undertake the obligations of the Tenant and to observe and perform the provisions of this Agreement applicable to the Tenant and the Tenant shall provide TfL with a copy of any deed effecting the assignment or novation within five (5) Business Days of the completion thereof.

45.7 **Assignment by TfL**

The benefit and burden of this Agreement may not be assigned by TfL, except to LUL or otherwise to a corporation, company or body which in each case becomes a statutory successor to all or part of the London Underground railway undertaking, subject to:

- (a) such successor entering into a deed with the Developer, the Tenant and the Guarantor (in a form approved by each of them acting reasonably) in which it covenants to undertake the obligations of TfL contained in this Agreement Provided That if such successor is, pursuant to such statutory succession arrangements, bound to comply with the obligations of TfL contained in this Agreement then no such deed shall be required;
- (b) written notice of any such express assignment (permitted by this clause) shall be given to the Developer within ten (10) Business Days of the date of the assignment provided; and
- (c) on delivery of the deed referred to in clause 45.7(a) to the Developer, the Tenant and the Guarantor, TfL shall be released from its obligations under this Agreement and have no further liability under this Agreement,

and the liability of the Developer shall not increase as a result of TfL's rights and obligations being assigned by them or having devolved to any third party.

45.8 **Dealings with freehold title by LUL**

LUL shall not dispose of, or deal with, any interest it has in the Demised Premises (including by way of the grant of an overriding lease) prior to the grant of the Leases (or any earlier lawful termination of this Agreement).

45.9 **Enforcement of security by an Approved Funder**

- (a) References to an Approved Funder in this clause 45.9 are to an Approved Funder which is not a member of either the Developer's Group or the Tenant's Group.
- (b) Nothing in this clause 45 shall restrict either the Developer's or the Tenant's interests in any or all of:
 - (i) this Agreement;
 - (ii) the Existing Headlease and the Supplemental Lease; and/or
 - (iii) either or both of the Leases,

being assigned by an Approved Funder, or an Approved Funder effecting a Change of Control in respect of the Developer and/or the Tenant (in each case, itself or acting through a receiver, manager, receiver and manager or administrative receiver (as applicable)) in accordance with this clause 45.9.
- (c) The delivery by an Approved Funder of a notice to the Developer or the Tenant (as the case may be) declaring the security interest created by the Approved Funder (an "**Approved Security**") to be enforceable and the taking of any action whatsoever by the Approved Funder to enforce such Approved Security (including the appointment by the Approved Funder of a receiver, manager, receiver and manager or administrative receiver (as applicable) over, or the taking possession or disposing by such Approved Funder of the Approved Security), will be deemed a "**Trigger Event**".
- (d) On the occurrence of a Trigger Event:
 - (i) the Developer or the Tenant (as the case may be) must give notice as soon as practicable to TfL of the Trigger Event; and
 - (ii) for so long as the default under the funding arrangements is continuing the Developer's and/or the Tenant's interests in any or all of:

- (A) this Agreement;
- (B) the Existing Headlease and the Supplemental Lease; and/or
- (C) either or both of the Leases,

may be assigned by the Approved Funder, or the Approved Funder may effect a Change of Control in respect of the Developer and/or the Tenant (in each case, itself or acting through a receiver, manager, receiver and manager or administrative receiver (as applicable)) to an Acceptable Assignee.

- (e) For the avoidance of doubt, the assignment and Change of Control permitted under this clause 45.9 may take place at any time and is not required to occur between stages of the Developer Works.
- (f) The provisions of clause 45.6 shall apply mutatis mutandis to any assignment under this clause 45.9.
- (g) The Developer and/or the Tenant (as the case may be) shall, within ten (10) Business Days after any assignment or Change of Control, provide TfL with written confirmation thereof.

45.10 Dealings with Leases by the Tenant

Nothing in this Agreement shall prevent:

- (a) the Tenant dealing with the Leases at any time (including prior to Practical Completion) in accordance with clause 45.5;
- (b) the Tenant drawing down the Leases in accordance with clause 17.2; and
- (c) the Tenant dealing with the Leases at, and following, Practical Completion in accordance with the terms of the Leases.

46. GUARANTOR'S COVENANTS

46.1 The Guarantor hereby guarantees and covenants with TfL (by way of primary obligation and not merely as a guarantor or collateral to that of the Developer) that the obligations on the part of the Developer shall be duly performed and observed in the manner and at the times specified and in case of default or delay on the part of the Developer the Guarantor will pay and make good to TfL on demand anything whatsoever which ought to be paid performed, observed or complied with as aforesaid including all losses, damages and expenses thereby arising or incurred by TfL in respect of any of the aforementioned matters and (subject to clause 46.7) indemnify TfL against any non-payment, breach, non-observance, non-performance or non-compliance Provided That the provisos in clause 39.1 shall apply mutatis mutandis.

46.2 The Guarantor's liability under this Agreement shall not be discharged affected or impaired by:

- (a) any neglect, delay or forbearance on the part of TfL in endeavouring to obtain payments as and when the same become due or in taking steps to enforce any of the said obligations; or
- (b) any time which may be given to the Developer; or
- (c) any variation of the terms of this Agreement to which the Guarantor is a party;

- (d) the Developer or any other party who may have guaranteed or otherwise may be liable in respect of all or any of the obligations of the Developer or any assignee ceasing to exist or having an administrator appointed in respect of it or all or any of the covenants, conditions or obligations on the part of the Developer or any other party as aforesaid ceasing (whether permanently or temporarily) to be enforceable against the Developer or other party as aforesaid (as the case may be) or being released or compromised except where they cease to be enforceable by reason of a release under the Landlord and Tenant (Covenants) Act 1995 or under this Agreement; or
- (e) the Developer or any other party who may have guaranteed or otherwise may be liable in respect of any of the obligations of the Developer entering into a company voluntary arrangement, scheme of arrangement or other arrangement with its creditors; or
- (f) the existence or validity of any other security taken by TfL in respect of any of the obligations or covenants of the Developer or any release of such security or any enforcement or failure to enforce such security or any part of it or any remedies TfL may have in respect of it against any third party or the release in whole or part of any guarantor or of all or any of the obligations of any guarantor; or
- (g) any omission or other matter which but for this provision would or might operate to affect, reduce or extinguish the liability of the Guarantor under this Agreement in whole or in part,

and the obligations of the Guarantor shall subsist in relation and by reference to the obligations on the part of the Developer as from time to time varied, to the extent the Guarantor is a party to such variations.

- 46.3 Subject to clause 46.9, the obligations of the Guarantor under this Agreement shall be a continuing guarantee in addition to any other guarantee or security now or hereafter held by TfL in respect of any of the obligations on the part of the Developer in this Agreement and shall continue until all of the obligations on the part of the Developer pursuant to this Agreement have been discharged and performed or validly released in full and this covenant shall impose upon the Guarantor the same obligations as if this Agreement had been entered into directly with it as Guarantor and it is hereby agreed and declared that the liability of the Guarantor is as principal covenantor with TfL and not merely collateral to the principal liability of the Developer.
- 46.4 TfL shall not be obliged to take any steps or proceedings or obtain any judgment against the Developer or any third party before exercising any of its rights against the Guarantor under this Agreement nor to make or file any claim in any bankruptcy or liquidation of the Developer or any third party and the liabilities of the Guarantor under this Agreement may be enforced irrespective of whether any demands, steps or proceedings are being or have been made or taken against the Developer or any third party or whether the obligations of any other guarantor or third party are released or waived in whole or in part.
- 46.5 The Guarantor covenants with TfL that it shall not, without first obtaining TfL's written consent:
- (a) seek to recover, whether directly or by set off, lien, counterclaim or otherwise, nor accept any money or other property, nor exercise any rights, in respect of any sum or security which may be or become due to the Guarantor on any account by the Developer, nor claim, prove for or accept any payment in any composition by, or any winding up of the Developer;
 - (b) claim as a creditor of the Developer in competition with TfL.

- 46.6 Without prejudice to the foregoing the Guarantor agrees that it shall not seek to discharge, affect, compromise or impair the Developer's liability under this Agreement in any voluntary arrangement, scheme of arrangement, or other arrangement with creditors proposed by or entered into by the Developer nor be a party to any such arrangement.
- 46.7 As a separate, additional, continuing and primary obligation, if the Guarantor proposes or enters into any voluntary arrangement, scheme of arrangement, or other arrangement with its creditors which has the effect directly or indirectly of discharging, affecting, compromising or impairing its liability or the Developer's liability under this Agreement the Guarantor agrees to indemnify TfL on demand against any losses, damages or expenses (including legal fees) incurred by or on behalf of TfL as a result of any such discharge, affect, compromise or impairment Provided That the provisos in clause 39.1 shall apply mutatis mutandis.
- 46.8 The Guarantor agrees that any decision of any court and/or any agreement reached between TfL and the Developer in respect of or in connection with this Agreement shall be binding on the Guarantor, Provided Always That the Guarantor shall have available to it such rights of appeal or challenge as the Developer would have or would have had.
- 46.9 Notwithstanding the foregoing, the liability of the Guarantor under this Agreement shall cease on:
- (a) the issue of the Defects Certificate in respect of the last of the OSD Works; or
 - (b) any earlier substitution of the Guarantor in accordance with clause 47,
- however, notwithstanding the foregoing, the Guarantor shall remain liable to the extent that any claim on the Guarantor under this Agreement has been notified to the Guarantor prior to the ceasing of the Guarantor's liability under this Agreement as provided for in clause 46.9(a) and is at that time outstanding.
- 46.10 The obligations of the Guarantor are subject always to the caps on liability in clause 38.6.
47. **REDACTED (REASON: 4)**
48. **EFFECT OF THIS AGREEMENT**
- 48.1 No modification, variation or waiver of any of the terms of this Agreement will be effective unless made in writing and signed by the Parties to this Agreement.
- 48.2 This Agreement does not create and is not in any circumstances to be taken as having created a partnership between any of the Parties to this Agreement.
- 48.3 The Developer is not and will not at any time hold itself out as the agent of TfL for any purposes and under no circumstances will the Developer have the authority to bind TfL or hold itself out to the public, the Building Contractor or any member of the Professional Team as having such authority.
- 48.4 All contracts and agreements entered into by the Developer pursuant to this Agreement will be contracts or agreements between the Developer as principal and the respective third parties and TfL will have no obligation or liability under them except where TfL is a party to the contract or agreement.
- 48.5 For the avoidance of doubt the provisions of this Agreement including those of approvals relate only to the Developer Works and do not affect in any way or derogate from the requirements of the Developer to obtain permissions otherwise required for any other development.

49. **DISPUTES RESOLUTION PROCEDURES**

49.1 **Executive Dispute Procedure**

- (a) If a Dispute arises between the Parties, the Developer's Representative and TfL's Representative shall first consult in good faith in an attempt to come to an agreement in relation to the dispute.
- (b) If the Developer's Representative and TfL's Representative fail to resolve the Dispute through such consultation within ten (10) Business Days, either Party may refer the matter to the Executives by giving written notice to the TfL's Representative or the Developer's Representative, as the case may be. The Executives shall consult in good faith in an attempt to come to an agreement in relation to the dispute.

49.2 **Reference to Independent Person**

If a Dispute cannot be resolved under clause 49.1, such dispute shall if any party to this Agreement so requires at any time from expiry of ten (10) Business Days after any reference to the Executives by notice served on the others (the "**Determination Notice**") be referred to and determined by an independent person (the "**Independent Person**") who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than ten (10) years and who shall be a specialist in relation to such subject matter.

49.3 **Appointment of Independent Person**

The Independent Person shall be appointed by agreement between the Parties to this Agreement or (if within ten (10) Business Days after service of the Determination Notice the Parties have been unable to agree) on the application of any of the Parties by such one of the following persons as the Parties shall agree to be appropriate having regard to the nature of the dispute or difference in question:

- (a) the Chairman for the time being of the Bar Council;
- (b) the President for the time being of the Royal Institute of British Architects;
- (c) the President for the time being of the Royal Institution of Chartered Surveyors;
- (d) the President for the time being of the Chartered Institute of Arbitrators;
- (e) the President for the time being of the Institute of Chartered Accountants in England and Wales; or
- (f) the President for the time being of the Law Society,

or (in each such case) the duly appointed deputy of such President or any other person authorised by him to make appointments on his behalf.

49.4 **Failure to agree Independent Person**

If within fifteen (15) Business Days after service of the Determination Notice the Parties have been unable to agree which of the persons referred to in clause 49.3 is appropriate to appoint the Independent Person then the Independent Person shall be appointed on the application of any of the Parties by the President for the time being of the Law Society or his duly appointed deputy or any other person authorised by him to make appointments on his behalf.

49.5 Independent Person to act as arbitrator

Except as mentioned in clause 49.6 any person appointed under this clause 49 shall act as an arbitrator in accordance with the provisions of the Arbitration Act 1996 and shall have the power to order a provisional award but the Parties agree that any arbitrator appointed under this clause 49 shall not have the powers set out in section 48(5) of the Arbitration Act 1996 and shall not be entitled to order the rectification setting aside or cancellation of this Agreement or any part of it.

49.6 Independent Person to act as an expert

Whenever the Parties have agreed in writing prior to his appointment that the Independent Person to be appointed under this clause 49 shall act as an expert or this Agreement expressly so provides then the following provisions shall have effect:

- (a) the Independent Person shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the Parties to the dispute;
- (b) the Independent Person shall consider (inter alia) any written representations made on behalf of any party (if made reasonably promptly) but shall not be bound thereby;
- (c) the Independent Person shall be independent and shall act impartially and fairly between the Parties;
- (d) the Parties to this Agreement shall use all reasonable endeavours to procure that the Independent Person shall give his decision as speedily as reasonably possible;
- (e) the Parties hereby consent to any hearing in connection with any such independent determination not being held in public and the decision of the Independent Person not being pronounced in public;
- (f) the costs of appointing the Independent Person and his costs and disbursements in connection with his duties under this Agreement shall be shared between the Parties to the dispute in such proportion as the Independent Person shall determine or in the absence of such determination then equally between the Parties; and
- (g) if the Independent Person shall be or become unable or unwilling to act then the procedure contained in this clause 49 for the appointment of an expert may be repeated as often as necessary until a decision is obtained.

49.7 Independent Person to determine delay

Where the dispute or difference between the Parties which was the subject of the Determination Notice shall have resulted in delay to the carrying out of any of the Developer Works the Independent Person shall be entitled (inter alia) to award such extension of time for the fulfilment of the obligation in question in respect of such delay as shall in all circumstances be fair and reasonable.

50. REDACTED (REASON: 2)

51. REDACTED (REASON: 2)

52. SURVIVAL OF PROVISIONS

The provisions of clause 1, 3.6 and (to the extent required) clause 20.6, clause 55 and clause 63 (and the Guarantor's obligations in relation to the performance of the obligations of the Developer and Tenant in such clauses) shall remain in full force and effect notwithstanding termination of this Agreement.

53. **CONSENTS**

53.1 For the purpose of this clause 53, "**Substantive Response**" means a response which:

- (a) (in each case whether subject to conditions or not) approves or accepts the subject matter of the relevant submission, or states that TfL or LUL (as the case may be) has no objection or no further comment on the subject matter; or
- (b) rejects the subject matter of the relevant submission (giving proper reasons); or
- (c) properly requests further information relating to the relevant submission (including such information as may be required to assess the cumulative impact of the works or action proposed in the relevant submission); or
- (d) proposes that a meeting is held in order to discuss the relevant submission; or
- (e) (where the consent of any third party is required) states the party from whom consent is required together with reasons why such consent is required and states the actions TfL is taking to obtain such consent,

and in particular TfL shall notify the Developer of any defects or omissions in the information supplied as soon as reasonably practicable after it becomes aware of the same and shall work with the Developer to identify any necessary alternative engineering solutions (but shall not be under any obligation to propose alternative solutions).

53.2 Where TfL Approvals are required, such approvals, agreement, authority, licence, determination, acceptance or consent (the "**Matter/Matters for Approval**") shall not be unreasonably withheld or delayed and any conditions imposed must be reasonable and TfL shall give a Substantive Response to each submission made in respect thereof as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the submission (the "**Consideration Period**") Provided That:

- (a) the Developer shall use reasonable endeavours not to submit Matters for Approval at a volume or speed that exceeds the reasonably practicable rate and volume for submission of Matters for Approval agreed between TfL and the Developer from time to time and, for the avoidance of doubt, compliance by the Developer with the Information Release Schedule as agreed from time to time will be deemed to satisfy the requirements of this clause 53.2(a); and
- (b) any Consideration Period may be extended by TfL in respect of any Matter/Matters for Approval where the Parties have agreed that TfL may prioritise any other Matter/Matters for Approval.

53.3 Provided That a Substantive Response has been given, it shall not be unreasonable for TfL to delay its approval, agreement, authority, licence, determination, acceptance or consent (the "**Approval**") until such time as TfL has obtained the approval of the PFI Contractor or any other third party (as the case may be) where such approval is required prior to TfL giving the Approval Provided That TfL shall use its reasonable endeavours to obtain the same as soon as reasonably practicable.

53.4 The Parties agree that subject to clause 1.2(m):

- (a) nothing in this Agreement shall require TfL to give or to procure the giving of any consent or agreement or approval which would detrimentally affect the operation of the Railway Undertaking or Railway Assets and Premises. Where TfL decides to reject the Developer's approach for consent, agreement or approval on grounds in this clause 53.4(a) then TfL must give proper reasons for such decision; and

- (b) notwithstanding any other provision of this Agreement, in performing its obligations and exercising its rights under this Agreement TfL shall retain sole discretion in relation to matters which may in the proper opinion of the Engineer detrimentally affect the operation of the Railway Undertaking or the Railway Assets and Premises.

53.5 TfL, LUL and CRL shall not:

- (a) improperly delay the issue of its approvals in respect of paragraph (c) of Initial Works Conditions and/or paragraphs (c) and (d) of the Option Conditions (or any other TfL Approval); or
- (b) seek to gain any commercial or collateral advantage in the course of the issue of any Engineering Approvals (or any other TfL Approval relating to the operation of the Railway Undertaking and/or the Railway Assets and Premises), such as by:
 - (i) causing a deliberate delay which would result in the Option Period expiring, and render the Option incapable of exercise; or
 - (ii) withholding approvals solely because TfL do not receive any benefit (beyond reasonable costs in accordance with this Agreement).

53.6 In addition to clause 53.5, TfL and CRL shall during such approval processes:

- (a) act properly;
- (b) give reasons for any refusal;
- (c) allow the Developer to resubmit any application for approval; and
- (d) work with the Developer to identify satisfactory alternative engineering solutions where required Provided That there shall be no obligation on TfL or CRL to propose (or procure the proposal of) such alternative engineering solutions.

53.7 Any dispute as to whether the subject matter of a consent, agreement or approval may affect the operation of the Railway Undertaking or the Railway Assets and Premises may only be referred to the LUL Head of Engineering for determination and shall not be subject to the Executive Dispute Procedure or reference to an Independent Person in accordance with clause 49 of this Agreement (but without prejudice to TfL's obligations to comply with the proviso to clause 1.2(m)) and, for the avoidance of doubt, the Developer may refer any such dispute to the Court for determination.

53.8 Any decision of TfL to withhold consent, grant approval or acceptance, or impose conditions under the terms of this Agreement or any direction given by TfL or decision made by TfL under the terms of this Agreement shall not in any way reduce or eliminate the Developer's obligations, covenants and conditions under this Agreement, but excluding any breach arising (or which may otherwise have arisen) from the Developer obtaining and acting upon a TfL Approval or TfL Waiver, Provided That such exclusion shall not apply in respect of any such breach that has arisen where the Developer acted upon a TfL Approval or TfL Waiver that contained an error where such error:

- (a) could have been identified by the Developer through the relevant matter being checked or verified independently, where a reasonable and prudent developer would do so; and/or
- (b) resulted from any error in the contents of the Supplied Information.

53.9 It is agreed that TfL shall be entitled to withdraw an approval where it is required by law to do so, but in those circumstances it will work with the Developer to identify an

alternative solution as soon as reasonably practical, Provided That there shall be no obligation on TfL to propose an alternative solution.

54. **NOTICES**

54.1 **Sending Notices**

Any notice to be given by one Party to any other Party under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the Party giving it. It shall be served by delivering it by hand, or sending it by pre-paid recorded delivery, special delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom), to the address set out in clause 54.4 and in each case marked for the attention of the relevant Party (or as otherwise notified from time to time in accordance with the provisions of clause 54.4). Any notice so served by hand, or post shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of prepaid recorded delivery, special delivery or registered post, at 10.00 a.m. on the second Business Day following the date of posting; and
- (c) in the case of registered airmail, at 10.00 a.m. on the fifth Business Day following the date of posting.

Provided That in each case where delivery by hand occurs after 5.00 p.m. on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9.00 a.m. on the next following Business Day.

54.2 References to time in this clause are to local time in the country of the addressee.

54.3 **Proof of Service**

In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party set out in clause 54.4 (or as otherwise notified by the party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, special delivery or registered post.

54.4 **Addresses for Service**

The addresses of the Parties for the purpose of this clause 54.4 are as follows:

Developer

Address: 5 Strand, London WC2N 5AF

For the attention of: (Reason: 5) and Company Secretary

TfL

Address: Windsor House, 42-50 Victoria Street, London SW1H 0TL

For the attention of: The Company Secretariat

Guarantor

Address: 5 Strand, London WC2N 5AF

For the attention of: (Reason: 5) and Company Secretary

54.5 **Change of Address**

A Party may notify any other Party to this Agreement of a change to its name, relevant addressee, address for the purposes of this clause 54.5, Provided That, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date following five (5) Business Days after notice of any change has been given.

54.6 Language

All notices under or in connection with this Agreement shall be in the English language.

54.7 E-mail

Notice given under this Agreement shall not be validly served if sent by email (save in the case of the provision of consents to any matter by either Party).

55. CONFIDENTIALITY AND TRANSPARENCY

55.1 Each Party agrees in respect of the Confidential Information:

- (a) to keep the Confidential Information in strict confidence and secrecy;
- (b) not to use the Confidential Information save for complying with its obligations under this Agreement;
- (c) subject to clause 55.1(d), not to disclose the Confidential Information to a third party without prior written consent of the other Party, save that:
 - (i) the Tenant and the Developer may disclose Confidential Information to:
 - (A) any Approved Contractors or Approved Consultants and other contractors and consultants appointed in accordance with this Agreement;
 - (B) their respective professional advisers;
 - (C) any potential Section 237 Assignee, Acceptable Assignee, Approved Funder or Joint Venture partner or to its or their professional advisers and consultants;
 - (D) HM Revenue and Customs or any other tax authority in connection with their respective tax affairs; and
 - (ii) TfL may disclose Confidential Information to any contractors and/or consultants it appoints in accordance with this Agreement or to its or their professional advisers,

subject in each case to each such person undertaking to keep the Confidential Information disclosed to it confidential in like terms to the provisions of this clause 55; or

- (d) to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees, contractors and consultants who need the same in the performance of this Agreement or in relation to the operation of the Railway Undertaking or the Railway Assets and Premises.

55.2 The obligations set out in clause 55.1 shall not apply to any Confidential Information which:

- (a) the relevant Party can show by documentary evidence was already in its lawful possession and at its free disposal otherwise than directly or indirectly from the other Party;
- (b) is lawfully disclosed to the relevant Party without any obligations of confidence by the other Party;
- (c) is or has come into the public domain through no fault of either Party or its personnel;
- (d) is required by law (including the FOI Legislation) or by order of a court of competent jurisdiction or by any competent authority or appropriate regulatory body or recognised securities exchange, to be disclosed but only to the extent required by such law or order, authority, body or exchange;
- (e) is properly required to be disclosed by TfL to the Mayor of London, the London Assembly or any department of the UK Government; or
- (f) is disclosed with the prior written consent of the relevant Party.

55.3 Each Party acknowledges that damages may not be an adequate remedy for any breach of this clause 55 and that (without prejudice to all other rights, powers and remedies which the other Party may be entitled to as a matter of law) that other Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this clause 55.

55.4 The Parties' obligations of confidentiality in this clause 55 shall survive the termination of this Agreement and last for a period of six years thereafter.

55.5 The Parties acknowledge that clause 63 shall take precedence over this clause 55 to the extent of any inconsistency.

55.6 The Developer acknowledges that TfL is subject to the Transparency Commitment. Accordingly, the Developer hereby gives its consent for TfL to publish the Main Terms to the general public. TfL may redact all or part of the Main Terms prior to its publication. In so doing TfL may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. To the extent permitted by law, TfL shall consult with the Developer regarding any redactions to the information to be published pursuant to this clause 55.6.

56. **INTEREST**

Save where otherwise provided in this Agreement, any sums due from one Party to another if not paid within twenty (20) Business Days of the due date hereunder shall bear interest payable at the Default Rate calculated on a daily basis from the due date to the date of payment in cleared funds as well after as before judgment.

57. **NON MERGER**

Notwithstanding the grant of the Leases this Agreement shall remain in full force and effect and binding on the Parties so far as any of its provisions remain to be implemented.

58. **ENTIRE AGREEMENT**

This Agreement, the documents entered into between the Parties on the same date as this Agreement and the documents to be entered into pursuant to this Agreement contain the entire agreement between the Parties relating to the transactions contemplated by it or them and all other prior or contemporaneous agreements, understandings,

representations and statements, whether oral or written relating to the transactions so contemplated, are merged in this Agreement.

59. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed interpreted and construed in accordance with English law and subject to clause 49, the Parties give the courts of England exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise in connection with the validity effect interpretation or performance of or the legal relationships established by this Agreement or otherwise arising in connection with this Agreement.

60. **SEVERABILITY**

If any provision of this Agreement is held to be invalid or unenforceable then such provision shall (so far as invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement.

61. **NON FETTER**

For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the statutory rights, powers, duties and obligations of TfL in the exercise of their statutory functions Provided That to the extent legally possible TfL will exercise its rights and powers and perform its duties and obligations in a manner which is consistent with the terms of this Agreement.

62. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a Party to this Agreement (other than the Secretary of State but only in respect of the provisions benefitting CRL) has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

63. **FREEDOM OF INFORMATION**

63.1 The Developer acknowledges that TfL:

- (a) is subject to the FOI Legislation and agrees to co-operate with TfL (at TfL's cost, which cost is properly incurred by the Developer) to enable TfL to comply with its obligations under the FOI Legislation; and
- (b) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Developer,

Provided That subject to clause 63.3 TfL will not disclose Information in relation to the Development or to the Developer, the Tenant or the Guarantor without consulting with or notifying the Developer to the extent that it is permitted and there is reasonable time available to do so.

63.2 The Developer shall use reasonable endeavours to procure that its consultants and contractors (if any) shall:

- (a) transfer to TfL each Information Request relevant to this Agreement that it or they (as the case may be) receive as soon as practicable after receiving such Information Request; and
- (b) in relation to Information held by the Developer on behalf of TfL, provide TfL with details about and/or copies of all such Information that TfL requests and such details and/or copies shall be provided as soon as reasonably practicable following a request

from TfL (subject to consulting with the Developer and having regard to its reasonable representations).

63.3 TfL shall consult with the Developer and have regard to its reasonable representations with regard to whether Information in relation to the Development or to the Developer, the Tenant or the Guarantor is Exempt Information under the FOI Legislation to the extent that it is permitted and there is reasonable time available to do so. The Developer acknowledges that TfL is responsible for determining whether Information is Exempt Information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Site Specific Terms are the terms of this Agreement that the Developer would like to be considered Exempt Information under the FOI Legislation and not disclosed in response to an Information Request in accordance with the FOI Legislation. The Developer shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by TfL.

63.4 This clause 63 shall survive termination of this Agreement.

64. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement.

IN WITNESS whereof this Agreement has been executed as a deed on the date first above written

SCHEDULE 1

Title Matters

The matters contained or referred to in the Property and Charges Registers of title numbers NGL706929, NGL147896, AGL255468 and AGL262624 as at 13 January 2015, including the provisions of a Deed dated 26 February 1998 made between Wates CityPoint Limited (1) London Underground Limited (2) and Hammerson U.K. Properties PLC (3).

SCHEDULE 2

Handover Arrangements

1. The Handover Arrangements shall apply to arrangements for the highway or (if relevant) any other areas which are not in the freehold or leasehold ownership of TfL or the Developer.
2. The overriding principles of the Handover Arrangements are that:
 - (a) all Parties must comply with Legislation (including CDM Regulations); and
 - (b) they shall not limit any entitlements or powers CRL may have arising out of the Crossrail Act 2008 or the other provisions of this Agreement.
3. TfL, CRL and the Developer shall endeavour to agree and shall procure that their respective contractors agree, to the extent applicable, arrangements with respect to the following matters:
 - CDM requirements
 - Access (entry points, means of access, timing)
 - Deliveries (e.g. timing) and parking
 - Emergency escape routes
 - Security and staff clearance
 - Supervision
 - Site facilities (welfare, catering etc)
 - Communication and co-ordination
 - Neighbour relations and relations with police, fire and other authorities
 - Storage of materials etc on site
 - Disposal of debris and surplus materials
 - Working hours
 - Noise/hours of noisy working
 - Power supplies (permanent/temporary)
 - Other utilities
 - Hoists
 - Cranes

SCHEDULE 3

Surrender of the Existing Headlease and the Supplemental Lease

1. DEFINITIONS

Words and expressions in this schedule shall have the following meanings:

"Existing Tenant" means the party holding the tenant's interest under the Existing Headlease and, if applicable, the Supplemental Lease at the time of the surrender envisaged by this schedule;

"Leased Property" means the land demised to the Existing Tenant under the Existing Headlease and, if applicable, the Supplemental Lease;

"Public Requirements" means all local land charges and other matters whensoever registered or registrable (whether registered or not) by any local authority or other body acting on statutory authority and every charge notice direction order restriction agreement resolution proposal condition and other matter affecting the Leased Property made (whether before or after the date of this agreement) by a body acting on statutory authority;

"Standard Commercial Property Conditions" means Part 1 of the Standard Commercial Property Conditions (Second Edition) and **"SCPC"** means Standard Commercial Property Condition.

2. SURRENDER

2.1 The Existing Tenant agrees that it will on the Completion Date (but subject to and in consideration for the grant of the Leases immediately thereafter) surrender and yield up (or procure the surrender and yield up by the Existing Tenant) to LUL all its estate, interest and rights in the Leased Property free from all charges to the intent that the Existing Headlease and, if applicable, the Supplemental Lease and all or any other estate, interest or rights of the Existing Tenant thereunder shall merge and be extinguished in the reversion immediately expectant on the term of years granted by the Existing Headlease and, if applicable, the Supplemental Lease.

2.2 LUL agrees that it will on the Completion Date accept such surrender.

2.3 The surrender shall be made with full title guarantee.

2.4 The surrender shall be effected by a deed of surrender in the form attached at appendix 12, with such amendments as may be necessary to reflect the position as at the date of the surrender and as are agreed between the Existing Tenant and LUL (acting reasonably).

2.5 It is agreed (for the avoidance of doubt) that on yielding up the Leased Property the Existing Tenant need not comply with the repair, decoration and reinstatement obligations contained in the Existing Headlease and the Supplemental Lease.

3. COMPLETION

Completion of the surrender shall take place on the Completion Date.

4. REIMBURSEMENT OF RENT AND OTHER SUMS PAID IN ADVANCE

LUL agrees to reimburse to the Existing Tenant on completion such part of the rents and other sums due under the Existing Headlease and, if applicable, the Supplemental Lease paid in advance as is attributable to the period after the date of actual completion.

5. **TITLE**

Title to the Leased Property is registered at the Land Registry under title number NGL244048 and the Supplemental Lease will be registered when the same is granted, and LUL shall be deemed to purchase with full knowledge of the title in all respects and shall not raise any requisitions or objections in relation to it.

6. **MATTERS AFFECTING THE PROPERTY**

6.1 The surrender is made subject to and (where appropriate) with the benefit of:

- (a) the matters (other than charges securing the Existing Tenant's indebtedness) contained or referred to in the registers of the title number NGL244048;
- (b) any unregistered occupational leases;
- (c) Public Requirements;
- (d) unregistered interests falling within schedule 3 to the Land Registration Act 2002; and
- (e) such other unregistered interests as may affect the Leased Property to the extent that and for so long as they are preserved by schedule 12 to the Land Registration Act 2002.

6.2 LUL shall be deemed to have notice of the matters referred to in paragraph 6.1 and shall not be entitled to raise any requisition or objection in respect of them.

7. **DOCUMENTS AND LAND REGISTRY REQUIREMENTS**

7.1 On completion the Developer shall deliver or procure the delivery to LUL of:

- (a) the Existing Headlease and, if applicable, the Supplemental Lease;
- (b) duly executed discharges of the financial charges (if any) referred to in the registers of title number NGL244048 and for the Supplemental Lease;
- (c) certificates of non-crystallisation of all floating charges affecting the Existing Headlease and Supplemental Lease to be dated the date of actual completion and to be in a form approved by LUL (acting reasonably); and
- (d) any other documents in the Developer's possession or under its control that may be needed by the Land Registry in connection with applications by LUL to close title number NGL244048 and cancel any notice of the Existing Headlease and, if applicable, the Supplemental Lease.

8. **STATUTORY COMPENSATION**

The Developer agrees and shall procure the agreement of the Existing Tenant that the grant of the Leases shall be accepted in full settlement of any claim which it might have against LUL in respect of any statutory compensation to which the Existing Tenant might otherwise be entitled on quitting the Leased Property.

9. **STANDARD COMMERCIAL PROPERTY CONDITIONS**

The Standard Commercial Property Conditions are incorporated in this agreement and where there is a conflict between them and any other provision of this agreement that other provision prevails.

SCHEDULE 4

Option Notice

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

From: LS 21 Moorfields Limited (No. 08072492)
5 Strand
London
WC2N 5AF

BY HAND

[Insert Date]

Dear Sirs

Land at Moorfields, London EC2 (the Property)

Pursuant to clause 3.3 of the Option and Development Agreement dated [•] made between Transport for London, London Underground Limited (No. 01900907), Crossrail Limited (No. 04212657), LS 21 Moorfields Development Management Limited (No. 08072478), LS 21 Moorfields Limited (No. 08072492) and Land Securities Property Holdings Limited (No. 05075022) relating to the Property (the **Agreement**):

LS 21 Moorfields Limited (No. 08072492) gives Transport for London notice of the exercise of the option contained in clause 3.1 of the Agreement to call for the grant of the Leases (as defined in the Agreement) to *[insert tenant entity or entities]* on the terms set out in the Agreement.

LS 21 Moorfields Limited requires the Leases as [one (1) Lease][two (2) Leases, split between the buildings] as per the attached plans.

Please acknowledge receipt of this notice by signing and returning the enclosed duplicate.

Yours faithfully

.....
For and on behalf of LS 21 Moorfields Limited (No. 08072492)

Acknowledged and accepted

.....
For and on behalf of Transport for London

The CORPORATE SEAL of **TRANSPORT**)
FOR LONDON hereunto)
affixed to this deed is authenticated by:)

Authorised Signatory

The CORPORATE SEAL of **LONDON**)
UNDERGROUND LIMITED hereunto)
affixed to this deed is authenticated by:)

Authorised Signatory

Executed as a deed by **CROSSRAIL**)
LIMITED acting by:)
)

Authorised Signatory

Executed as a **DEED** by **LS 21**)
MOORFIELDS DEVELOPMENT)
MANAGEMENT LIMITED acting by)

) On behalf of Director

duly authorised by Land Securities)
Management Services Limited to sign on)
its behalf as Director and)

) On behalf of Director

duly authorised by LS Director Limited)
to sign on its behalf as Director.

EXECUTED as a **DEED** by **LS 21**)
MOORFIELDS LIMITED acting by)

) On behalf of Director

duly authorised by Land Securities)
Management Services Limited to sign on)
its behalf as Director and)

) On behalf of Director

duly authorised by LS Director Limited)
to sign on its behalf as Director.

EXECUTED as a **DEED** by **LAND
SECURITIES PROPERTY HOLDINGS
LIMITED** acting by

)
)
)
)
)

Director

A director, in the presence of

Signature of witness

Name (in BLOCK CAPITALS)

Address

APPENDIX 1

Pre-Demolition Works

Stage No.	Activity.
Setting out.	
0.	<p>0.1 <u>Setting out of Pile positions: -</u></p> <ul style="list-style-type: none"> • Method Statement for LUL review and approval • Above retained deck in 21 Moorfields building • Below the soffit of the retained deck within the LUL demise • At platform level within the LUL demise
	<p>0.2 <u>Setting out of intrusive site investigation works</u></p> <ul style="list-style-type: none"> • Method Statement for LUL review and approval • To existing pilecaps at platform level within the LUL demise • To existing steel beams at platform level within the LUL demise • To the existing concrete soffit within the LUL demise • To existing retaining walls within the LUL demise
	<p>0.3 <u>Determination of Pile enabling works</u></p> <ul style="list-style-type: none"> • Determination of station critical MEP to be repositioned / relocated • Determination of structure and fabric to be removed • Determination of strategy for welfare and staff to be relocated
R&D Survey's & Asbestos removal.	
1.	<p>1.1 <u>Refurbishment & Demolition (R&D) Survey for Asbestos</u></p> <ul style="list-style-type: none"> • Method Statement for LUL review and approval • R&D Survey for asbestos within the LUL demise • R&D Survey for asbestos within the developers area • R&D Survey for asbestos within the 21 Moorfields building • Vacant possession of existing tenants • Asbestos removal notifications
	<p>1.2 <u>Asbestos Removal</u></p> <ul style="list-style-type: none"> • Method Statement for LUL review and approval • Co-ordination of works with Crossrail • Asbestos removal within the LUL demise insofar as it is required to enable construction of the Development • Asbestos removal within the developers area • Asbestos removal within the 21 Moorfields building
Site Investigation Works.	
2.	<p>2.1 <u>Site Investigation Works</u></p> <ul style="list-style-type: none"> • Method Statement for LUL review and approval • Co-ordination of works with Crossrail • Installation of temporary hoarding to platform 6 • Opening up for site investigations works • Site investigation works to existing pilecaps at platform level within the LUL demise • To existing steel beams at platform level within the LUL demise • To the existing concrete soffit within the LUL demise • To existing retaining walls within the LUL demise • Condition surveys within the LUL demise • Testing of elements within the LUL demise • Making good of site investigations works within the LUL demise • Site investigations to 21 Moorfields building • Reporting of Site investigations works • Update of F10, establishment of Principal Contractor • Security established

Demolition & Pile enabling works.

3.	3.1	Demolition and Pile enabling works <ul style="list-style-type: none">• Method Statement for LUL review and approval• Designs and notifications for LUL review and approval• Method statements and administration to allow Hard Demo i.e. City of London approvals, scaffolding & over-sailing licenses• Forming of LUL accommodation for transfer of welfare and staff from the LUL demise• Repositioning / relocation of station critical MEP within the LUL demise by TFL to enable piles• Removal of structure and fabric within the LUL demise to enable piles• Installation of temporary works within the Demised Premises to enable piles• Installation of permanent works within the Demised Premises to enable piles i.e. mini piles and steel walls (design in progress) – Strengthening• Co-ordination of works with Crossrail• Diversion strategy of existing ducts within 21 Moorfields building origination from LUL demise (maintaining)• Start of soft Strip of 21 Moorfields building• Design of temporary steel grillage• Design of temporary waterproofing & drainage• Repair of existing waterproofing & drainage• Protection of existing UKPN substations• Neighbourhood liaison established• Perimeter hoardings established• Logistics strategy agreed and confirmed with City of London, Logistics strategy• Link Bridges Strategy agreed, temporary supports designed• Design & installation of Scaffolds, Monaflex and crash decks• Protected Temporary public walkways established
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APPENDIX 2

(Reason: 4)

APPENDIX 3

(Reason: 4)

APPENDIX 4

(Reason: 4)

APPENDIX 5

(Reason: 4)

APPENDIX 6

TfL Policy Clauses

1. Definitions

"Approved Driver Training" means the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training details of which can be found at: www.fors-online.com;

"Bronze Accreditation" means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;

"Car-derived Vans" means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;

"Class VI Mirror" means a mirror that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC;

"Close Proximity Sensor" means a device consisting of a sensor system that detects objects in a vehicle's blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle's indicators are engaged;

"Collision Report" means a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;

"Driver" means any employee of the [Contractor/Consultant] (including and agency driver), who operates Freight Vehicles on behalf of the [Contractor/Consultant] while delivering the [Works/Services];

"DVLA" means Driver and Vehicle Licensing Agency;

"FORS" means the Fleet Operator Recognition Scheme, which is an accredited scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;

"FORS Standard" means the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk;

"Freight Vehicle" means a Lorry, a Van or a Car-derived Van;

"Fresnel Lens" means a clear thin plastic lens that is press fitted to a lorry window on the passenger side and that allows the driver to see that which is in the vehicle's blind spot;

"Gold Accreditation" means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;

"Lorry" means a vehicle with an MAM exceeding 3,500 kilograms;

"MAM" means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;

"Side Guards" means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Constructions and Use) Regulations 1986;

"Silver Accreditation" means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk;

"Van" means a vehicle with a MAM not exceeding 3,500 kilograms;

"TfL Group" means Transport for London and all its subsidiaries (as defined in section 736 of the Companies Act 1985) from time to time and reference to "any member of the TfL Group" shall refer to TfL or any such subsidiary.

2. **Fleet Operator Recognition Scheme Accreditation**

2.1 Where the [Contractor/Consultant] operates Freight Vehicles, it shall within 90 days of executing the [Contract]:

2.1.1 (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the [Employer], is an acceptable substitute to FORS (the "Alternative Scheme"); and

2.1.2 (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme.

2.2 The [Contractor/Consultant] shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the [Contractor/Consultant] has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

2.3 The [Contractor/Consultant] shall use its best endeavours to ensure that those of its sub-contractors who operate Freight Vehicles shall comply with clauses 2.1 and 2.3 as if they applied directly to the sub-contractor.

Safety Equipment on Vehicles

2.4 The [Contractor/Consultant] shall ensure that every Lorry, which it uses to provide the [Works/Services], shall:

2.4.1 have Side Guards, unless the [Contractor/Consultant] can demonstrate to the reasonable satisfaction of the [Employer] that the vehicle will not perform the function for which it was built if Side Guards are fitted;

2.4.2 have a Close Proximity warning system fitted comprising:

(i) A front-mounted, rear-facing CCTV camera with in-cab live feed from the said camera or a Fresnel Lens where the Fresnel Lens provides a reliable alternative to the CCTV camera and where the [Contractor/Consultant] has obtained the [Employer's] approval to use the Fresnel Lens, which approval the [Employer] may withhold in its unfettered discretion; and

(ii) A Close Proximity Sensor.

2.4.3 have a Class VI Mirror; and

2.4.4 bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

- 2.5 The [Contractor/Consultant] shall ensure that every Van, which it uses to provide the [Works/Services], shall bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

Driver Licence Checks

The [Contractor/Consultant] shall ensure that each of its Drivers has a driving licence check with the DVLA before that Driver commences delivery of the [Works/Services] and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the [Contractor/Consultant]'s risk scale, provided that the [Contractor/Consultant]'s risk scale has been approved in writing by the [Employer] within the last 12 months:

- (a) 0 – 3 points on the driving licence – annual checks;
- (b) 4 – 8 points on the driving licence – six monthly checks;
- (c) 9 – 11 points on the driving licence – quarterly checks; or
- (d) 12 or more points on the driving licence – monthly checks.

Driver Training

- 2.6 The [Contractor/Consultant] shall ensure that each of its Drivers who has not undertaken:
- (a) Approved Driver Training (or training, which in the reasonable opinion of the [Employer], is an acceptable substitute) in the last three years, undertakes Approved Driver Training or the said substitute training within 60 days of the commencement of this [Contract]; and
 - (b) a FORS e-learning safety module in the last 12 months, undertakes a FORS e-learning safety module (or e-learning, which in the reasonable opinion of the [Employer], is an acceptable substitute).

Collision Reporting

- 2.7 Within 15 days of the commencement of this [Contract], the [Contractor/Consultant] shall provide to the [Employer] a Collision Report. The [Contractor/Consultant] shall provide to the [Employer] an updated Collision Report on a quarterly basis and within five working days of a written request from the [Employer].

FORS Reports

- 2.8 Within 30 days of its achieving Bronze Accreditation or equivalent within the Alternative Scheme, the [Contractor/Consultant] shall make a written report to the [Employer] at fors@tfl.gov.uk detailing its compliance with clauses 2.4, 2.5 and 2.6 of this Contract (the "Safety, Licensing and Training Report"). The [Contractor/Consultant] shall provide updates of the Safety, Licensing and Training Report to the [Employer] at fors@tfl.gov.uk on each three month anniversary of its submission of the initial Safety, Licensing and Training Report.

Obligations of the Service Provider Regarding Subcontractors

- 2.9 The [Contractor/Consultant] shall procure that each of its subcontractors that operates the following vehicles shall comply with the corresponding provisions of this [Contract] as if those subcontractors were a party to this [Contract]:

- 2.9.1 For Lorries – clauses 2.4, 2.5, 2.6 and 2.7; and

2.9.2 For Vans – clauses 2.4, 2.5, 2.6 and 2.7.

Failure to Comply with Freight-related Obligations

2.10 Without limiting the effect of clause [INSERT CROSS REFERENCE TO TERMINATION CLAUSE], if the Service Provider fails to comply with clauses 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8 and 2.9:

2.10.1 the [Contractor/Consultant] has committed a material breach of this [Contract];
and

2.10.2 the [Employer] may refuse the [Contractor/Consultant], its employees, agents and Freight Vehicles entry onto any property that is owned, occupied or managed by the [Employer] for any purpose (including but not limited to deliveries).

APPENDIX 7

Form of New Headlease and Heads of Terms Note

This is the Form of New Headlease and Heads of Terms Note referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 8

Plan showing the Development Site

This is the Plan showing the Development Site referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 9

Site Specific Terms

These are the Site Specific Terms referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 10

Station Interface Plan

This is the Station Interface Plan referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6)

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for Transport for London

.....

for London Underground Limited

.....

for Crossrail Limited

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for LS 21 Moorfields Development Management Limited

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for LS 21 Moorfields Limited

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for Land Securities Property Holdings Limited

APPENDIX 11

(Reason: 4)

APPENDIX 12

Form of Surrender of Existing Headlease

LAND REGISTRY

LAND REGISTRATION ACT 2002

County and District : City of London
(or London Borough)

Title Numbers of Landlord : NGL706929 and NGL147896

Title Number of Tenant : NGL244048

Property : Land at Moorgate Station, Moorfields, London EC2

THIS DEED OF SURRENDER is made on _____ 20__

BETWEEN:

- (7) **LONDON UNDERGROUND LIMITED** whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL (Company Registration No. 01900907) (the **Landlord**)
- (8) [●] whose registered office is at [●] (Company Registration No. [●]) (the **Tenant**)

WHEREAS

- (A) This Deed is supplemental to the leases mentioned in Schedule 1 hereto (the Leases) whereby the property above mentioned (the **Property**) was demised as mentioned in the Leases.
- (B) The reversion expectant on the term granted by the Leases remains vested in the Landlord and the benefit of the term granted by the Leases remains vested in the Tenant.
- (C) It has been agreed that the Tenant will surrender the Leases to the Landlord in consideration of the grant by the Landlord to the Tenant of two new leases of the Property and other land (the **New Headleases**) immediately after completion of this Deed and that the Landlord will accept such surrender on the terms hereinafter set out.
- (D) [By the underleases, short particulars of which are set out in Schedule 2 (the **Underleases**), certain parts of the Property were demised as mentioned in the Underleases.]

NOW THIS DEED WITNESSES AS FOLLOWS:

1. **SURRENDER**

In consideration of the release contained in clause 2, and in consideration of the grant by the Landlord to the Tenant of the New Headleases immediately after completion of this Deed, the Tenant hereby transfers, yields up and surrenders to the Landlord with full title guarantee all its estate, interest and rights in the Property (whether granted by or arising from the Leases or by any deed or document supplemental thereto or otherwise) together with all Landlord's and Tenant's fixtures and fittings [subject to and with the benefit of the Underleases but otherwise] free from encumbrances, to the intent that the residue of the term of years granted by the Leases shall merge and be extinguished in the freehold reversion to the same.

2. **ACCEPTANCE AND RELEASE BY LANDLORD**

In consideration of the release contained in clause 3, the Landlord hereby accepts the surrender and releases the Tenant (including all former tenants under the Leases) from all claims, demands, liabilities, costs, damages and expenses which have arisen or may arise from the covenants, agreements, conditions and obligations (whether past, present or future) on the part of the Tenant contained in the Leases and any supplemental deed or document (other than this Deed).

3. **RELEASE BY TENANT**

The Tenant hereby releases the Landlord from all claims, demands, liabilities, costs, damages and expenses which have arisen or may arise from the covenants, agreements, conditions and obligations (whether past, present or future) on the part of the Landlord contained in the Leases and any supplemental deed or document (other than this Deed).

4. **REGISTERS OF TITLE**

4.1 The Landlord and the Tenant hereby jointly apply to the Chief Land Registrar for the closure of Leasehold Title Nos. NGL244048 and [●] relating to the Property and for the cancellation of the notice of the Leases on the registers of Title Nos. NGL706929 and NGL147896 relating to the Landlord's reversionary interest in the Property.

4.2 The Tenant shall lodge this Deed together with the original Lease (and counterpart if required), properly completed Land Registry Forms together with any further documentation required and the requisite fee, to the Land Registry in order to give effect to clause 4.1 and the Landlord must provide all reasonable assistance to answer any requisitions.

5. **THIRD PARTY RIGHTS**

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

6. **GOVERNING LAW AND JURISDICTION**

6.1 The English courts shall have exclusive jurisdiction in relation to all disputes (including claims for set-off and counterclaims) arising out of or in connection with this Deed including, without limitation disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Deed; and (ii) any non-contractual obligations arising out of or in connection with this Deed. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

6.2 This Deed and any non-contractual obligations arising out of or in connection with this Deed shall be governed by, and interpreted in accordance with, English law.

7. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

EXECUTED AS A DEED and delivered on the date inserted on page 1

**SCHEDULE 1
THE LEASES**

	Date	Parties	Term
1.	8 April 1974	The London Transport Executive (1) The Prudential Assurance Company Limited (2)	120 years from 24 June 1973
2.	[To be completed with date of Supplemental Lease]	London Underground Limited (1) [] (2)	From [] for the residue of the term granted by the Lease at 1 above

**SCHEDULE 2
THE UNDERLEASES**

	Date	Details	Parties	Term
1.	1 May 1974	Ground floor electricity transformer chamber at Moorgate Station adjoining Fore Street Avenue	Moorstat Properties Limited (1) The London Electricity Board (2)	60 years from 24 June 1973
2.	7 August 2014	31 Moorfields, London EC2	Souzel (1) CRL (2) the Administrators (3) the Tenant (4) LUL (5)	From 7 August 2014 until 30 September 2016 (unless terminated earlier)
3.	[To be completed with date of Crossrail Licence]	Airspace above ticket hall and station structures	The Tenant (1) CRL (2) LUL (3) the Developer (4)	From [] until 31 December 2018 (unless terminated earlier)

[Note: The transformer chamber underlease may be deleted if it has been surrendered.]

Executed as a Deed by **LONDON**)
UNDERGROUND LIMITED acting by)
two directors/a director and the)
secretary:)
)

Executed as a Deed by [*] acting by two)
directors/a director and the secretary:)
)
)
)

_____ 20__

LONDON UNDERGROUND LIMITED

[●]

**DEED OF SURRENDER
of Lease of
Land at Moorgate Station, Moorfields, London EC2**

APPENDIX 13

Form of Crossrail Licence between Souzel, the Tenant and TfL for occupation of the Supplemental Lease Premises

This is the Form of Crossrail Licence between Souzel, the Tenant and TfL for occupation of the Supplemental Lease Premises referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 14

Deed of Covenant to satisfy the restrictions on the proprietorship registers for Title Numbers NGL706929 and NGL147896

This is the Deed of Covenant to satisfy the restrictions on the proprietorship registers for Title Numbers NGL706929 and NGL147896 referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 15

(Reason: 1)

APPENDIX 16

(Reason: 1)

APPENDIX 17

(Reason: 1)

APPENDIX 18

(Reason: 1)

APPENDIX 19

Material Part (works packages)

1. Piling – substructure
2. Demolition Works
3. Substructure and Enabling Works
4. Steel – superstructure
5. Mechanical, electrical and public health
6. Cladding
7. Lifts

APPENDIX 20

Not Used

APPENDIX 21

Supplemental Lease

This is the Supplemental Lease referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 22

Railway Assets and Premises Plan

This is the Railway Assets and Premises Plan referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 23

Crossrail Programme (with indicative Handover Date)

This is the Crossrail Programme (with indicative Handover Date) referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 24

Super Pile Warranties

These are the Super Pile Warranties referred to in an Agreement dated _____ 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 25

Station Box / Ticket Hall Specifications and Plans

These are the Station Box / Ticket Hall Specifications and Plans referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 26

(Reason: 4)

APPENDIX 27

Plan of Developer's Area

This is the Plan of Developer's Area referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

APPENDIX 28

(REASON: 3)

APPENDIX 29

FORM OF DUTY OF CARE LETTER

This is the Form of Duty of Care Letter referred to in an Agreement dated 2015 made between Transport for London (1), London Underground Limited (2), Crossrail Limited (3), LS 21 Moorfields Development Management Limited (4), LS 21 Moorfields Limited (5) and Land Securities Property Holdings Limited (6).

For Transport for London

For London Underground Limited

For Crossrail Limited

For LS 21 Moorfields Development Management Limited

For LS 21 Moorfields Limited

For Land Securities Property Holdings Limited

