

DATED \_\_\_\_\_ 2014

LONDON UNDERGROUND LIMITED (1)

and

EC PROPERTIES LP acting by its general  
partner EC PROPERTIES GP LIMITED (2)

and

CAPITAL & COUNTIES LIMITED (3)

---

LICENCE TO CARRY OUT WORKS

on LUL land at

Earls Court  
in the London Borough of Kensington and Chelsea

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

This Licence is made the                      day of                      two thousand and fourteen

BETWEEN:

- (1) LONDON UNDERGROUND LIMITED (company registration number 1900907) whose registered office is at 42-50 Windsor House, Victoria Street, London SW1H 0TL ("**LUL**")
- (2) EC PROPERTIES LP (registered number LP014695) acting by its general partner EC PROPERTIES GP LIMITED (company registration number 07696161) of 15 Grosvenor Street London W1K 4QZ ("the **Licensee**")
- (3) CAPITAL & COUNTIES LIMITED (company registration number 00280739) whose registered office is at 15 Grosvenor Street, London W1K 4QZ ("the **Guarantor**")

WHEREAS:-

- (a) LUL is the registered proprietor of the freehold property known as the Earls Court Complex and Lillie Bridge Depot, Lillie Bridge, London registered at the Land Registry under title numbers BGL71558, BGL72349, BGL101021 and NGL631813 shown edged red on Plan 1 (including Lillie Bridge Depot hereinafter called "**LUL's Railway Land**");
- (b) The Licensee wishes to demolish the infrastructure known as Bridge 19 (hereinafter the "**Main Works**");
- (c) In order to carry out the Main Works the Licensee is desirous of entering the part of LUL's Land shown shaded pink on Plan 2 ("**LUL's Land**") for the purpose of carrying out the works briefly described in Annex 1 to facilitate the Main Works (hereinafter called "**the Licensed Works**").

IT IS AGREED as follows:

#### 1. **DEFINITIONS**

In this Licence the following expressions shall, unless the context requires otherwise, have the following meanings:-

- 1.1 "Access Date" means 9 June 2014;
- 1.2 "ACoP" means the Approved Code of Practice under the CDM Regulations;
- 1.3 "Adverse Effect" means an adverse effect in any respect on the Operation of the Railway (as determined by the Engineer in accordance with Paragraph 16 of Schedule 1 to this Licence);
- 1.4 "Appointment" means an appointment or agreement to be entered into with any person or entity in respect of the provision of consultancy services with a material design role in connection with any Licensed Works;
- 1.5 "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 LUL's Land and/or its use and occupation and includes any person or body acting under their authority;
- 1.6 "Base Rate" means either the base lending rate of Barclays Bank plc or such other clearing bank nominated by LUL at any time or, if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as LUL may reasonably determine;
- 1.7 "Bridge 19" means the bridge structure spanning the West London railway line in the location shown on Plan 2;
- 1.8 "Building Contract" means a contract or contracts or Subcontract to be entered into in respect of the carrying out or implementation of any Licensed Works;
- 1.9 "Consultant" means a person appointed under an Appointment;

- 1.10 "Contractor" means a person employed under a Building Contract;
- 1.11 "Contractor's All Risks Insurance" means insurance against damage caused by any of the following events:- fire, lightning, earthquake, subsidence, heave, explosion, terrorism, aircraft (other than hostile aircraft) and aerial devices or articles dropped therefrom riot and civil commotion and malicious damage storm tempest bursting or overflowing of water tanks apparatus or pipes flood impact theft and such other usually insurable risks as LUL shall reasonably prescribe;
- 1.12 "Deleterious Materials" means any products, substances or materials or any combination of them which at the time of specification are specified as deleterious materials in the relevant Appointments or the Building Contract or which otherwise (at the time of specification):
- 1.12.1 do not conform with British or (where applicable) European Standards or codes of practice or the recommendations of the Building Research Establishment; and
- 1.12.2 are generally known to the building profession to be deleterious to health and safety, the performance or durability of buildings or structures or damaging to the environment in the particular circumstances in which they are specified to be used or are used;
- 1.13 "Engineer" means LUL's Principal Infrastructure Protection Engineer for the time being or such other person as may be nominated by LUL in writing from time to time to exercise the Engineer's powers under this Licence;
- 1.14 "Implementation Agreement" means the agreement dated \_\_\_\_\_ and made between (1) EC Properties LP Limited (2) TTL Earls Court Properties Limited (3) JV Entity (4) EC Properties Management Limited (5) Capital & Counties Limited (6) EC Properties LP (7) London Underground Limited and (8) Transport for London.
- 1.15 "Insolvency Event" means any one or more of the following:
- 1.15.1 an encumbrancer takes possession of or a receiver is appointed over any property or assets of the Licensee;
- 1.15.2 the Licensee makes any voluntary arrangements with its creditors or is subject to an administration order;
- 1.15.3 being an individual, the Licensee is the subject of a bankruptcy petition;
- 1.15.4 being a company, the Licensee is insolvent and/or goes into liquidation; or
- 1.15.5 the Licensee ceases or threatens to cease carrying on business.
- 1.16 "JV Entity" means Earls Court Partnership Limited a private limited company registered in England, (CRN: 8872070) whose registered office is at 15 Grosvenor Street, London, W1K 4QZ or any limited liability partnership into which such entity may be converted.
- 1.17 "Lease" means the 999-year lease of premises including LUL's Land to be entered into between (1) LUL and (2) JV Entity pursuant to an Option Agreement made between (1) LUL and (2) JV Entity dated \_\_\_\_\_.
- 1.18 "Legislation" means all Acts of Parliament and other public or local legislation having legal effect in the United Kingdom together with:
- 1.18.1 all secondary legislation made under that legislation including statutory instruments, rules, order, regulations, notices, directions, bye laws and permissions for the time being made under or deriving validity from any Act of Parliament or other public or local legislation;

- 1.18.2 any European directive or regulations and rules having the force of law in the United Kingdom; and
- 1.18.3 any regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over works being carried out by the Licensee;
- 1.19 "Licensed Works" has the meaning given to it in recital (c);
- 1.20 "LUL's Costs" means all proper costs, charges, expenses and fees properly incurred by LUL due to and arising from the carrying out of any Licensed Works or other matters in respect of which the Licensee is liable to pay LUL's costs and expenses and (for the avoidance of doubt) this may include LUL's proper internal and professional costs payable in accordance with Paragraph 9 of Schedule 1 to this Licence;
- 1.21 "LUL's Land" has the meaning given to it in recital (c);
- 1.22 "LUL's Railway Land" has the meaning given to it in recital (a)
- 1.23 "LUL Standards" means those documents published from time to time by LUL containing requirements relating to the design, construction, safety, operation, maintenance or use of LUL's railway undertaking or relating to works carried out in the vicinity of LUL's railway undertaking, such LUL Standards being made available to the Licensee as required from time to time;
- 1.24 "Main Works" has the meaning given to it in recital (b);
- 1.25 "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 LUL's Railway Land including the safety of the public, passengers and persons employed in connection with the Railway;
- 1.26 "Plan 1" means the plan annexed and marked "1";
- 1.27 "Plan 2" means the plan annexed and marked "2";
- 1.28 "Prescribed Rate" four per centum (4%) per annum above Base Rate from time to time;
- 1.29 "Railway" means the railway business or businesses or railway undertaking or undertakings carried on by LUL or its successors in respect of the London underground system or any similar public transport system running on under over or through LUL's Railway Land;
- 1.30 "Subcontract" means a contract for the appointment of a subcontractor with design responsibility for any of the Licensed Works;
- 1.31 "Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday or other public holiday in England;
- 1.32 "Works Documents" means checked calculations detailed drawings specifications programmes method statements risk assessments and any other information reasonably required by LUL in relation to the Licensed Works prepared in accordance with the relevant LUL Standards;
- 1.33 Where the Licensee is more than one person, all such persons shall be jointly and severally liable for the obligations and liabilities of the Licensee arising under this Licence;
- 1.34 Words importing one gender include all other genders words importing the singular include the plural and vice versa and any reference to a person includes a reference to any legal or natural person or authority board department or other body;

- 1.35 The clause headings do not form part of this Licence and shall not be taken into account for the purposes of its construction or interpretation;
- 1.36 Any covenant by the Licensee not to do or omit any act or thing shall include a covenant by the Licensee not to permit or suffer it to be done or omitted by its employees, contractors (including their subcontractors (if any)) or agents;
- 1.37 References to clauses without further designation are references to the respective clauses of this Licence;
- 1.38 References to "LUL" include LUL's employees, contractors and agents.

## 2. LICENCE

- 2.1 In consideration of the payment referred to in clause 4 and of the obligations on the part of the Licensee in this Licence, LUL grants to the Licensee its employees contractors (including their subcontractors (if any)) and agents licence and authority to carry out the Licensed Works on LUL's Land in accordance with the terms of this Licence (including Schedule 1) at all times of the day and night.
- 2.2 The licence hereby granted shall be for a period of 104 weeks commencing on the date of this Licence (subject to earlier determination provided for herein), provided that the licence shall automatically expire upon completion of the Lease.

## 3. LICENSEE'S OBLIGATIONS

The Licensee covenants with LUL to observe and perform the obligations and conditions in this Licence as follows:

### 3.1 Access

- 3.1.1 LUL shall provide and the Licensee shall have access to LUL's Land on and from the Access Date at all times with or without workmen, vehicles, plant and equipment to carry out the Licensed Works.
- 3.1.2 LUL shall use all reasonable endeavours to procure that before the Access Date (i) LUL shall have removed from LUL's Land all plant, machinery, vehicles, tools, equipment, goods, materials, waste or temporary works belonging to LUL or any third party (the "**LUL Property**") and (ii) a sufficient number of parking spaces at LUL's new car park at Lillie Bridge Depot shall be available for use to accommodate the vehicles which use the outer car park within LUL's Land. Notwithstanding the foregoing, if before the Access Date:
- (a) LUL shall have failed to so remove the LUL Property, the Licensee shall cooperate with LUL with a view to the LUL Property being stored at the northern end of LUL's Land or such other location as the Licensee may from time to time notify to LUL (but without being responsible for any loss or damage save in the case of wilful default or loss or damage caused intentionally by the Licensee), provided that:
- (i) the Licensee shall provide LUL with access to collect the LUL Property at all reasonable times upon reasonable prior written notice;
- (ii) without prejudice to the generality of the foregoing, the Licensee shall be entitled to remove the LUL Property from LUL's Land if it has not been collected by 12 December 2014; and

- (iii) if LUL has not collected the LUL Property by 31 March 2015 the Licensee shall have no duty, obligation or liability, whether express or implied, to store or otherwise in respect of the LUL Property;
    - (b) LUL's new car park at Lillie Bridge Depot is not available for such use, then until such time as that car park is available for such use the Licensee shall cooperate with LUL with a view to providing LUL with the use of land to accommodate the same number of car parking spaces as are comprised within the outer car park within LUL's Land at the date of this Licence, provided that:
      - (i) the provision of such car parking spaces shall be subject to availability and the may be at the land known as the blue car park at the Empress State Building or such other reasonably proximate location as the Licensee may from time to time notify to LUL; and
      - (ii) the Licensee shall have no duty, obligation or liability, whether express or implied, to provide LUL with the use of car parking spaces after 31 March 2015.
- 3.1.3 It is acknowledged that the Licensee has given LUL sufficient notice of the commencement of the Licensed Works and that LUL has confirmed its acceptance of the same.
- 3.1.4 Every person who enters upon LUL's Land in pursuance of this Licence will be required to have undergone basic safety training organised by LUL and to carry a permit issued by LUL and will be required to produce the permit for inspection by any employee contractor or agent of LUL upon demand. If a person fails to produce such a permit he shall be refused access to LUL's Land notwithstanding this Licence or if he has entered, shall leave LUL's Land immediately upon being requested to do so.
- 3.1.5 The Licensee its employees agents and contractors (including their subcontractors (if any)) shall observe such rules and regulations as LUL may make and of which LUL shall notify the Licensee from time to time governing the safety and/or protection of LUL's Land. Any person who has been hereby authorised to enter and fails to comply with such rules and regulations shall leave LUL's Land immediately on being requested to do so.

### 3.2 **Outgoings**

The Licensee shall pay all taxes rates charges and other outgoings payable in respect of the Licensed Works and its occupation of LUL's Land.

### 3.3 **Damage to LUL land**

The Licensee shall immediately make good to the satisfaction of LUL any damage (including decorative damage) to any land or building structure plant or machinery owned or controlled by LUL and which is caused in the exercise of the rights granted under this Licence (other than to the extent required to carry out the Licensed Works agreed by the Engineer).

### 3.4 **Indemnity**

The Licensee shall indemnify LUL and its employees and agents from and against all expenses liabilities losses and claims whatsoever in respect of:-

- 3.4.1 death or injury to any person;

- 3.4.2 loss or damage to property (including property belonging to LUL or for which it is responsible);
- 3.4.3 any other loss damage cost or expense

arising from or in consequence of the Licensee's performance or non-performance of its obligations under this Licence or the presence of the Licensee, its employees contractors (including their subcontractors (if any)) or agents on LUL's Land to the extent such injury loss damage cost or expense is caused by negligence, breach of statutory duty, act, omission or default of the Licensee or its employees, contractors (including their subcontractors (if any)) or agents provided always that the Licensee's liability to indemnify LUL as aforesaid shall be reduced proportionately to the extent that the act or negligence of LUL may have contributed to the injury loss damage and expense.

### 3.5 **Confidentiality and use of information supplied by LUL**

- 3.5.1 The Licensee shall not at any time disclose to any person any confidential information concerning the business, affairs, assets, infrastructure, customers or suppliers of LUL except as permitted by clause 3.5.2.
- 3.5.2 The Licensee may disclose the information described in clause 3.5.1:
  - (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Licensed Works provided that the Licensee shall ensure that its employees, officers, representatives or advisers to whom it discloses LUL's confidential information comply with this clause 3.5; and
  - (b) as may be required by law, court order or any governmental or regulatory authority.
- 3.5.3 The Licensee shall not use LUL's confidential information for any purpose other than in connection with the Licensed Works or the Main Works.

## 4. **COSTS**

The Licensee shall pay to LUL on the signing of this Licence the sum of one pound (£1.00) (if demanded).

## 5. **NO WARRANTY**

- 5.1 LUL gives no warranty as to the condition of LUL's Land or as to its suitability for the Licensed Works.
- 5.2 Nothing in this Licence implies any warranty as to the purpose for which the Licensee is permitted to use LUL's Land under planning legislation or any other statute.
- 5.3 LUL shall not be required to show any evidence of title and the Licensee shall not make any requisition or objection in respect of the power of LUL to grant this Licence.

## 6. **LUL'S UNDERTAKING**

- 6.1 The safety and operation of LUL's railway undertaking shall be a primary concern and shall not be subordinated to any other requirement under this Licence. For the avoidance of doubt the Engineer shall have absolute discretion in respect of railway safety matters and any decision made by the Engineer in connection with railway safety matters shall be final and binding.
- 6.2 The Licensee shall raise no objections to LUL in the carrying out of its lawful undertaking

notwithstanding that this may interfere with the permissions granted by this Licence.

## **7. NUISANCE AND INTERFERENCE**

- 7.1 The Licensee shall not do any act matter or thing which would or might constitute a breach of any statutory requirement affecting LUL's Land or which might reasonably be expected to vitiate in whole or in part any insurance effected in respect of LUL's Land from time to time.
- 7.2 The Licensee its employees agents and contractors (including their subcontractors (if any)) shall not use LUL's Land or exercise the rights granted under this Licence in such a way as to cause any nuisance damage obstruction disturbance to or interference with LUL's Land (other than to the extent required to carry out the Licensed Works agreed by the Engineer) or its officers servants or agents or any adjoining or neighbouring operations or property (whether owned or operated by LUL or otherwise).

## **8. DETERMINATION**

- 8.1 LUL may determine this Licence at any time with immediate effect by written notice of such determination to the Licensee (LUL not being liable for compensation for any loss or inconvenience caused to the Licensee as a consequence of such determination):
- 8.1.1 if the Licensee is in breach of any of the terms of this Licence and shall have failed to remedy the breach (if capable of remedy) within the timescales specified in any notice served on the Licensee by LUL specifying such breach;
- 8.1.2 in an emergency; and
- 8.1.3 where LUL shall be required to do so by another statutory authority.
- 8.2 This Licence shall determine immediately upon an Insolvency Event.
- 8.3 The Licensee shall be entitled to terminate this Licence on written notice at any time but without any right to a refund of any premium or any other payment made hereunder or any part thereof.
- 8.4 Any determination of this Licence shall be without prejudice to the accrued rights or remedies which either party may have against the other in respect of any antecedent claim or breach of the terms hereof.

## **9. OBLIGATIONS ON EXPIRY OR EARLIER DETERMINATION**

- 9.1 Subject to clause 9.2, before expiry or earlier determination of this Licence, the Licensee shall remove anything installed built or used on LUL's Railway Land as part of the Licensed Works make good any damage to LUL's Railway Land caused by the Licensed Works and reinstate LUL's Railway Land to LUL's satisfaction.
- 9.2 The Licensee shall not be required to comply with the requirements of clause 9.1 if before expiry or earlier determination of this Licence the Final Completion Date has occurred before the Longstop Date as defined in and pursuant to the Implementation Agreement.

## **10. GUARANTEE**

- 10.1 The Guarantor guarantees to LUL that the Licensee shall observe and perform the Licensee's obligations in this Licence and if the Licensor fails to observe and perform any of those obligations, the Guarantor will observe and perform them.
- 10.2 The Guarantor covenants with LUL as a separate and independent primary obligation to pay all costs, losses and expenses suffered by LUL arising out of or in relation to any failure by the Licensee to observe or perform any of the Licensee's obligations in this



Licence and shall indemnify LUL against any failure of the Guarantor to observe or perform the Guarantor's obligations under this clause 10;

- 10.3 The liability of the Guarantor under clauses 10.1 and 10.2 of this Licence shall continue until the earlier of (a) the expiry of a period of six years from the earlier of (1) the date of expiry of the period of this Licence or (2) the date of determination of this Licence, and (b) the date of novation of this Licence to the JV Entity pursuant to clause 12 of this Licence.
- 10.4 The liability of the Guarantor shall not be affected by:
- 10.4.1 any time or indulgence granted by LUL to the Licensee;
  - 10.4.2 any delay or forbearance by LUL in enforcing the observance or performance of any of the Licensee's obligations in this Licence;
  - 10.4.3 LUL exercising any right or remedy against the Licensee for any failure to observe or perform the Licensee's obligations in this Licence;
  - 10.4.4 any legal limitation or disability on the Licensee or any invalidity or irregularity of any of the Licensee's obligations in this Licence or any unenforceability of any of them against the Licensee;
  - 10.4.5 the Licensee being dissolved, or being struck off the register of companies or otherwise ceasing to exist; or
  - 10.4.6 by any other act or omission except an express written release of the Guarantor by LUL.
- 10.5 The liability of the Guarantor under this Deed shall not in any circumstances be greater than the liability which the Guarantor would have had if it had been the licensee under the Licence in place of Licensee.
- 10.6 Any payment or dividend that LUL receives from the Licensee (or its estate) or any other person in connection with any insolvency proceedings or arrangement involving the Licensee shall be taken and applied as a payment in gross and shall not prejudice the right of LUL to recover from the Guarantor to the full extent of the obligations that are the subject of this guarantee.
- 10.7 The following provisions shall apply if the Guarantor at any time requires to be released from its obligations under clause 10 of this Licence:
- 10.7.1 the Guarantor shall propose in writing a substitute guarantor (*Substitute Guarantor*) for approval by LUL; and
  - 10.7.2 the Substitute Guarantor shall enter into a deed of covenant with LUL in the same form or substantially in the form of this Licence and in accordance with the following provisions of this clause 10.
- 10.8 In connection with any such proposal and application for approval, the Guarantor will provide to LUL such information about the Substitute Guarantor as shall reasonably demonstrate that the good standing and repute and the financial standing and resources of the Substitute Guarantor are appropriate and sufficient to assume and discharge the obligations (both actual and contingent) on the part of the Licensee and the Guarantor contained in this Licence.
- 10.9 If any of the following circumstances applies, either at the date when application for LUL's approval is made or after that date but before LUL's approval is given, then LUL may withhold its approval and if after LUL's approval has been given, but before the said deed of covenant has been entered into, any such circumstances applies then LUL may revoke its approval until and if the circumstances cease to apply. The circumstances are:

- 10.9.1 that any sum properly due from the Licensee under this Licence remains unpaid;
  - 10.9.2 that there is a material breach of any of the covenants on the part of the Licensee in this Licence;
  - 10.9.3 that in LUL's reasonable opinion the Substitute Guarantor is a person who does not, or may become a person who does not, satisfy the requirements set out in clause 10.8;
  - 10.9.4 that the Substitute Guarantor is an entity registered or otherwise resident outside the United Kingdom; or
  - 10.9.5 that the Substitute Guarantor enjoys diplomatic or state immunity.
- 10.10 Subject to LUL having previously approved the identity of the Substitute Guarantor in accordance with this clause (such approval not to be unreasonably withheld or delayed), the Licensee's Solicitors shall provide to LUL's Solicitors three grossments of the said deed of covenant (having first been approved by LUL) duly executed and delivered in escrow by the Licensee and the Substitute Guarantor and for execution by LUL
- 10.11 The Guarantor's obligations under this Licence will cease and determine upon completion of such deed of covenant but such cesser and determination will be without prejudice to the Guarantor's liability for any antecedent breach of obligation by the Guarantor.

## 11. NOTICES

- 11.1 Any notice required to be given under this Licence shall be in writing and shall be sufficiently served if delivered by hand or sent by recorded delivery to the other party at the following address or as otherwise specified by the relevant party by notice in writing to the other party:

LUL  
LUL's Principal Infrastructure Protection Engineer  
London Underground Limited  
3rd Floor, Albany House  
Petty France  
London SW1H 0BD

Licensee  
The Company Secretary  
Capital & Counties Properties PLC  
15 Grosvenor Street  
London W1K 4QZ

- 11.2 Any notice shall be deemed to have been duly received if delivered by hand, on the date of delivery and if sent by recorded delivery, at 9.00am on the second working day after posting.

## 12. BENEFIT OF LICENCE

This Licence is personal to the Licensee and may not be assigned transferred novated or otherwise disposed of, provided that the Licensee may at any time novate this Licence to the JV Entity and within seven days following receipt of a written request therefor from the Licensee, the Licensee, the Guarantor, the JV Entity and LUL shall join in a novation of this

Licence in the form set out in Annex 2.

**13. ASSIGNMENT**

If LUL transfers, leases or otherwise disposes of its interest in LUL's Land, it shall procure that the purchaser, tenant or disponee shall at the same time enter into a Licence with the Licensee and, subject to any novation made pursuant to clause 12, the Guarantor on the same terms as this Licence.

**14. LEGAL EFFECT**

14.1 It is not the intention of either party to create between them the relationship of landlord and tenant in relation to LUL's Land or to confer such rights upon the Licensee as would amount in law to a tenancy of LUL's Land or to create any estate or proprietary interest therein.

14.2 Notwithstanding the fact that the parties' intention is to create a licence, in the event that this licence is held to be a lease which may attract the protection of Part II of the Landlord and Tenant Act 1954 (the "Act"), LUL and the Licensee agree to exclude the provisions of sections 24 to 28 the Act in relation to any tenancy created by this Licence. The Licensee confirms that before the date of this Licence:

14.2.1 LUL served on the Licensee a notice (the "Notice") in relation to the tenancy created by this Licence in a form complying with the requirements of Schedule 1 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

14.2.2 the Licensee, or a person duly authorised by the Licensee, in relation to the Notice made a statutory declaration (the "Declaration") in a form complying with the requirements of Schedule 2 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

14.2.3 where the Declaration was made by a person other than the Licensee, the declarant was duly authorised by the Licensee to make the Declaration on the Licensee's behalf; and

14.2.4 it was not contractually bound to enter into any tenancy created by this Licence.

14.3 LUL and the Licensee agree as a pre-condition to any novation of this Licence that LUL and the Licensee shall take all such steps as may be necessary to ensure that the provisions of sections 24 to 28 Landlord and Tenant Act 1954 are excluded from the novated Licence, including if required by LUL, LUL serving a new Notice and the novatee making a new Declaration in respect of the novated Licence.

**15. SCHEDULE 1**

The provisions of Schedule 1 are to apply as if incorporated in full in the main body of this Licence and each of the parties covenants to observe and perform its obligations and conditions in Schedule 1.

**16. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Licence shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence.

**17. GOVERNING LAW**

This Licence shall be governed by English law and disputes or differences arising under or in connection with this Licence shall be referred to the exclusive jurisdiction of the English Courts.

This Licence has been signed by the parties as a deed on the day and year written above.

The Common Seal of **LONDON UNDERGROUND LIMITED**  
was affixed to this Deed in the presence of:

)  
)  
)  
)  
)  
)  
Duly Authorised Signatory

**EXECUTED** as a deed by  
**EC PROPERTIES LP** acting by **EC PROPERTIES GP LIMITED**, general partner, acting by its attorney

*Signature*

as attorney for

in the presence of:

.....

*Print name*

*Witness signature*

*Print name (IN BLOCK CAPITALS)*

*Address*

Executed as a Deed  
by **Capital & Counties Limited**  
acting by:

Director

Director/Secretary

**SCHEDULE 1**  
**Conditions of Work**

**1. Approvals**

- 1.1 Prior to commencing each and every stage or phase of any Licensed Works the Licensee is to obtain all approvals, consents, permissions and licences (including any required under the Highways Act 1980) of any Authority that may from time to time be necessary to enable the Licensee lawfully to commence and to carry out that stage or phase of the Licensed Works and if any part of the Licensed Works are destroyed or damaged to reinstate them (the "**Approvals**").
- 1.2 The Licensee is to prepare written statements outlining the principles of the design and the methods to be used in carrying out any Licensed Works (the "**Concept Design Statement**") together with a timetable specifying when the Licensee will release the various elements of the Works Documents (the "**Information Release Schedule**") and is to submit the Concept Design Statement and the Information Release Schedule with a request for approval in principle by the Engineer (such approval not to be unreasonably withheld or delayed save where such Licensed Works would or are likely to have an Adverse Effect in which case such approval may be withheld in the absolute discretion of the Engineer). Subject to receiving such approval, the Licensee is to design and execute the Licensed Works in accordance with such approved Concept Design Statement and is to comply in all respects with the prevailing LUL Standards and those conditions of LUL that are notified in writing to the Licensee forming part of that approval.
- 1.3 In accordance with the Information Release Schedule, the Licensee is to submit to the Engineer all Works Documents as the Engineer may from time to time reasonably require showing comprehensive details of the manner in which each part of the Licensed Works shall be executed. The Licensee is not to commence the relevant part of the Licensed Works until such Works Documents relating to that part of the Licensed Works have been approved in writing by the Engineer (such approval not to be unreasonably withheld or delayed save where the manner of execution of such Licensed Works as shown in or inferred by or arising as a consequence of such Works Documents would or are likely to have an Adverse Effect in which case such approval may be withheld in the absolute discretion of the Engineer and the Engineer shall provide written reasons for his decision).
- 1.4 The Licensee is not entitled to commence or to permit the commencement of any Licensed Works or any part or parts of them until the Engineer has approved in writing the details submitted in accordance with paragraph 1.3 above.
- 1.5 The Licensee is not without first obtaining the written approval of the Engineer to make any material variation of or modification to the details approved by the Engineer under the terms of paragraph 1.3 above (such approval shall not be unreasonably withheld or delayed save where such variation or modification would or is likely to have an Adverse Effect in which case such approval may be withheld in the absolute discretion of the Engineer and the Engineer shall provide written reasons for his decision).
- 1.6 The Licensee is (where applicable) to procure and deliver to the Engineer for his written approval prior to the commencement of the Licensed Works (such approval not to be unreasonably withheld or delayed) the pre-construction health and safety plan (prepared in accordance with at least the recommendations of ACoP) and procure and deliver to LUL as soon as practicable following completion of the Licensed Works (but not later than two months after that date) a copy of the health and safety file prepared maintained and completed and updated as required by ACoP or any more stringent requirements of the CDM Regulations.

**2. Appointments, Building Contracts and Collateral Warranties**

- 2.1 Prior to entering into any Appointment or Building Contract in respect of any Licensed Works the Licensee shall submit to LUL the names of the consultants and/or contractors whom it intends to appoint or employ in connection with the Licensed Works (the

**"Appointment List"**). LUL (acting reasonably) shall be entitled within twenty (20) Working Days of receipt of the Appointment List to require the Licensee to remove a consultant and/or contractor from the Appointment List (LUL giving its written reasons for requiring such removal), in which event the Licensee shall not appoint such consultant and/or contractor, Provided That LUL shall not remove a consultant and/or contractor from the Appointment List without just cause where the relevant consultant and/or contractor is on the list of approved contractors and consultants from time to time in existence in respect of works undertaken for LUL (here meaning London Underground Limited or any of its group companies). If LUL fails to issue a request to remove a consultant and/or contractor within twenty (20) Working Days of receipt of the Appointment List, the Appointment List shall be deemed approved and the Licensee shall be entitled to appoint any of the consultants and/or contractors on such Appointment List. Any consultant and/or contractor whom LUL does not require to be removed from an Appointment List shall be an approved Consultant or approved Contractor (as the case may be) for the relevant Licensed Works for which the Licensee is seeking the consent of LUL.

- 2.2 The Licensee may submit to LUL any list of contractors and/or consultants to whom the Licensee proposes to invite to tender for any Licensed Works, for pre-approval by LUL, and LUL shall give due consideration to such list (the **"Tender List"**). LUL (acting reasonably) shall be entitled within twenty (20) Working Days of receipt of the Tender List to require the Licensee to remove a consultant and/or contractor from the Tender List (LUL giving its written reasons for requiring such removal). Any consultant and/or contractor whom LUL does not require to be removed from a Tender List shall be an approved Consultant or approved Contractor (as the case may be) for the purposes of the relevant Licensed Works for which the appointment is made only.
- 2.3 Any Appointment or Building Contract for any Licensed Works are to be entered into by the Licensee with consultants and/or contractors suitable for the type of work to be undertaken and in any event must be with an approved Consultant or an approved Contractor.
- 2.4 The forms of any proposed Building Contracts and any Appointments are:
- 2.4.1 other than the financial terms which may be redacted, to be approved by LUL (such approval not to be unreasonably withheld or delayed);
  - 2.4.2 to be executed as a deed; and
  - 2.4.3 to require that the Consultant or Contractor (as the case may be) maintains professional indemnity insurance and such other insurances for a duration and at a level which is reasonable having regard to the scope and complexity of the works being undertaken
- and the Licensee shall provide to LUL a copy of each Appointment and Building Contract certified as a true copy within five (5) Working Days of it being entered into.
- 2.5 The Licensee is to procure that any Consultant or Contractor undertaking or providing services in respect of any Licensed Works or part thereof shall before the commencement of the Licensed Works or relevant part of them enter into a collateral warranty with LUL in such form as LUL acting reasonably shall approve (or such other equivalent arrangements under which the Consultant or Contractor owes a duty of care to LUL for its services in respect of the Licensed Works acceptable to LUL acting reasonably to reflect current market practice from time to time) and if reasonably required by LUL such warranty or security shall include the provision of a parent company guarantee for such Consultant or Contractor and/or such other performance security, if any, as is reasonably in line with current market practice from time to time, in each case in such form as may be approved in writing by LUL (such approval not to be unreasonably withheld or delayed).
- 2.6 The Licensee is to use all reasonable endeavours to procure that each Contractor and Consultant complies with the terms of its Building Contract or Appointment insofar as they relate to the design or execution of the Licensed Works.

- 2.7 The Licensee is not, without the prior written consent of LUL, such consent not to be unreasonably withheld or delayed, to:
- 2.7.1 dismiss any Contractor or Consultant if such dismissal would be likely to cause an immediate danger or emergency in respect of the Railway;
  - 2.7.2 waive, release nor stop itself from enforcing or seeking redress for any breach of the Appointments or the Building Contracts insofar as they relate to the design or execution of the Licensed Works and would prejudice LUL's rights under the collateral warranty or other arrangement referred to in paragraph 2.5 above; or
  - 2.7.3 do or omit to do any act or thing which would entitle any Contractor or Consultant to treat its Building Contract or Appointment as terminated by breach if such termination would be likely to cause an immediate danger or emergency in respect of the Railway.
- 2.8 If there is any rescission, repudiation or termination of any Building Contract or Appointment before practical completion of the Licensed Works, the Licensee is as soon as practicable to notify LUL in writing of such rescission, repudiation or termination and the reasons for it and, if the Licensee wishes to continue with the Licensed Works, the Licensee shall use all reasonable endeavours to appoint another person, such appointment to be on the terms of this Schedule, in substitution for the person whose appointment was terminated.
- 2.9 If any Contractor or Consultant is in material default or commits a material breach of their obligations in relation to the Licensed Works or any part of it, the Licensee will use all reasonable endeavours to enforce its rights and remedies in respect of that breach if such default or breach would be likely to cause an Adverse Effect;
- 2.10 The Licensee is to comply (and procure compliance by the Contractors and any Consultants designing or carrying out Licensed Works at LUL's Land) with:
- 2.10.1 all relevant LUL Standards; and
  - 2.10.2 such relevant and reasonable and proper requirements as LUL may make and of which LUL notifies the Licensee in writing from time to time to avoid or remedy an Adverse Effect during the Licensed Works and during any subsequent maintenance repair or renewal of the Licensed Works and notified to the Licensee in writing.
- 3. Conduct of the Licensed Works**
- 3.1 The Licensed Works shall be designed with all due skill and care reasonably to be expected of design consultants engaged in preparing designs for comparable works affecting Railway and shall be carried out and completed:
- 3.1.1 in a good and workmanlike manner;
  - 3.1.2 using good quality materials of their several kinds;
  - 3.1.3 free from Deleterious Materials;
  - 3.1.4 in accordance with all relevant British or (where applicable) European Standards and codes of practice;
  - 3.1.5 in accordance with the relevant local authority's Considerate Contractor's Scheme or any replacement or substitute scheme;
  - 3.1.6 in accordance with all relevant LUL Standards.
- 3.2 The Licensee is to comply and procure compliance by the Consultants and Contractors and the Licensee's agents and sub-contractors with all Legislation which may affect LUL's Land or which relate to the Railway and which affect or may affect the design or construction of any Licensed Works.
- 3.3 The Licensed Works shall be carried out in full compliance with the materials and Works Documents approved by the Engineer subject only to:

- 3.3.1 such material modifications as may be requested by the Licensee and approved in writing by the Engineer (such approval not to be unreasonably withheld or delayed save where such modified Licensed Works would or are likely to have an Adverse Effect in which case such approval may be withheld in the absolute discretion of the Engineer and the Engineer shall provide written reasons for his decision); and
- 3.3.2 non-material and inconsequential modifications.
- 3.4 Subject to paragraph 3.5 below, once commenced, the Licensee shall proceed with the Licensed Works with all reasonable speed to the reasonable satisfaction of the Engineer so as to complete the same as soon as reasonably practicable in full conformity with all statutory and regulatory and other consents and approvals and LUL Standards.
- 3.5 The Licensee may discontinue at any time the execution of Licensed Works but, if it shall do so, the Licensee shall ensure to the satisfaction of LUL that the Licensed Works, as then carried out, do not have and do not potentially have an Adverse Effect or cause an increased cost to LUL in relation to the Operation of the Railway.
- 3.6 The Licensee is to keep the Engineer informed of material measures taken and stages reached by the Licensee in performing its obligations under this Schedule, the progress of and any material problems or delays affecting the Licensed Works and shall on request supply promptly to LUL copies of all material documents, reports, revisions to the health and safety plan, written records and minutes of site or other relevant meetings prepared in respect of the Licensed Works.
- 4. Instructions, site visits and Inspections**
- 4.1 The Licensee is not to commence the Licensed Works without first procuring (LUL being entitled to require that access is on an accompanied and supervised basis) the carrying out, at its own cost, of a detailed condition survey of any part of the Railway likely to be affected by the Licensed Works by a reputable and appropriately qualified professional and providing a copy of such survey report with all relevant supporting information, to the Engineer within five (5) Working Days of the production of the report. If the report contains a recommendation that further investigations are required, or LUL reasonably considers that further investigations are required as a result of the report, the Licensee shall arrange at its own cost, for such further investigations as LUL may require. The process of procuring the carrying out of a condition survey is also to be repeated (on an accompanied and supervised basis if required by LUL) at the Licensee's cost immediately following completion of the Licensed Works and, where reasonably requested by LUL, at appropriate interim points during the course of the Licensed Works.
- 4.2 At all times whilst carrying out any Licensed Works the Licensee is to appoint a suitably graded trained and experienced representative who is identified to and approved by the Engineer (such approval not to be unreasonably withheld or delayed) as the designated Licensee's Railway Representative ("Licensee'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 Licensed Works, plant and materials and general health and safety matters and to be the person to whom any issue that LUL wishes to raise in connection with the Licensed Works should be communicated and to communicate to the Contractor any instructions properly given by the Engineer in accordance with the terms of this Licence. The Licensee is to procure that such person (or any alternate appointed and approved in accordance with this paragraph 4.2) shall (or such person's or alternative person's nominee shall) be available on site during the Contractor's normal working hours and shall be available by telephone 24 hours a day throughout the duration of the Licensed Works.
- 4.3 In the event LUL has material and persistent problems communicating with and/or receiving co-operation from the Licensee's Railway Representative as a result of the Licensee's Railway Representative's default (where LUL is entitled to such communication and/or co-operation pursuant to this Schedule) LUL shall be entitled (after



- consultation with the Licensee) to require that the Licensee replace the Licensee's Railway Representative.
- 4.4 The Licensee is to make available or procure the availability for inspection by the Engineer at all reasonable times and on reasonable notice (save in case of emergency) copies of all registers, forms and certificates that the Licensee and the contractors are obliged to hold or maintain by virtue of any Legislation in respect of any scaffold, material, plant and machinery, equipment or operation used in connection with the Licensed Works.
- 4.5 The Engineer shall be entitled:
- 4.5.1 without prejudice to paragraph 4.5.3 below at all reasonable times by prior arrangement with the Licensee to inspect the Licensed Works but in so doing the Engineer shall:
- (a) not impede or obstruct the progress of the Licensed Works or any other Works save in case of immediate danger or emergency in respect of the Railway;
  - (b) not issue any instructions to the Contractor or any workmen employed at LUL's Land or any Consultants but will address any requirement, comment or complaint only to the Licensee or the Licensee's Railway Representative; and
  - (c) comply with the reasonable requests of the Contractor and the Licensee in relation to the access to the premises, including as to health, safety and security;
- 4.5.2 where he believes reasonably necessary to do so, to test and take samples of materials and workmanship subject to compliance with paragraphs 4.5.1(a) and 4.5.1(b) (inclusive) and the Licensee shall give all necessary instructions to allow such a test to be carried out;
- 4.5.3 to give instructions in respect of the carrying out of the Licensed Works to:
- (a) the Licensee's Railway Representative(s) with a view to avoiding any Adverse Effect or where the Engineer has a mandatory duty or professional obligation to address unsafe working practices or any other immediate construction risk; or
  - (b) (where the Engineer has reasonable grounds to believe that there is an immediate danger or emergency) any Consultants, Contractors or other persons on LUL's Land,
- (provided always that the Engineer confirms such instructions to the Licensee's Railway Representative(s) in writing within five (5) Working Days); or
- 4.5.4 to make representations to the Licensee and the Licensee's Railway Representative about the Licensed Works.
- 4.6 The Licensee shall whenever reasonably practicable ensure that the Engineer is given not less than five (5) Working Days prior notice of the date and time of all formal site meetings relating to the Licensed Works and shall permit the Engineer to attend all such site meetings.
- 4.7 Where the Engineer, acting reasonably, believes that it would be useful to have a meeting between the Licensee, Licensee's Railway Representative, Engineer, Contractor and/or Consultant (as may be appropriate) in relation to the Licensed Works, the Engineer shall notify the Licensee and the Licensee shall facilitate such request as soon as reasonably practicable following receipt of the same.
- 4.8 The Licensee, the consultants, contractors and the Licensee's agents and sub-contractors may be required by the Engineer to stop work or remove from any Licensed Works any scaffold, material, plant and machinery or equipment which the Engineer

considers may cause damage or be a hazard to the Railway and which does not comply with the details of the Licensed Works previously approved by the Engineer.

- 4.9 If in the course of carrying out the Licensed Works the Licensee shall:
- 4.9.1 use any materials or execute any Licensed Works (not being materials or Licensed Works for which specific provision is made in the materials previously approved by the Engineer) which the Engineer shall on reasonable grounds consider materially inferior or unfit for the purpose intended or would or is likely to cause an Adverse Effect;
  - 4.9.2 execute any work which the Engineer shall on reasonable grounds consider have not been constructed in accordance with the agreed design (other than work which is usually included as items of snagging); or
  - 4.9.3 make any deviation of substance from the materials approved by the Engineer and the deviation is not approved by the Engineer;

the Licensee shall upon receipt of written notice from the Engineer requiring it so to do take all necessary steps to remedy the same and if the Licensee fails to commence and thereafter diligently rectify the same within thirty (30) Working Days after such notice then it shall be lawful for LUL and their respective agents and workmen to take such steps to rectify the same and the proper costs and expenses of so doing shall be paid by the Licensee in accordance with paragraph 9 of this Schedule 1.

## 5. **Safety and consideration of environs**

- 5.1 The Licensee is to procure that:
- 5.1.1 proper provision is made for the security and protection of the Railway during the carrying out of the Licensed Works and for the protection of any materials, Plant and Equipment serving the Railway and if reasonably required by LUL the Licensee is to provide the Engineer with suitable site accommodation in accordance with LUL Standards;
  - 5.1.2 proper precautions are taken for the safety of all persons upon or in the vicinity of the Railway including maintaining such hoardings, fences, security patrols, safeguards and arrangements of lighting the Licensed Works and other security measures as LUL or any competent statutory or other Authority may consider necessary or desirable in the interest of public safety or the safety of employees or passengers of LUL or other persons upon the Railway or (if LUL shall provide any of these after consultation with the Licensee (save in the case of emergency)) repay to LUL the proper costs of so doing;
  - 5.1.3 the Licensed Works are carried out in a manner which does not cause any nuisance, injury, loss or danger or interference to the Railway or to LUL or its officers servants agents or persons making use of the Railway and minimises any actionable annoyance or interference or inconvenience; and
  - 5.1.4 proper provision is made for the support of the Railway and for the protection of all services benefiting the Railway.
- 5.2 The Licensee shall in connection with the Licensed Works (and unless otherwise agreed by LUL):
- 5.2.1 procure that the rights and interests of third parties are not infringed by the carrying out of the Licensed Works, provided that the Licensee has notice of such rights and interests, in sufficient time for them to be taken into account prior to the Engineer's written approval of the Concept Design Statement and the Information Release Schedule in accordance with paragraph 1.2 of this Schedule 1;
  - 5.2.2 at its own cost secure necessary access to or use of any land not owned by LUL and required temporarily or permanently in connection with the carrying out of the Licensed Works;

- 5.2.3 negotiate the terms of any agreements with owners and occupiers of neighbouring property for the release of rights of way, light and air or any other legal or equitable rights over LUL's Land, the Railway which would be infringed by or prevent or impede the carrying out of the Licensed Works;
- 5.2.4 apply for and use all reasonable endeavours to obtain any orders which may be required for the temporary stopping-up or temporary diversion of any highways, footpaths or public rights of way to the extent that these may be required to enable the Licensed Works to be carried out at its own cost take all necessary steps (including the placing and processing of orders) to arrange with the appropriate party for any temporary or permanent diversion of any conduits or Licensed Works and for any road closure or traffic diversions as may be necessary for the carrying out of any Licensed Works in such a manner as not to render LUL in any way liable in respect thereof provided always that the Licensee shall not interfere with the access to or from any of the utilities or conduits which serve the Railway without the prior written approval of the Engineer (such approval not to be unreasonably withheld or delayed unless such interference would or would be likely to have an Adverse Effect in which case the Engineer shall be entitled to withhold such approval in his absolute discretion) and that LUL may elect to carry out at the Licensee's expense any such temporary or permanent modification or diversion of such utilities or conduits.
- 5.3 The Licensee is not to do any act matter or thing in connection with any Licensed Works which would or is likely to constitute a breach of any Legislation affecting the Railway or is likely to vitiate in whole or in part any insurance effected in respect of the Railway the terms of which insurance have been notified to the Licensee in writing.
- 5.4 Unless otherwise required by the Engineer or agreed in writing the Licensee is prior to or within a reasonable time following the completion of the Licensed Works or earlier vacation of the site of the Licensed Works and to the reasonable satisfaction of the Engineer to reinstate and make good any damage caused by execution of the Licensed Works to any of the Railway and any plant and machinery thereon and any existing Licensed Works having regard to the carrying out of the Licensed Works. Such reinstatement and making good is to comply with LUL Standards in force at the time of reinstatement and notified to the Licensee in writing.
- 6. Insurance**
- 6.1 During the carrying out of any Licensed Works the Licensee is to effect and maintain with substantial and reputable insurers (undertaking business in the United Kingdom or through underwriters at Lloyds) for the composite interests of, inter alia, LUL and the Licensee and on terms approved by LUL (such approval not to be unreasonably withheld or delayed):
- 6.1.1 public liability insurance for not less than fifty million pounds (£50,000,000) in respect of each and every occurrence against:
- (a) damage to the Railway or any other property arising out of or in the course of and caused by the execution of the Licensed Works (including subsidence movement removal of ground support heave and change in the water table);
  - (b) personal injury to or death of any person arising out of or in the course of or caused by the execution of the Licensed Works;
  - (c) any interruption suspension or other impact on the Operation of the Railway arising out of or in course of the execution of the Licensed Works;
- and which policy shall contain a cross liability clause to the effect that each insured party is treated as a third party in respect of any liability to another insured party;

- 6.1.2 insurance against damage or destruction of Licensed Works under a contractor's all risks policy for an amount no less than the full Reinstating Cost of the Licensed Works;
- 6.2 During the carrying out of any Licensed Works the Licensee is to procure that:
- 6.2.1 the Contractor maintains professional indemnity insurance of not less than ten million pounds (£10,000,000) in the aggregate both during the carrying out of and for a period of twelve years after the date of practical completion of the relevant Works; and
- 6.2.2 any Contractor employed in relation to the Licensed Works maintains with Standard Insurers employer's liability insurance of not less than five million pounds (£5,000,000) in the aggregate
- on terms approved by LUL (such approval not to be unreasonably withheld or delayed).
- 6.3 The Licensee shall provide details of all insurance effected pursuant to paragraphs 2.4.3 and 6 prior to commencement of the Licensed Works (and a certificate of insurance and/or broker's letter shall be sufficient for this purpose).
- 6.4 The Licensee is to make all payments necessary for the purposes of obtaining and maintaining the insurances required under paragraph 6.2 above and is to use all reasonable endeavours and take all necessary steps to procure compliance by the relevant third parties with paragraph 6.2 above and shall upon request from time to time, produce to LUL a copy or full details of the insurance policies effected in accordance with this Licence and all endorsements on such insurance policies and evidence that they are in force (including evidence that the last premium has been paid).
- 6.5 If the Licensee does not insure or procure all or any of the insurances required by paragraphs 6.1 or 6.2 above or fails to produce reasonable evidence that such insurances are in force, LUL may itself effect such insurance cover as it may consider prudent (but not more extensive than required under paragraphs 6.1 or 6.2 above) and the cost of so doing together with LUL's management and administrative costs for so doing will be payable by the Licensee to LUL on written demand.
- 7. Protection of adjoining premises**
- 7.1 The Licensee acknowledges that it is aware of the state and condition of the Railway and shall take such extra precautions as may be necessary in order to protect the same.
- 8. Limitation on LUL's Liability**
- Save in the case of fraud or actionable negligence of LUL or the Engineer or in connection with any works carried out by LUL, LUL shall not be liable by way of indemnity or otherwise in respect of any loss (including consequential economic loss) damage or delay to the Licensee, its employees contractors, agents or sub-contractors or any other person resulting from:
- 8.1 any approval or otherwise given by LUL of the Licensed Works or any documentation in connection with any Licensed Works;
- 8.2 any stoppage of the Licensed Works as a consequence of LUL exercising its rights under and in accordance with the provisions of this Licence; or
- 8.3 the Licensee, its employees, contractors, agents or sub-contractors being prevented or delayed from entering upon or being properly required to vacate the site by reason of any emergency or exigency, regulation or operation relating to the Railway.
- 9. Costs**
- 9.1 The Licensee is to pay LUL's Costs arising from any application made by the Licensee for LUL's consent or approval to any matter under this Licence whether or not:
- 9.1.1 consent or approval is given unless a court determines that LUL has unreasonably or unlawfully withheld that consent or approval in circumstances where it is not entitled to do so; or

- 9.1.2 the application is withdrawn;
- 9.2 Where the Licensee must pay LUL's Costs the following provisions shall apply:-
- 9.2.1 where reasonable and possible not later than 28 days before incurring any LUL's Costs LUL shall provide an estimate of the amount together with details of the rate (or other basis) upon which such costs will be charged;
- 9.2.2 the Licensee shall promptly provide all such information as LUL may reasonably require to enable LUL to provide any estimate of LUL's Costs;
- 9.2.3 where LUL has given an estimate of LUL's Costs such estimate shall not be exceeded unless:
- (a) LUL has previously notified the Licensee as to why the estimate is likely to be exceeded and given a revised estimate; or
- (b) such LUL's Costs have been incurred in preventing or remedying or avoiding the occurrence of an Adverse Effect or a potential Adverse Effect;
- 9.2.4 LUL's Costs which are charged in respect of its own employees shall not be more than would normally be charged by LUL to third parties in respect of such matters;
- 9.2.5 LUL's Costs will be invoiced to the Licensee within 2 months of the relevant costs being incurred and each such invoice will be accompanied by a statement giving reasonable details of the items charged, the calculation of the charges and copies of all relevant invoices or valuations;
- 9.2.6 invoices in respect of LUL's Costs will be due for payment 28 days after such invoices are submitted and if not paid within 7 days of such due date, any unpaid amounts will bear interest at the Prescribed Rate from the date of the invoice or demand until the date of actual payment;
- 9.2.7 in the event of emergency or other urgent action required to avoid or prevent an Adverse Effect, LUL shall not be required to comply with sub-paragraphs 9.2.1 to 9.2.5 of this paragraph to any greater extent than would be reasonable to expect LUL to do so in the circumstances having regard for the need for such urgent action.
10. **As built drawings and warranties**
- 10.1 Unless supplied with the health and safety plan as provided in paragraph 1.6 above, within four (4) weeks of any issue of a certificate of practical completion pursuant to paragraph 14 of this Schedule, the Licensee is to deliver free of cost to LUL for record purposes two complete sets (one set in hard copy and another set in an electronic format specified by LUL) of "as-constructed" drawings, specifications, checked calculations (including all amendments made since the initial approval of the said drawings by LUL upon which the design and construction of the Works have been completed) and materials, test reports (in a digital format if LUL shall so require). The Licensee shall use all reasonable endeavours to procure that LUL is granted a non-exclusive irrevocable royalty-free licence to use such information for all purposes connected with the Premises and the Railway.
11. **Works to LUL's Conduits**
- 11.1 Notwithstanding any of provisions of this Schedule the Licensee shall not undertake any part of the Licensed Works affecting the Conduits of LUL serving the Railway ("**Conduit Works**") without complying with the provisions of this **paragraph 11**.
- 11.2 For the purposes of this **paragraph 11** no Appointment List or Tender List shall apply and LUL shall have an absolute discretion in approving every contractor or consultant the Licensee wishes to propose for appointment in connection with the Conduit Works.

- 11.3 If LUL grants its consent to the Conduit Works in accordance with **paragraph 1** of this Schedule LUL shall simultaneously with the grant of such consent by notice in writing to the Licensee elect whether or not LUL shall carry out all or any part of the Conduit Works itself at the proper cost and expense of the Licensee and shall give due consideration to engaging the Licensee its contractors and consultants in connection therewith.
- 11.4 If LUL fails to respond in accordance with **paragraph 11.3** the Licensee may give notice to LUL requiring LUL to elect whether or not to undertake the Conduit Works within a period of five (5) Working Days and if LUL does not respond within such timescale the Licensee shall be entitled to elevate the matter to the senior Engineer of LUL and the chief executive officer or other nominated senior representative of the Licensee for discussion and resolution.
- 11.5 Unless the Licensee indicates in writing to LUL within fifteen (15) Working Days of receipt by the Licensee of LUL's notice of election under **paragraph 11.3** that it no longer requires the work that LUL has elected to carry out, any works to be carried out by LUL pursuant to **paragraph 11.3** shall be carried out with all reasonable diligence as soon as may be reasonably practicable.
- 11.6 The Engineer shall give to the Licensee an estimate of the amount and timing of the costs which may properly be incurred by LUL in carrying out the works under this paragraph and before the Conduit Works (or relevant part thereof) shall commence the Licensee shall pay to LUL 20% of that estimate.
- 11.7 When such amount as paid by the Licensee pursuant to **paragraph 11.6** has been properly expended by LUL, the Engineer shall provide a further estimate (which estimate shall consist of past actual costs plus future estimated costs less amounts paid by the Licensee under this paragraph) and the Licensee shall pay a sum equivalent to 20% of such further estimate on account.
- 11.8 The Licensee shall continue to pay like amounts and in like manner until the Engineer certifies the total costs incurred by LUL whereupon a final amount shall either be paid by or repaid to the Licensee as appropriate.
- 11.9 LUL shall procure the provision to the Licensee of adequate estimates costings receipts and invoices evidencing such costs.

## 12. **LUL's Consents**

- 12.1 Any decision of LUL or the Engineer to withhold consent, approval or acceptance under the terms of this Licence or any direction given by LUL or the Engineer or decision made by the Engineer under the terms of this Licence:
- 12.1.1 (where the matter being the subject of such consent, approval, acceptance, direction or decision is likely in the opinion of the Engineer to affect the Operation of the Railway) shall be final, binding and conclusive; and
- 12.1.2 shall not in any way reduce or eliminate the Licensee's obligations save that where:
- (a) a condition, instruction, direction or requirement (collectively a "**Requirement**") is imposed by LUL or the Engineer on the design or execution of any Licensed Works pursuant to this Schedule; and
- (b) the Licensee obtains written advice from an independent and appropriately qualified professional that such Requirement would be in breach of LUL's obligations at paragraph 15 of this Schedule or otherwise contrary to the proper performance of the Engineer's professional duties; and

- (c) having received the advice obtained pursuant to paragraph 12.1.2.(b), LUL or Engineer (as they agree to do) consults with the Licensee and insists upon the Licensee complying with the Requirement which is the subject of the advice obtained pursuant to paragraph 11.1.2.2 without variation or modification wholly to take account of such advice; then
- (d) the Licensee may refer the Requirement to a different more senior Engineer of LUL (being the Infrastructure Protection Manager or such other senior Engineer who may perform that role from time to time) to the one who made the Requirement which is the subject of the advice (the "**Second Engineer**") to determine whether the Requirement would be in breach of LUL's obligations at paragraph 15 of this Schedule or otherwise contrary to the proper performance of the Engineer's professional duties; and
- (e) if the Second Engineer finds wholly or partly in favour of the advice obtained at paragraph 12.1.2.(b) then the extent of the Licensee's obligations in respect of the relevant Licensed Works shall be reduced in a manner which is reasonable having regard to the extent of the divergence of the Requirement from the advice obtained at paragraph 12.1.2.(b) but not further or otherwise; and
- (f) (where the matter being the subject of such decision is likely in the opinion of the Second Engineer to affect the Operation of the Railway) the decision of the Second Engineer shall be final, binding and conclusive.

**13. Notices**

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

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

14.1 The Licensee is to give to LUL not less than five (5) Working Days' prior notice in writing of the date and time at which an inspection of any Licensed Works in anticipation of issuing a certificate of practical completion is to be carried out.

14.2 The Licensee shall permit LUL and those authorised by it (not exceeding three (3) in number) to attend the inspection referred to in paragraph 14.1 and the Licensee shall have due regard to any reasonable representations made by LUL at that time to the extent that they relate to those elements of any Licensed Works which still have or may still have an Adverse Effect.

14.3 The Licensee is to procure that a copy of the certificate of practical completion is delivered to LUL as soon as practicable after its issue.

14.4 LUL and the Licensee agree that the issue of the certificate of practical completion shall not be delayed by the existence (if at all) of any minor defects shrinkages or other faults usually included in a snagging list. The Licensee is to use reasonable endeavours to remedy such defects, shrinkages or faults as soon as reasonably practicable in accordance with the provisions of the relevant Building Contract.

14.5 As soon as reasonably practicable following the date of practical completion of the relevant Licensed Works, the Licensee is to use all reasonable endeavours to:

14.5.1 procure that the Contractor carries out any further works that are required to make good any defects, omissions and snagging items identified in the certificate of practical completion to the reasonable satisfaction of LUL;

14.5.2 procure that all defects in the Licensed Works for which the Building Contractor is responsible under the relevant Contract that arise within the contractual

defects liability period are made good in accordance with the terms of the Building Contract to the reasonable satisfaction of LUL.

**15. LUL's Obligations**

15.1 LUL covenants with the Licensee:

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

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

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

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

**16. Adverse Effect**

16.1 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:

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

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



## **ANNEX 1**

### **LICENSED WORKS**

- Installation of protection screens to the West London Line
- Installation of strengthening works to the existing Earls Court 2 structure
- Installation or protective scaffolding for Bridge 19 demolition works (including installation of a crash deck over the West London Line)
- Installation of protective scaffolding around track 1 and associated walkway and on LUL boundaries
- Installation or Vortok safety barrier alongside the West London Line
- Site clearance of existing vegetation and site investigation works (including ground investigations etc)
- Reduced level excavation and installation of working platforms
- Crane installation and operation
- Removal of parapet walls in preparation for demolition of Bridge 19
- Enabling demolition adjacent to Bridge 19
- Demolition of Bridge 19

## ANNEX 2

### FORM OF NOVATION

**DATE:**

20[●]

**PARTIES:**

- (1) [LICENSEE] of [●];
- (2) [GUARANTOR] of [●];
- (3) [NOVATEE] of [●];
- (4) **LONDON UNDERGROUND LIMITED** (registered number 1900907), whose registered office is at 55 Broadway, London SW1H 0BD.

#### RECITALS

This novation deed is supplemental to the Licence to Carry out Works on LUL Land at Earls Court in the London Borough of Kensington and Chelsea made between the Licensee, the Guarantor and LUL.

#### OPERATIVE PROVISIONS

##### 1. INTERPRETATION

- 1.1 In this Deed the following words and expressions shall, where the context so admits, be deemed to have the following meanings:

“**Agreement**” means the Licence to Carry Out Works dated *[insert date]* between EC Properties LP (acting by its general partner EC Properties GP Limited) and LUL;

“**Guarantor**” means the person named as the second party above;

“**Licensee**” means the person named as the first party above;

“**LUL**” means the person named as the fourth party above; and

“**Novatee**” means the person named as the third party above.

- 1.2 Words importing one gender include all other genders words importing the singular include the plural and vice versa and any reference to a person includes a reference to any legal or natural person or authority board department or other body
- 1.3 The clause headings do not form part of this Deed and shall not be taken into account for the purposes of its construction or interpretation
- 1.4 References to clauses without further designation are references to the respective clauses of this Deed.
- 1.5 References in this Deed to any statute or statutory instrument shall include and refer to any statutory amendment or re-enactment thereof from time to time and for the time being in force.

##### 2. NOVATION OF THE AGREEMENT

- 2.1 LUL hereby releases and discharges each of the Licensee and the Guarantor from the further performance of its obligations and duties and from all claims, liabilities and demands of whatsoever nature and howsoever arising under or in connection with the Agreement (including without limitation in respect of all and any obligations, duties, claims, liabilities and demands under or in connection with the Agreement whether past, present, future or contingent, accrued or accruing prior to the date of this Deed or otherwise).
- 2.2 LUL undertakes to be bound to the Novatee by the terms of the Agreement in every way as if the Novatee was and always had been a party thereto in place of the Licensee and the Guarantor.
- 2.3 LUL acknowledges and agrees that the Novatee shall have the right to enforce the terms of

the Agreement and pursue all claims and demands (future or existing) against LUL whatsoever arising out of or in respect of the Agreement and whether arising prior to or subsequent to the date of this Deed.

- 2.4 The Novatee undertakes to be bound to LUL by the terms of the Agreement and to perform the obligations and duties on the part of the Licensee and the Guarantor thereunder in every way as if the Novatee was and always had been a party thereto in place of the Licensee and the Guarantor and without limitation to be responsible for all claims, liabilities and demands whatsoever nature and howsoever arising under or in connection with the Agreement (including without limitation in respect of all and any obligations, duties, claims, liabilities and demands under or in connection with the Agreement whether past, present, future or contingent, accrued or accruing prior to the date of this Deed or otherwise).

3. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence.

4. **GOVERNING LAW**

This Deed shall be governed by English law and disputes or differences arising under or in connection with this Deed shall be referred to the exclusive jurisdiction of the English Courts.

**DELIVERED** as a deed on the date of this document.