

Dated

2014

- (1) LONDON UNDERGROUND LIMITED
- (2) EC PROPERTIES GP LIMITED AND EC PROPERTIES NOMINEE LIMITED
- (3) CAPITAL & COUNTIES LIMITED

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Deed of Variation and Agreement for Demolition Works

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relating to Leases of Earls Court and 1 and 2 Exhibition Halls Warwick Road London SW5

## PARTICULARS

**Date**

**LUL** LONDON UNDERGROUND LIMITED (registered number 01900907) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL.

**EC** EC PROPERTIES GP LIMITED (registration number 7696161) and EC PROPERTIES NOMINEE LIMITED (registered number 7696994) both of whose registered office is at 15 Grosvenor Street, London W1K 4QZ.

**Guarantor** CAPITAL & COUNTIES LIMITED (registration number 00280739) whose registered office is at 15 Grosvenor Street, London W1K 4QZ

**EC1 Lease** A Lease dated 23 February 1959 made between (1) The British Transport Commission and (2) Earls Court Limited together with any deeds or documents varying or supplemental or ancillary to that lease

**EC2 Lease** A Lease dated 28 January 1991 made between (1) London Underground Limited and (2) Earls Court Limited and (3) The Peninsular and Oriental Steam Navigation Company together with any deeds or documents varying or supplemental or ancillary to that lease.

**Demolition Works Licence** a licence in the form of the draft annexed to this Deed or any replacement licence granted by LUL in accordance with this Deed.

**Demised Premises** the premises respectively demised by the EC1 Lease and the EC2 Lease.

**Demolition Works** the works EC proposes to carry out to demolish and remove the whole or parts of the buildings and /or any other elements either on or forming part of the Demised Premises.

**THIS DEED OF VARIATION** is made on the date set out in the Particulars

**BETWEEN**

- (1) LUL;
- (2) EC; and
- (3) Guarantor

**BACKGROUND**

- (A) The EC1 Lease and EC2 Lease were entered into by the persons whose names appear in the definition of the EC1 Lease and EC2 Lease respectively in the Particulars.
- (B) The parties to this Deed of Variation are now entitled to the benefit of the EC1 Lease and EC2 Lease and have agreed to vary them on the terms set out in this Deed of Variation.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

- 1.1 Words and expressions defined in the EC1 Lease and EC2 Lease have the same meanings in this Deed of Variation except to the extent that they are expressly varied by this Deed of Variation.
- 1.2 The provisions of the EC1 Lease and EC2 Lease relating to its interpretation apply to this Deed of Variation except to the extent that they are expressly varied by this Deed of Variation.
- 1.3 This Deed of Variation is supplemental to the EC1 Lease and EC2 Lease. A breach of this Deed is to be regarded as a breach of the EC1 Lease or EC2 Lease (as the case may be) and will permit LUL to exercise its right of re-entry under the EC1 Lease and EC2 Lease respectively.
- 1.4 The Particulars form part of this Deed of Variation and words and expressions set out in the Particulars are to be treated as defined terms in this Deed of Variation.
- 1.5 The expression "LUL" includes the person or persons for the time being entitled to the reversion immediately expectant upon the term of each of the EC1 Lease and the EC2 Lease.
- 1.6 The expression "EC" means the person (however described in the EC1 Lease and the EC2 Lease) in whom the EC1 Lease and the EC2 Lease are vested from time to time.

1.7 The parties to this Deed of Variation do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 2. **ADDITIONAL CLAUSES**

2.1 The following definitions are to be entered into the EC1 Lease and EC2 Lease:

2.1.1 "Adverse Effect means an adverse effect in any respect on the Operation of the Railway (as determined by the Engineer) pursuant to the provisions of clause 4(7) of the EC1 Lease and clause 6(14) of the EC2 Lease respectively".

2.1.2 "Demolition Works Licence means a licence in the form of the draft annexed hereto or any replacement licence granted by the Landlord in accordance with this Deed of Variation"

And the EC1 Lease and EC2 Lease are to be read and interpreted as if the Demolition Works Licence were annexed to the EC1 Lease and EC2 Lease respectively.

2.1.3 "Demolition Works means the works the Tenant proposes to carry out to demolish and remove the whole or parts of the buildings and/or any other elements either on or forming part of the demised premises".

2.1.4 "Engineer means the appropriately qualified engineer appointed or employed by the Landlord at any time for the purposes of providing professional engineering services to the Landlord".

2.1.5 "LUL Standards means the rules and regulations including codes of practice and standards (including any rules and regulations of the Rail Safety and Standards Board) as specified from time to time by the Landlord and in the event of any inconsistency between different rules, regulations, codes of practice or standards the Landlord's decision as to the hierarchy or application of each shall be final and conclusive."

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

2.1.7 "Railway means the Landlord's undertaking."

2.1.8 "Railway Premises means the property owned by the Landlord in connection with its undertaking."

2.1.9 "Repairing Notice means a notice served on the Tenant by the Landlord (acting properly) requiring repairs or other Works to be carried out to the Demised Premises".

2.1.10 "Works means any works of repair, maintenance, renewal, rebuilding, construction, reconstruction, alteration, improvement, demolition or other works"

2.2 For the purpose of the definitions in clause 2.1 above references in the EC1 Lease and/or EC2 Lease to the said Engineer or to the Authority's Engineer are to be construed as references to the Engineer and references to the Commission or the Railway Authority are to be construed as references to the Landlord and references to the Lessees are to be construed as references to the Tenant.

2.3 The following clause is inserted as a new clause 2(37) of the EC1 Lease:

"Not to begin the Demolition Works without giving prior written notice to the Engineer and entering into the Demolition Works Licence and complying with the terms of the Demolition Works Licence when carrying out the Demolition Works PROVIDED THAT if the Tenant has not commenced the Demolition Works within three years after the date of this Deed of Variation, the form of the Demolition Works Licence may be revised to the extent required to comply with the prevailing LUL Standards."

2.4 The following clause is inserted as a new clause 4(7) in the EC1 Lease: -

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

- (a) receive any representations and/or engineering or other professional advice which the Tenant may place before the Engineer; and
- (b) have regard only to matters properly relevant to the Operation of the Railway

Provided That the decision of the Engineer shall be final".

2.5 The following clause is inserted as a new clause 4(41) of the EC2 Lease:

"Not to begin the Demolition Works without giving prior written notice to the Engineer and entering into the Demolition Works Licence and complying with the terms of the Demolition Works Licence when carrying out the Demolition Works PROVIDED THAT if the Tenant has not commenced the Demolition Works within three years after the date of this Deed of Variation, the form of the Demolition

Works Licence may be revised to the extent required to comply with the prevailing LUL Standards."

2.6 The following clause is inserted as a new clause 6(14) in the EC2 Lease: -

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

- (a) receive any representations and/or engineering or other professional advice which the Tenant may place before the Engineer; and
- (b) have regard only to matters properly relevant to the Operation of the Railway

Provided That the decision of the Engineer shall be final".

2.7 The following clause is inserted as a new clause 1(K) of the EC1 Lease:

"(a) A right for the Landlord to enter onto the demised premises to inspect the Demolition Works (once commenced in accordance with clause 2(37)) on reasonable prior notice; and

(b) a right to enter and remain upon the demised premises with or without workmen, plant and materials for so long as is reasonably necessary to carry out the repairs or other works properly required by the Warning Notice (mentioned below in this clause) and in such a case the proper costs incurred by the Landlord (as evidenced by copies of all relevant invoices, receipts and quantity surveyor valuations as appropriate) in carrying out the repairs or other works properly required by the said Repairing Notice are to be paid by the Tenant to the Landlord within twenty eight (28) days of written demand together with interest on those costs at 4% per annum above the base rate of Barclays Bank from and including the date on which the payment is due and including the date on which they are paid;

PROVIDED THAT no notice is required by the Landlord in case of an emergency which affects the Operation of the Railway and in all other cases in respect of sub-clause (b) the Landlord has first served a Repairing Notice (in circumstances where the Demolition Works would or may cause an Adverse Effect or would otherwise cause a liability or potential liability for the Landlord to any third party) and the following procedures were first followed by the Landlord:

(i) Following service of the Repairing Notice the Tenant was given the opportunity to commence the carrying out of any repair or other works properly required by the Repairing Notice: -

- (A) Immediately in the case of an emergency or threat to safety and otherwise within the reasonable period specified in the notice; or
- (B) If no reasonable period was specified, within a reasonable period after the receipt of the Repairing Notice; and

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

- (ii) If the Tenant failed to comply with the Repairing Notice within the period referred to at sub-clause (i) above then (save in case of emergency) the Landlord must have also served on the Tenant a further written notice ("Warning Notice") specifying the Adverse Effect and setting out the repairs and/or works that the Landlord required the Tenant to carry out in order to ensure the Operation of the Railway and which specified a reasonable date by which the Tenant was to commence to remedy the same and the Tenant failed to do so.

2.8 The same clause (as that at 2.7 above) shall be inserted as a new paragraph 10 of Schedule 2 of the EC2 Lease except that in this case the reference is to the Demolition Works having commenced in accordance with clause 4(41) of the EC2 Lease.

2.9 The words "and any permanent structures constructed during any Demolition Works" are to be inserted on every occasion after the word "Raft" in clause 4(5) of the EC2 Lease and (in the same clause) the reference to a structural survey and report in every third year of the Term is amended to refer to every fourth year of the Term.

2.10 The following clause 4(5)A is inserted in the EC2 Lease after clause 4(5):

"To carry out or procure that inspections are carried out of any temporary structures constructed during any Demolition Works as often as are required by the designer of the temporary structure or as required by legislation or best practice, whichever is more frequent."

2.11 The same clause as at clause 2.10 above is inserted as a new clause 2(38) in the EC1 Lease.

### 3. **DELETION OF CLAUSES**

3.1 The EC1 Lease is to be read and interpreted as if clauses 1(G), 2,(2), 2(8), 2(18), 2(21), 2(33) and 2(34) were deleted from the EC1 Lease.

3.2 The EC1 Lease is to be read and interpreted as if the words "or to pull down or in any manner make any permanent alteration in the construction or arrangement of the demised premises or any permanent alteration in or injury to the walls timbers stanchions floors foundations or ceilings of the demised premises nor at any time permanently to block up darken obstruct or obscure any doorway passage window light grating manhole or opening belonging to the demised premises or to other premises of the Commission and not to permit any new window light opening or other encroachment or easement to be made into against or upon the demised premises which might be or grow to the damage annoyance or inconvenience of the Commission and that the Lessees will at the request and cost of the Commission adopt such means as may in the opinion of the Commission be expedient for preventing any such encroachment or the acquisition of any such easement" are deleted from clause 2(28) of the EC1 Lease.

3.3 The EC2 Lease is to be read and interpreted as if the words "or surrender the BR Lease" are deleted from clause 4(34) of the EC2 Lease.

#### 4. **ADDITIONAL PROVISIONS**

4.1 As from the date when EC has substantially commenced the Demolition Works in accordance with the terms of this Deed and the Lease all of the provisions of the EC1 Lease shall be read and construed as if the premises demised by the EC1 Lease (including the buildings and other elements forming part of them) and the tenant's obligations relating thereto only apply (as far as appropriate) to any elements which remain from time to time as the Demolition Works progress Provided That (without prejudice to the generality of the foregoing):-

4.1.1 LUL is to have due regard to the tenant's timing for commencement of the Demolition Works (and once started to the stage the Demolition Works have reached at any given time) and to the tenant's programme in this regard when seeking to exercise any rights reserved to the landlord in the EC1 Lease.

4.1.2 The tenant's obligations at clauses 2(5), 2(10), 2(13) and 2(16) of the EC1 Lease shall be limited to keeping those parts of the premises demised by the EC1 Lease (including buildings and other elements forming part of them whether temporary or permanent) in such a safe state and condition as is appropriate in the context of the Demolition Works until they are fully demolished and removed and these clauses and the landlord's rights at clause 2(13) and 2(16) shall be interpreted accordingly.

4.1.3 The tenant's obligations at clause 2(11) of the EC1 Lease shall be limited to ensuring the demised premises are kept secure at all times



and replacing any gates removed as part of the Demolition Works with appropriate secure hoardings or fences.

4.1.4 Clause 2(6) of the EC1 Lease is to be construed so that the tenant is authorised by the landlord to carry out the Demolition Works and does not require any further authorisations consents or approvals from the landlord to begin and carry out the Demolition Works provided that it has first complied with clause 2(37) and those of the Tenant's obligations under the Demolition Works Licence which must be satisfied prior to the commencement of the Demolition Works and has obtained any necessary planning consents for the Demolition Works.

4.1.5 Clause 2(12) of the EC1 Lease shall be construed as only applying to what remains of the premises demised by the EC1 Lease (including buildings and other elements forming part of them) as remain from time to time and subject to the provisions of clause 4.1.2 above PROVIDED ALWAYS THAT the tenant is in no event required to replace any buildings (or other elements or items forming part of the premises demised by the EC1 Lease) which it has already demolished and removed as part of the Demolition Works provided further that the Tenant shall at all times maintain support or protection for the Railway and Railway Premises.

4.1.6 Clause 2(24) of the EC1 Lease shall be construed as only requiring (that in respect of the parts of the demised premises being demolished under the relevant demolition contract(s)) the tenant procures that its demolition contractor(s) insure the demised premises in accordance with the requirements of the Demolition Works Licence whilst any part of the Demolition Works is being carried out and so that the tenant is not required to reinstate replace or rebuild any damaged or destroyed parts of the demised premises being demolished at the relevant time.

4.1.7 Clauses 2(19), 2(25) and 2(26) of the EC1 Lease will cease to apply.

4.2 As from the date when EC has substantially commenced the Demolition Works all of the provisions of the EC2 Lease shall be read and construed as if the premises demised by the EC2 Lease (including the buildings and other elements forming part of them) and the Tenant's obligations relating thereto only apply (as far as appropriate) to any elements which remain from time to time as the Demolition Works progress Provided That (without prejudice to the generality of the foregoing):

4.2.1 LUL is to have due regard to the tenant's timing for commencement of the Demolition Works (and once started to the stage the Demolition Works have reached at any given time) and to the Tenant's

programme in this regard when seeking to exercise any rights reserved to the landlord in the EC2 Lease.

- 4.2.2 The tenant's obligations at clauses 4(3)(a) and (c), 4(35) and 4(36) of the EC2 Lease shall be limited to keeping those parts of the premises demised by the EC2 Lease (including the Raft, buildings and other elements forming part of them whether temporary or permanent) in such a safe state and condition as is appropriate in the context of the Demolition Works until they are fully demolished and removed and these clauses and the landlord's rights at clauses 4(6)(a), 4(7) and 4(8) shall be interpreted accordingly.
- 4.2.3 Clause 4(5) of the EC2 Lease shall continue to apply to the whole or any part of the Raft and any temporary or permanent structures constructed during the Demolition Works but for the avoidance of doubt will cease to apply to any part of the Raft which has been demolished in accordance with clause 4(41).
- 4.2.4 Clauses 4(10), 4(13), 4(14) and 4(15) of the EC2 Lease will cease to apply.
- 4.2.5 Clause 4(4) of the EC2 Lease shall be construed as only applying to what remains of the premises demised by the EC2 Lease (including the Raft and the buildings and other elements forming part of them) as remain from time to time and subject to the provisions of clause 4.2.2. above Provided Always That the tenant is in no event required to replace the Raft or any buildings (or other elements or items forming part of the premises demised by the EC2 Lease) which it has already demolished and removed as part of the Demolition Works provided further that the Tenant shall at all times maintain support or protection for the Railway and Railway Premises.
- 4.2.6 Clauses 4(16)(a), 4(20)(b) and (c) and 4(25) of the EC2 Lease are to be construed so that the tenant is authorised by the landlord to carry out the Demolition Works and does not require any further authorisations consents or approvals from the landlord to begin and carry out the Demolition Works provided that it has first complied with clause 4(41) and those of the Tenant's obligations under the Demolition Works Licence which must be satisfied prior to the commencement of the Demolition Works and has obtained any necessary planning consents for the Demolition Works.
- 4.2.7 Clauses 4(23)(a) and (c), and 4(29) of the EC2 Lease shall be construed as only requiring (that in respect of the parts of the demised premises being demolished under the relevant demolition contract(s))

the tenant procures that its demolition contractor(s) insure the demised premises in accordance with the requirements of the Demolition Works Licence whilst any part of the Demolition Works is being carried out and so that the tenant is not required to reinstate replace or rebuild any damaged or destroyed parts of the demised premises being demolished at the relevant time.

**5. CONSENT FOR DEMOLITION WORKS**

5.1 LUL hereby consents to EC carrying out the Demolition Works provided that EC shall not commence them without having complied with:

5.1.1 its obligations under clauses 2.2 and 2.3 of this Deed of Variation; and

5.1.2 any obligations on its part under the Demolition Works Licence which must be satisfied prior to the commencement of the Demolition Works.

**6. EFFECTIVE DATE**

The amendments to the EC1 Lease and the EC2 Lease made by this Deed and all other provisions of this Deed take effect from and including the date of this Deed.

**7. OBLIGATIONS IN THE PRINCIPAL DEEDS**

7.1 The terms of the EC1 Lease and EC2 Lease continue in effect as amended by this Deed of Variation and subject to the provisions of Clause 4.

7.2 For the purposes of section 2 Law of Property (Miscellaneous Provisions) Act 1989, the terms of the EC1 Lease and EC2 Lease, as varied by this Deed of Variation, are incorporated into this Deed of Variation.

7.3 This Deed of Variation does not release any party to it from any breaches of the EC1 Lease and EC2 Lease existing at the date of this Deed of Variation.

**8. GUARANTOR'S OBLIGATIONS**

9. The Guarantor agrees with LUL that the guarantee given by it to LUL in the licence to assign the EC1 Lease (dated 3 October 2012) is not released or varied by this Deed of Variation and applies to the EC1 Lease as amended by this Deed of Variation.

**10. REGISTRATION**

10.1 EC agrees to make an application to the Land Registry to note this Deed of Variation on the registers of title numbers BGL71588, LN176409 and NGL680303

and, on completion of the registration, promptly to provide official copies of those title numbers to LUL showing that the registration has been made.

10.2 LUL consents to this Deed of Variation being registered by EC on the registers of title number BGL71588.

11. **EXECUTION**

LUL and EC and the Guarantor have executed this Deed of Variation as a deed and it is delivered on the date set out in the Particulars.

Executed as a deed by affixing )  
the common seal of )  
**LONDON UNDERGROUND LIMITED** )  
in the presence of: )

*Authorised Signatory*

**EXECUTED** as a deed by  
**EC PROPERTIES GP LIMITED** acting by two  
directors or a director and a secretary

<i>Signature</i>	Director
<i>Print name</i>	

<i>Signature</i>	Director/Secretary
<i>Print name</i>	

**EXECUTED** as a deed by  
**EC PROPERTIES NOMINEE LIMITED** acting  
by two directors or a director and a secretary

<i>Signature</i>	Director
<i>Print name</i>	

<i>Signature</i>	Director/Secretary
<i>Print name</i>	

Signed as a deed by )  
**CAPITAL & COUNTIES LIMITED** )  
acting by two directors or )  
one director and its secretary )

Signature of director

Signature of director/secretary

