

Private & Confidential

Draft 8 November 2018

2664914/SBA

Dated **201[●]**

RAIL FOR LONDON LIMITED

(1)

AND

[DETAILS OF RELEVANT PARTY TO BE INSERTED TENANT/ DEVELOPER]

(2)

AND

[DEVELOPER'S GUARANTOR]

(3)

WORKS AGREEMENT

**relating to land at 13-15 Cinnamon Street, 14-16
Clegg Street and 127-129 Wapping High Street,
London**



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THIS AGREEMENT is dated [DATE]

201[●]

PARTIES

- (1) **RAIL FOR LONDON LIMITED** incorporated and registered in England and Wales with company number 05965930] whose registered office is at 55 Broadway, London SW1H 0BD ("Landlord").]
- (2) [*Details of relevant party to be inserted* **TENANT/Details of relevant party to be inserted** **TENANT/DEVELOPER**] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Developer**").
- (3) [*Details of relevant party to be inserted* **TENANT/DEVELOPER'S GUARANTOR**] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Developer's Guarantor**").

BACKGROUND

- (A) This agreement is supplemental and collateral to the Lease.
- (B) The parties are entering into this agreement following satisfaction of the Conditions contained in the Agreement for Lease with the intention that the Works to develop the Property are carried out in accordance with this agreement.
- (C) The Landlord is entitled to the immediate reversion to the Lease and the term granted by the Lease is vested in the Developer.
- (D) The Developer intends to carry out the Works and, under the terms of the Lease, requires the consent of the Landlord to do so.
- (E) If the Parties consider that additional rights or obligations or a change to the boundary of the Property demised by the Lease are required, the Parties will vary the Lease on the terms set out at Schedule 3 to this agreement.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Acceptable Permission	<p>a Planning Permission which:</p> <p>(a) is acceptable to the Developer in its absolute discretion; and</p> <p>(b) does not contain any Landlord Onerous Conditions or contains only Landlord Onerous Conditions that are acceptable to the Landlord;</p> <p>and it is confirmed that the planning permission ref [●] dated [●] is an Acceptable Permission</p> <p><i>[Note: the details of the Planning Permission obtained in accordance with the Agreement for Lease will be inserted.]</i></p>
Adjudicator	<p>the person appointed to resolve a dispute between the Parties (or any of them) in accordance with the terms of this agreement;</p>
Agreed Required Changes	<p>Required Changes agreed by the Landlord and the Developer pursuant to the provisions of Schedule 3;</p>
Agreement for Lease	<p>an agreement for lease made between (1) the Landlord (2) [the Developer] (3) [the Developer's Guarantor] dated [●];</p>
Appeal	<p>all or either of the following:</p> <p>(a) an application to the local planning authority under</p>

section 73 of the Planning Act; or

- (b) an application to the Secretary of State under sections 78 and 79 of the Planning Act following a Planning Refusal by the local planning authority;

Appointment	each of the deeds of appointment of the Professional Team to be entered into by the Developer and/or the Building Contractor in accordance with Schedule 5;
Appointment List	has the meaning given to it in paragraph 1.1 of Schedule 5;
Approved Consultant	has the meaning given to it in paragraph 1.1 of Schedule 5;
Approved Contractor	has the meaning given to it in paragraph 1.1 of Schedule 5
Architect	such person as may be appointed as the architect (or such replacement architect) for the time being by the Developer [or the Building Contractor], with the approval of the Landlord (such approval not to be unreasonably withheld or delayed), in relation to this agreement and [the Development] [the Building Contract];
Assurance	evidence that documented and controlled processes are in place and will be operated by competent and appropriately experienced people (giving true statements and compiling evidence to support such statements) so as to ensure that compliance will be achieved with the Landlord's technical, safety, environmental, operational and customer facing requirements in accordance with the Landlord's Standards;
Building Contract	a building contract for the construction of the Works based upon the JCT Standard Form of Building Contract [EDITION] JCT Design & Build Form [2011] [2016] or JCT Major Projects Form 2011] [JCT Major Projects Construction Contract 2016] with such amendments as may be approved by the Landlord (such approval not to be unreasonably withheld or delayed);

Building Contractor	such building contractor (or replacement building contractor) as approved by the Landlord (such approval not to be unreasonably withheld or delayed) as the Developer appoints under the Building Contract for the purposes of the Works;
Calling-In	a direction by the Secretary of State that a Planning Application be referred to him for determination under Section 77 of the Planning Act;
CDM Regulations	the Construction (Design and Management) Regulations 2015;
Certificate of Making Good Transport Works Defects	the Certifier's certificate or written statement issued in accordance with the Building Contract and this agreement certifying that all Snagging Items and defects shrinkages or faults in the Transport Works which appear during the Defects Liability Period have been made good in accordance with the terms of the Building Contract and this agreement;
Certificate of Practical Completion	the Certifier's certificate or written statement issued in accordance with the Building Contract certifying that the Works are practically complete according to the terms of the Building Contract and this agreement;
Certificate of Transport Works Completion	the certificate or statement to be issued by the Certifier that the Transport Works are practically complete in accordance with the terms of the Building Contract and this agreement;
Certifier	means in respect of the remainder of the Works the person appointed or employed by the Developer in relation to this agreement and the Building Contract and who will have responsibility for certifying that the Works are practically complete in accordance with the terms of the Building Contract and this agreement;
CIL	the Community Infrastructure Levy introduced by sections

205-225 of the Planning Act 2008;

Client	the client as defined by the CDM Regulations;
Completion and Consent to Operate Report	a report as so defined in and which is compliant with LUL Standard S1538;
Completion Date	the date of completion of a Supplemental Lease pursuant to Schedule 3;
Compliance Submission	has the meaning given to it in paragraph 3.7 of Schedule 2;
Concept Design Statement	a written statement prepared by the Developer outlining the principles of the design and the methods to be used in carrying out each material element of the Works, together with such supporting information as may be required by the Landlord pursuant to Schedule 1 or Schedule 2;
Confidential Information	has the meaning given to it in paragraph 2.1 of Schedule 6;
Covenantor	has the meaning given to it in clause 12.5;
DCLG Code of Practice	means the Department for Communities and Local Government "Local Government Transparency Code" 2015 as updated from time to time;
Default Rate	3% per annum above the base lending rate from time to time of National Westminster PLC or such other clearing bank nominated by the Landlord at any time or, if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as the Landlord may reasonably determine;
Default Notice	has the meaning given to it in clause 12.5;
Defects Liability Period	the defects liability period or rectification period for the making good of snagging items, defects, shrinkages or other faults and omissions under the Building Contract being not

less than 12 months from the relevant Practical Completion Date;

Deleterious Materials	any goods, materials or substances which are themselves or which incorporate substances which are generally known at the time of recommendation, specification or use, to be deleterious to health and safety, or the durability of the completed Works in the particular circumstances in which they are used, or are otherwise not in accordance with British Standards, codes of practice or good building practice or techniques;
Design Document	has the meaning given to it in paragraph 3.10 of Schedule 2;
Developer Project Information	information recorded in any form held by the Landlord and/or its Group, and/or the Developer and/or its Group relating to the Developer and/or its Group, including this agreement, the Development or the Works;
Developer's Assurance Plan	a plan prepared by the Developer as required by the Landlord in accordance with LUL Standards and the Landlord's Assurance Regime (and updated as necessary to reflect the development of the design, the method of implementation and any other relevant changes) detailing the manner in which Assurance will be given to the Landlord;
Developer's Guarantor	the guarantor of the Developer's covenants and obligations in this agreement from time to time pursuant to the terms of Schedule 8;
Developer's Representative	the person nominated or appointed pursuant to paragraph 4.17 of Schedule 1;
Development	the development at the Property and any adjoining property pursuant to the Planning Permission;
Development Operational	a written document containing details of the management and operational interfaces between the Transport Assets and

Interface Plan	<p>Premises and the Transport Undertaking and the Works and (following the Practical Completion Date) between the Transport Assets and Premises and the Transport Undertaking and the Development;</p> <p><i>[Note: It is envisaged that this document will set out the arrangements for the ongoing use of parts of the Property for transport purposes, and for access to and from the Transport Assets and Premises through the development period]</i></p>
Development Works	<p>all or any part of the Developer's works to design and construct the Development [INSERT DESCRIPTION OF THE WORKS] together with any Transport Works or ancillary works on the Landlord's Neighbouring Property properly required in order to facilitate such works (including surveys, monitoring and site investigations);</p> <p><i>[Note: The description of works will be scheme specific for the Development.]</i></p>
Disclosing Party	<p>has the meaning given to it in paragraph 2.1(a) of Schedule 6;</p>
Dispute	<p>any claim dispute or difference of whatsoever nature arising under, or in connection with this agreement including but not limited to any questions regarding the existence, validity, construction or termination of this agreement but not including any dispute or difference as to whether a matter relates to the operation of the Transport Undertaking or the Transport Assets and Premises;</p>
Document Submissions Programme	<p>the Developer's programme specifying when the Developer intends to submit documents to the Landlord for approval pursuant to the processes under this agreement for the development of design, the implementation of the Works and the provision of Assurance as such programme may be revised and updated from time to time in accordance with</p>

Schedule 1;

EIR Legislation

the Environment Information Regulations 2004 and any subordinate legislation made under it, any amendment or re-enactment of any of them; and any guidance and/or codes of practice issued by the Information Commissioner, any relevant government department or decisions made by other appropriate legislative bodies (including in each case its successors or assigns) in relation to such legislation from time to time;

Emergency Exits

the two emergency exits from the Transport Assets and Premises shown coloured [purple] on Plan [●] and Plan [●] and the subsoil under such exits;

[Note: Requisite Definition for Block A only]

Enabling Works

such works to the Transport Assets and Premises as the Landlord requires to be carried out, including such works to segregate the areas of the Transport Assets and Premises in which the Developer requires to carry out the Transport Works from the rest of the Transport Assets and Premises to ensure that the relevant areas are free from any live services and operational assets, the extent of which works shall be determined by the Landlord in its absolute discretion;

Event of Default

the occurrence of one or more of the following events:

- (a) an Event of Insolvency occurs in respect of the Developer or the Developer's Guarantor;
- (b) the Developer commits a material breach of this agreement which is capable of being remedied and:
 - (i) does not begin diligently to remedy that breach within ten (10) Working Days of written notice from the Landlord or

immediately in case of emergency; and

- (ii) does not remedy the breach within a reasonable period of time, to be specified in the notice, to the reasonable satisfaction of the Landlord; or
- (c) the Developer commits a material breach of this agreement which cannot be remedied;

Event of Insolvency

in respect of the Developer or the Developer's Guarantor (being a body corporate or a partnership or a limited partnership), the occurrence of any of the following events:

- (a) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer or the Developer's Guarantor;
- (b) the making of an application for an administration order or the making of an administration order in relation to the Developer or the Developer's Guarantor;
- (c) the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Developer or the Developer's Guarantor;
- (d) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Developer or the Developer's Guarantor;
- (e) the commencement of a voluntary winding-up in respect of the Developer or the Developer's

Guarantor, except (with the Landlord's prior written consent) a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;

- (f) the making of a petition for a winding-up order or a winding-up order in respect of the Developer or the Developer's Guarantor;
- (g) the striking-off of the Developer or the Developer's Guarantor from the Registrar of Companies or the making of an application for the Developer or the Developer's Guarantor to be struck-off;
- (h) the Developer or the Developer's Guarantor otherwise ceasing to exist;
- (i) the Developer or the Developer's Guarantor being unable to pay their respective debts as they fall due or admitting their inability to pay their respective debts as they fall due; or
- (j) if that person shall be a unit trust, partnership or a limited partnership, any of the events described in the preceding sub-clauses (a) to (i) above occurs in relation to one or more partners (in the case of a partnership whether limited or general), whether or not concurrently with any such event occurring in relation to the partnership or limited partnership

and where such person is not an entity established or operating under the laws of England and Wales shall also include the occurrence in respect of that person of any event that is analogous under the law of any jurisdiction where such person is established to any of the events listed in sub-clauses (a) to (j) above;

Exclusion Zone	subsoil lower than two (2) metres AOD and lying between the vertical planes three (3) metres outside the extrados of the Tunnel;
Executive Dispute Procedure	the procedure set out in clause 11.1;
Executives	means [NAME] on behalf of the Developer and the Head of Engineering on behalf of the Landlord or their successors or such other persons of equivalent seniority from time to time notified to the other Party in writing from time to time;
Expert	a Queen's Counsel practising at the Planning Bar being such counsel as may be appointed by the Parties, or failing agreement, such counsel as shall be appointed, at the request of the Parties, by or behalf of the President for the time being (or the next most senior available officer) of the Law Society;
FOIA Legislation	the Freedom of Information Act 2000, all regulations made under it and any subordinate legislation made under them, any amendment or re-enactment of any of them; and any guidance and/or codes of practice issued by the Information Commissioner, any relevant government department including, the DCLG Code, or decisions made by other appropriate legislative bodies (including in each case its successors or assigns) in relation to such legislation from time to time;
Funder	<p>a person, not being a Prohibited Person or a person over whom a Prohibited Person within the meaning of paragraph (c) of that definition exercises control within the meaning of Section 1124 of the Corporation Tax Act 2010, who is a bona fide, arm's length funder and being:</p> <p>(a) a reputable bank or financial institution or other entity which is engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets and which is regulated under</p>

United Kingdom law; or

- (b) any other entity as the Landlord may approve (acting reasonably)

that in each case has provided or who will be providing funding for the Development or a material part of it whether directly to the Developer or to any Group of the Developer (including a security trustee on behalf of such a funder);

Group	in relation to an undertaking, that undertaking, any subsidiary undertaking or parent undertaking of that undertaking, any other subsidiary undertaking of any parent undertaking of that undertaking (as each such term is defined in section 1161 or section 1162 (as applicable) of the Companies Act 2006);
Head of Engineering	the relevant Director responsible for engineering in the transport mode that is most affected by the Works or such replacement as has been notified to the Developer in writing;
Health and Safety File	the health and safety file required by the CDM Regulations;
Information	information recorded in any form held by TfL and/or the Landlord or by the Developer on behalf of TfL and/or the Landlord relating to or connected with the terms or subject matter of this agreement including Developer Project Information and/or Landlord Project Information;
Information Request	a valid request for any Information under the FOIA Legislation and/or EIR Legislation;
Infrastructure Protection Engineer	such engineer appointed or employed by LUL for the purposes of providing professional engineering services to the Landlord in connection with the matters referred to in Schedule 1 and whose identity and address have been notified to the Developer;
Infrastructure Protection	the person occupying the post of "Principal Infrastructure

Manager	Protection Engineer" at LUL or such equivalent post or replacement as has been notified to the Developer in writing;
Internal Time Costs	the cost of time spent by the Landlord (to include the Landlord's own engineering staff, internal legal advisers, internally appointed project manager(s) and internal surveyors) in connection with performing activities related to the Works or the Development pursuant to the provisions of this agreement;
Landlord's Assurance Regime	the processes, procedures and documents by which the Landlord derives Assurance including those described in LUL Standard S1538;
Landlord's Neighbouring Property	means each and every part of the adjoining and neighbouring property in which the Landlord or TfL has an interest from time to time, including the Transport Assets and Premises;
Landlord Onerous Condition	<p>a pre-condition to, or condition or obligation of, a Planning Permission or Planning Agreement which:</p> <ul style="list-style-type: none"> (a) is in the reasonable opinion of the Landlord likely to have a material adverse effect on the use or development of any adjoining land owned by the Landlord; or (b) in the absolute discretion of the Landlord has or would be likely to have an adverse effect on: <ul style="list-style-type: none"> (i) the operation of the Transport Undertaking or the Transport Assets and Premises ; (ii) the exercise by any body within the definition of 'TfL' of its public functions duties and obligations, which includes both any transport operations and undertakings; and a

role as a statutory consultee under the planning process and any other statutory processes;

Landlord Project Information information recorded in any form held by the Landlord and/or its Group, and/or by the Developer and/or its Groups relating to the Landlord and/or its s, including this agreement, the Development or the Works;

Landlord's Representative [●] or such other person as may be appointed from time to time by the Landlord in relation to this agreement for the purposes of clause 11 and notified to the Developer;

Landlord's Requirements includes:

- (a) any proper requirements of the Landlord resulting from the design and construction methodology of the Transport Works including security measures (including the requirements of the transport security services) and fire safety measures; and
- (b) any proper requirements of the Landlord arising as a result of local station operation and asset management requirements

in each case elicited by the Developer from the Landlord during each stage of the design process and submitted by the Developer to and verified by the Landlord via a formal response using a methodology for such responses agreed between the Parties;

Landlord's Solicitors such firm of solicitors that may be notified in writing by the Landlord to the Developer from time to time;

Leases the leases of the Property dated [] and made between (1) the Landlord and (2) the Developer and includes any documents supplemental to it and Lease shall refer to

any one of them;

Legislation

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

- (a) all secondary legislation made under that legislation including statutory instruments, rules, orders, regulations, notices, directions, bye laws and permissions for the time being made under or deriving validity from any Act of Parliament or other public or local legislation;
- (b) European directives or regulations and rules having the force of law in the United Kingdom;
- (c) regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Works; and
- (d) railway safety principles or guidance published by the Office of Rail and Road from time to time;

Letter of No Objection

a letter of no objection addressed to the Developer in respect of the submission made by the Developer at each stage of the Landlord's Assurance Regime in respect of the Transport Works;

Liability to Taxation

any liability of the Landlord to make a payment of Taxation which arises as a result of the transactions set out within this agreement;

LUL

London Underground Limited (Company No 1900907) of 55 Broadway, London SW1H 0BD and successors to its functions;

LUL MAID Requirements the requirements as to content and format and otherwise in respect of information to be held in LUL's mandatory asset information database;

LUL Standards any documents as produced or varied from time to time and accessible to users authorised by LUL via the LUL Standards e-library website (which authorisation the Landlord will ensure is available to the Developer and the relevant members of the Professional Team) or otherwise communicated to the Developer and which apply to the operation of the Transport Undertaking or the Transport Assets and Premises generally and contain requirements or guidance on:

- (a) matters of safety and security in respect of the operation of the Transport Undertaking or the Transport Assets and Premises;
- (b) the design or construction of the Transport Assets and Premises;
- (c) the operation of the Transport Undertaking or the Transport Assets and Premises; and/or
- (d) works carried on over or in the vicinity of the Transport Assets and Premises

and in the event of any inconsistency between different rules, regulations, codes of practice or standards the Landlord's decision as to the application of each shall be final and conclusive;

M & E Engineer the mechanical and electrical services engineer (or such replacement engineer), in each case, approved by the Landlord (such approval not to be unreasonably withheld or delayed), to be appointed by the Developer [or the Building Contractor], in relation to the Works;

Nominator of Adjudicator	the Chairman for the time being of the Technology and Construction Solicitors Association (" TeCSA ") or such other officer of TeCSA as is authorised to deputise for him;
Parapet Wall	the wall forming the parapet wall with Cinnamon Street shown coloured [●]on Plan [●];
<i>[Note: Requisite Definition for Block A only]</i>	
Parties	the parties to this agreement and "Party" means any one or more of them but the Developer and the Developer's Guarantor shall be treated as a single Party;
Payee	has the meaning given to it in clause 17.4;
Payer	has the meaning given to it in clause 17.4;
Permitted Disclosure	has the meaning given to it in paragraph 2.4 of Schedule 6;
Personnel	employees, officers, suppliers, sub-contractors and agents;
PFI Contract	the Landlord's 'Project Connect' contract for the operation and maintenance of communications systems dated 19 November 1999 and made between LUL (1) and City Link Communications Limited (2) as amended, varied, restated or replaced from time to time by any other contract or contracts for the operation maintenance and replacement of communications systems;
PFI Contractor	the contractor under the PFI Contract;
Planning Act	the Town and Country Planning Act 1990 and includes any statute amending, consolidating or replacing it for the time being in force;
Planning Agreement	an agreement or undertaking in respect of and affecting the Development, whether or not also affecting other property,

pursuant to:

- (a) section 106 of the Planning Act;
- (b) section 111 Local Government Act 1972;
- (c) sections 38 or 278 Highways Act 1980;
- (d) section 104 Water Industry Act 1991 or any other provision of similar intent, within the meaning of the Water Act 1989, with an appropriate authority for the supply of water or the drainage of surface or foul water from the Development; or
- (e) any agreement with an appropriate authority or utility company relating to the passage or transmission of gas, water, electricity, foul or surface water drainage or any of them;

[Note: This does not apply to planning permission obtained in satisfaction at the Planning Condition under the Agreement for Lease]

Planning Application	has the meaning given to it in paragraph 1.1 of Schedule 7;
Planning Authority	the London Borough of Tower Hamlets or the Greater London Authority or the Secretary of State (as appropriate) (or otherwise as the case may be);
Planning Condition	has the meaning given in the Agreement for Lease;
Planning Decision	a Planning Refusal or the grant of Planning Permission by the Planning Authority;
Planning Permission	reference [●] dated [●] or such other planning permission(s) as may be necessary for the Development granted pursuant to a Planning Application (including approval of use, access, appearance, layout and scale whether or not reserving

approval for landscaping) together with all requisite approvals issued in connection with such permission and any replacement, renewals, waivers, relaxations or variations of any of the terms as amended, supplemented or replaced from time to time;

Planning Proceedings

all or any of the following:

- (a) an application made for judicial review following the grant of a Planning Permission by the Planning Authority;
- (b) an application made under section 288 of the Planning Act, including by the Planning Authority, following the grant of Planning Permission by the Secretary of State or an inspector; or
- (c) an application made under section 288 of the Planning Act by the Developer following a Planning Refusal by the Secretary of State or an inspector

and includes any appeal to a higher court made against a judgment given in a lower court;

Planning Refusal

any of the following:

- (a) a refusal by the Planning Authority to grant Planning Permission pursuant to a Planning Application;
- (b) a refusal by the Planning Authority to vary or remove a Landlord Onerous Condition attached to a Planning Permission pursuant to an application made by the Developer under section 73 of the Planning Act;
- (c) a refusal by or on behalf of the Secretary of State to grant planning permission following an Appeal or a Calling In;

- (d) a failure by the Planning Authority to determine the Planning Application within the period required under section 78(2) of the Planning Act; or
- (e) the grant of a Planning Permission that is not an Acceptable Permission;

Plant and Machinery

all or any of the following:

- (a) fire alarm systems, sprinklers and other systems for detecting or extinguishing fires;
- (b) security alarms and other security systems including CCTV equipment;
- (c) systems for heating cooling and/or storing water;
- (d) systems for providing ventilation;
- (e) systems for heating or cooling air;
- (f) communication systems;
- (g) passenger information systems;
- (h) signalling systems;
- (i) plant, apparatus, equipment and systems relating to the provision and operation of lifts and/or escalators; and
- (j) any other machinery, plant or equipment;

Practical Completion Date

the date stated in the Certificate of Practical Completion;

Principal Designer

such person as may be appointed from time to time by the Developer, with the approval of the Landlord, to be the principal designer for the purposes of the Development and

the CDM Regulations;

Principal Sub-Contractor the sub-contractors or trade contractors appointed under the Principal Sub-Contracts;

Principal Sub-Contract each sub-contract or trade contract relating to a material part of the Works, excluding those where the Landlord has agreed it is not a Principal Sub-Contract;

Professional Team the Architect, the Principal Designer, the Structural Engineer, the M&E Engineer, the Certifier and any other specialist advisors or sub-consultants that may, with the approval of the Landlord, be appointed for the time being in connection with the design or management of the Works;

Prohibited Person an individual or entity:

- (a) which is a company incorporated in or an individual resident in a country outside the United Kingdom unless it agrees to be bound by the jurisdiction of the English Courts and in respect of which a legal opinion from a reputable independent law firm in the relevant jurisdiction is provided in a form reasonably satisfactory to the Landlord (acting reasonably) relating to:
 - (i) the authority and capacity of the company or individual to act as the assignee, guarantor or funder (as applicable); and
 - (ii) the enforceability of the obligations of the company or individual as assignee, guarantor or funder (as applicable);
- (b) which enjoys sovereign or state immunity, unless it is a department, body or agency of the Government of the United Kingdom ;

- (c) which uses funds that are derived from illegal or illegitimate activities;
- (d) which has been convicted of criminal activities, or is or has been involved in organised crime;
- (e) which is named on the Consolidated List of Terrorists maintained by the Bank of England pursuant to any authorising statute, regulations or guideline;
- (f) which is, or professes to be, resident in a nation state which at the relevant time is not recognised by the Government of the United Kingdom;
- (g) which is otherwise prohibited from entering into the proposed transaction pursuant to any applicable law or requirements of any country or governmental authority (including any applicable exchange control regulations);
- (h) with whom the Landlord or any Group may not lawfully contract, or with whom the established policy of the Government of the United Kingdom is that they should not contract;
- (i) whose activities would prevent the discharge by the Landlord or any Group of its or their statutory duties or other legal functions;
- (j) which has a substantial direct interest(s) in gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons (provided that any organisation that is engaged in legitimate investment and lending to any such business shall not constitute a Prohibited Person); or

(k) whose activities could pose a threat to national security;

Project Engineer

such appropriately experienced engineer appointed or employed by the Landlord for the purposes of providing professional engineering services to the Landlord in connection with the matters referred to in Schedule 2 and whose identity and address has been notified to the Developer;

Property

the leasehold property at 13-15 Cinnamon Street, 14-16 Clegg Street and 127-129 Wapping High Street, London demised by the Leases as varied in accordance with Schedule 3, if applicable;

[Note: The Leases (Block A and Block B and C) will be entered into on the date of this agreement and thus will not have been registered at the time of entering into this agreement]

Protective Works

temporary protective works required by the Landlord to protect the stability and operation of the Transport Assets and Premises and the operation of the Transport Undertaking whilst the Works (or any element of them) are being undertaken;

Public Authority

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

Receiving Party

has the meaning given to it in paragraph 2.1(b) of Schedule 6;

Recipient	has the meaning given to it in clause 18.3;
Reinstatement Cost	<p>the full cost, allowing for inflation during the period of reinstatement, of:</p> <ul style="list-style-type: none"> (a) debris removal, demolition, site clearance and complete reinstatement of the Works, assuming their total destruction; (b) all of the Professional Team's design, legal and other professional fees; (c) obtaining all Requisite Consents required for the activities referred to in sub-clause (a) above; and (d) VAT on the costs set out in sub-clauses (a), (b) and (c) above;
Relevant Plant	has the meaning given to it in paragraph 3.27 of Schedule 2;
Required Changes	has the meaning given to it in paragraph 2 of Schedule 3;
Requisite Consents	the Planning Permission and all approvals of details pursuant to it, building regulation approvals, by-law approvals, and any other consents, permissions, licences (including any required under the Highways Act 1980) and authorisations required from any Public Authority or other competent authority, statutory undertaker or person either for the carrying out of the Works or for the intended use of the Development as contemplated by the terms of the Planning Permission;
Secretary of State	the Secretary of State or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the Planning Act and references to the Secretary of State include any inspector appointed by the Secretary of State to act on his behalf;

Self Help Works	has the meaning given to it in clause 12.6;
Snagging Item	imperfections, defects and other faults in the Transport Works or in any documentation required in connection with the Transport Works pursuant to this agreement which, in each case, are of a minor nature and will not impede or adversely affect the operation of any Transport Undertaking or Transport Assets and Premises;
Snagging List	a list of all Snagging Items discovered in the course of an inspection (such list also to identify where any Snagging Item would prevent the Landlord taking the relevant asset into maintenance);
Structural Engineer	the structural engineer (or any replacement structural engineer) in each case, approved by the Landlord (such approval not to be unreasonably withheld or delayed), to be appointed by the Developer [or the Building Contractor], in relation to the Works;
Supplemental Lease	has the meaning given to it in paragraph 8 of Schedule 3;
Supplier	has the meaning given to it in clause 17.3;
Taxation	any tax, duty, impost or levy of the United Kingdom including but not limited to corporation tax, capital gains tax, stamp duty land tax and irrecoverable VAT including any fine, penalty, surcharge, interest or other imposition relating to such tax, duty, impost or levy;
Technical Interface Parameters	the document to be prepared by the Landlord setting out inter alia the physical and functional interfaces between the Development and the Transport Assets and Premises;
TfL	Transport for London and includes (unless the context requires otherwise) any successor to all or part of Transport for London's functions and any Group of Transport for

London or any such person;

Third Party	a person, partnership, company or any other undertaking not being the Developer, a Group of the Developer, the Developer's Guarantor or a Group of the Landlord;
Transparency Commitment	the commitment to transparency in accordance with the DCLG Code of Practice and TfL's published transparency strategy from time to time;
Transport Assets and Premises	the whole or any part or parts of the transport infrastructure, roads, pavements, track, buildings, works, conducting media, lifts, escalators, bridges, tunnels, structures, plant, apparatus and equipment, the Ventilation Shaft, Emergency Exits, the Tunnel, and all other things serving or used, controlled or enjoyed in connection with the Transport Undertaking from time to time including all those over, under, adjoining or near to the Property at any time;
Transport Undertaking	the transport undertakings or networks operated by TfL, the Landlord and any successor to any of their functions;
Transport Works	<p>together:</p> <p>(a) the Enabling Works; and</p> <p>(b) any other works to be designed and carried out to the Transport Assets and Premises or to design and create new or altered Transport Assets and Premises, the extent of which shall be determined in accordance with paragraph 3 of Schedule 2;</p> <p><i>[Note: the requirement to include this will be decided once the scheme is finalised.]</i></p>
Transport Works Practical Completion Date	the date certified by the Certifier in the Certificate of Transport Works Completion issued in compliance with the

requirements of paragraphs 3.24 to 3.26 of Schedule 2;

Transport Works Programme the Developer's programme for the Transport Works showing key stages, activities and milestones in respect of the preparation for and the design and carrying out of the Transport Works, to be produced by the Developer and submitted to the Landlord for approval in advance of commencement of the Transport Works in accordance with paragraph 1.2 of Schedule 2, as the same may be varied in accordance with paragraph 1.3 of Schedule 2;

Tunnel means the tunnel shown with a [blue dashed line] on Plan [●];

[Note: This applies to all Blocks]

User Requirement Statement a statement of user requirements issued by the Landlord in respect of the Transport Works;

VAT value added tax chargeable under the VAT Act and any similar replacement tax and any similar additional tax;

VAT Act Value Added Tax Act 1994;

VAT Election an option to tax property pursuant to part 1 schedule 10 to the VAT Act;

VAT Group two or more bodies corporate registered as a group for VAT purposes under section 43 of the VAT Act;

Ventilation Shaft means the shaft or shafts and any ancillary Plant and Machinery providing ventilation to the Transport Assets and Premises as shown coloured [●] on Plan [●] and the airspace directly above the Ventilation Shaft;

[Note: Requisite Definition for Block A only]

Working Day any day except Saturday, Sunday or any public holiday in

England;

Works together the Transport Works and the Development Works;

Works Documents plans, detailed drawings and other documentation in respect of the design, works specification(s), material specification(s), method statement(s), programme(s); risk assessment(s), checked calculations, health and safety plan, test or other information (including soil and material testing information, temporary works drawings, supporting calculations, programme dates and hours of working), a fire and emergency strategy which contains provisions allowing the same to be amended by the Landlord from time to time (acting reasonably) in order to reflect changing circumstances and a plan of any security arrangements which may be required (including all updates, amendments, additions and revisions) and such other matters as the Landlord may reasonably require.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute, statutory provision or subordinate legislation is a reference to it as amended, extended or re-enacted from time to time.

- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes fax, e-mail and electronic text message.
- 1.11 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time [and includes any document entered into pursuant to this agreement].
- 1.12 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.13 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.14 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.15 Unless the context otherwise requires, references to the **Property** or the **Development** or the **Transport Assets and Premises** are to the whole and/or any part of it.
- 1.16 Any reference to the Landlord's **consent** or **approval** or **acceptance** being required is to a consent or approval or acceptance in writing which must be obtained before the relevant act is taken or event occurs.
- 1.17 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms and the words "**including**" and "**includes**" shall be read as if followed by the words "without limitation".
- 1.18 The words "**operation of**" shall:
- (a) where used in relation to the Transport Undertaking, be deemed to be preceded by the words "safe, efficient and economic"; and
 - (b) where used in relation to the Transport Assets and Premises, be deemed to mean the "safe, efficient and economic operation and maintenance of".

1.19 Reference to "**safe**" or "**safety**" shall be deemed to include the safety and security of staff, passengers, visitors and members of the public generally on and around the Transport Assets and Premises.

1.20 No requirement for the Landlord to act reasonably or not unreasonably to withhold a consent, acceptance or approval, nor any stipulation that a conclusion or decision by the Landlord is to be reached on a reasonable basis, shall diminish the Landlord having absolute discretion:

- (a) in relation to matters relating to safety and security; or
- (b) where the Landlord has to comply with or is subject to a statutory obligation; or
- (c) where the relevant matter relates to the operation of the Transport Undertaking or the Transport Assets and Premises.

and where the Landlord has absolute discretion under sub-clauses 1.20(a), 1.20(b) and 1.20(c) above or where the decision of the Landlord is said to be final the Landlord covenants to exercise such discretion or make such decision in a proper manner, without seeking to obtain a commercial advantage and shall provide proper reasons for its decisions.

1.21 No direction given or decision made by the Landlord under the terms of this agreement shall in anyway reduce or eliminate the obligations of the Developer under this agreement.

1.22 Any request by the Developer for the consent, acceptance or approval of the Landlord must be communicated in writing to:

- (a) the Infrastructure Protection Engineer with respect to the matters referred to in Schedule 1; and
- (b) the Project Engineer with respect to the matters referred to in Schedule 2.

1.23 Where a consent, acceptance or approval is required from the Landlord or any conclusion, decision or direction is made by the Landlord, such consent, acceptance, approval, conclusion, decision or direction will be made and communicated in writing to the Developer by:

- (a) the Infrastructure Protection Engineer on behalf of the Landlord with respect to matters pursuant to Schedule 1; and

- (b) the Project Engineer on behalf of the Landlord with respect to matters pursuant to Schedule 2.

1.24 (Without prejudice to the Landlord's express obligations under this agreement) any review, inspection or supervision carried out and any comment, observation, specification, consent, approval, acceptance, non-objection or instruction issued by or on behalf of the Landlord (whether before or after the date of this agreement) in respect of any matter relating to the Development shall be carried out or issued solely for the protection of the Landlord's own interests without liability to the Developer nor shall any such review, inspection, supervision, comment, observation, specification, consent, approval, acceptance, non-objection or instruction or failure to do so release the Developer from any obligation or liability arising under or in connection with this agreement (save for the obligation to obtain the Landlord's consent, approval, acceptance, authority, licence or determination).

1.25 Where the Infrastructure Protection Engineer or Project Engineer is entitled to carry out any activity under this agreement he may appoint a delegate to do so and details of such delegate shall be notified to the Developer by the Landlord in writing.

1.26 In the event of any inconsistency between different rules, regulations, codes of practice or standards the Landlord's decision as to the application of each shall be final and conclusive.

2 CONSENT TO WORKS

2.1 Subject to and in consideration of the obligations on the Developer and the Developer's Guarantor in this agreement (including the requirement to obtain the necessary engineering approvals, Requisite Consents and any other consents and acceptances):

- (a) the Landlord consents to the Developer carrying out the Works; and
- (b) to the extent that any of the Works comprise the construction of buildings within the Exclusion Zone the Landlord waives the prohibition on the construction of buildings within the Exclusion Zone in respect of such buildings.

2.2 Nothing in this agreement shall impose any obligation on the Developer to carry out the Works but if any Works are undertaken by the Developer it shall do so in accordance with the terms of this agreement.

- 2.3 The Developer shall provide such outline information in relation to the Works as the Landlord may require in order to determine whether the Works may include Transport Works.
- 2.4 The Developer will be responsible, at its own cost, for obtaining any third party consents for the Works and the consent of the Landlord shall not constitute consent from any third party (save for any Group of the Landlord).

3 INFRASTRUCTURE PROTECTION

Where in the opinion of the Landlord the Works may have an impact on the operation of the Transport Assets and Premises or the operation of the Transport Undertaking or where there may be an interface between the Works or the Development and the Transport Assets and Premises, the Developer shall comply with the Landlord's requirements for infrastructure protection (as the same apply from time to time) as set out at Schedule 1.

4 NEW AND ALTERED ASSETS

Where the Works include Transport Works, the Parties shall comply with the Landlord's requirements in respect of new and altered assets (as the same apply from time to time) set out at Schedule 2, in addition to the requirements set out at Schedule 1.

5 SUPPLEMENTARY PROPERTY MATTERS

Where, following the grant of an Acceptable Permission and the finalisation of the design of the Works pursuant to Schedule 1 and Schedule 2 (as applicable), the Landlord and the Developer both consider (acting reasonably) that certain changes are required to the Leases (including as necessary entering into supplemental deeds) to take account of the approved detailed design of the Works and to preserve the beneficial use and enjoyment of the Property or the Landlord's Neighbouring Property, the Parties shall comply with the provisions of Schedule 3.

6 INSURANCE AND INDEMNITY

From the date of this agreement the Developer shall comply with the provisions of Schedule 3.

7 DESIGN AND CONSTRUCTION CONTRACTS

The Parties shall comply with the provisions of Schedule 4.

8 PLANNING

The Parties will comply with the provisions of Schedule 7.

9 SAFETY AND OPERATION OF THE TRANSPORT UNDERTAKING AND THE TRANSPORT ASSETS AND PREMISES

- 9.1 The Developer acknowledges that matters or concerns relating to the safety, security and operation of the Transport Undertaking and the Transport Assets and Premises are paramount and, in relation to any question as to whether anything to be done in connection with the Works may affect the operation of the Transport Undertaking or the Transport Assets and Premises, the decision of the Landlord shall be final and shall not be capable of referral to an adjudicator or be the subject of any other dispute resolution proceedings.
- 9.2 The Developer shall not cause the Landlord to be in breach of any Legislation and the Developer acknowledges that the Landlord shall be entitled to withdraw a consent, approval or acceptance where it is required by law to do so.

10 ALIENATION AND CHANGE OF CONTROL

- 10.1 Subject to the terms of this clause 10, this agreement is incapable of being assigned, charged, held on trust or in any way being dealt with by the Developer.
- 10.2 The Developer may, with the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed, assign by way of security or charge the benefit of this agreement to a Funder subject to:
- (a) the Funder entering into a step-in agreement, (which may include the ability to appoint a replacement developer, subject to their identity being approved by the Landlord (such approval not to be unreasonably withheld or delayed), in such form as the Funder may propose and the Landlord may approve (such approval not to be unreasonably withheld or delayed);
 - (b) the Funder entering into direct covenants with the Landlord should it exercise its rights under the step-in agreement:
 - (i) to carry out or procure that the Works are carried out in accordance with the terms of this agreement; and

- (ii) not to use or permit the Property to be used before the Practical Completion Date for any purpose other than the carrying out of the Works;
- (c) the Funder entering into a direct covenant with the Landlord to comply with the provisions of this clause 10 before any further assignment or charging of the benefit of this agreement or the sale, transfer or charging of the Property; and
- (d) the Developer covenanting with the Funder and the Landlord to comply with its obligations in this agreement notwithstanding its assignment by way of security to the Funder.

11 DISPUTES

11.1 Executive Dispute Procedure

- (a) Any Dispute (save for those where urgent injunctive relief is sought, or where the Dispute relates to a construction operation within the meaning of s105 of the Housing Grants Construction and Regeneration Act 1996 or any dispute under Schedule 7) shall be referred to the Executive Dispute Procedure and the provisions of this clause 11.1 shall apply.
- (b) If a Dispute arises between the Parties, the Developer's Representative and the Landlord's Representative shall first consult in good faith in an attempt to come to an agreement in relation to the Dispute.
- (c) If the Developer's Representative and the Landlord's Representative fail to resolve the Dispute through such consultation within ten (10) Working Days, of being notified of the Dispute either Party may refer the matter to the Executives by giving written notice to the Landlord's Representative or the Developer's Representative, as the case may be. The Executives shall consult in good faith in an attempt to come to an agreement in relation to the Dispute.

11.2 Adjudication

- (a) Subject to the Parties first having complied with the provisions of clause 11.1 (if applicable), any Party may refer a Dispute to an Adjudicator by notice in writing to the other Party and such notice shall include short particulars of the matters which are in

dispute and the identity of the proposed Adjudicator who shall have no interest financial or otherwise in any matter relating to the Dispute.

- (b) Within two (2) Working Days of receipt of a notice given pursuant to clause 11.2(a), the Party receiving such notice shall notify the other Party whether or not it agrees to the appointment of the proposed Adjudicator and in default of agreement propose an alternative person to act as Adjudicator. If the Parties agree upon the identity of the proposed Adjudicator then the Dispute shall be referred to the Adjudicator within five (5) Working Days of the date of agreement upon the identity of the Adjudicator. In the absence of agreement upon the identity of the proposed Adjudicator within the period of two (2) Working Days referred to above, any Party may apply to the Nominator of Adjudicator for the appointment of the Adjudicator with the intention that the Adjudicator shall be nominated and the Dispute referred to him within five (5) Working Days following the expiry of the period of two (2) Working Days referred to above and the Parties shall accept any such nomination. If the Adjudicator resigns or is unable to act, the Parties shall seek to agree a replacement Adjudicator but in the absence of agreement within two (2) Working Days the procedure set out in this clause 11.2 for the nomination and appointment of an Adjudicator shall apply in relation to the replacement Adjudicator.
- (c) The Adjudicator to whom the Dispute is referred shall determine the Dispute by notifying the Parties of his decision in accordance with the applicable law in relation to this agreement, together with his reasons, within twenty (20) Working Days of referral of the Dispute, or such longer period as the Parties may agree. The Adjudicator shall be entitled to extend the period of twenty (20) Working Days by up to ten (10) further Working Days with the consent of the referring Party.
- (d) The Party referring the Dispute to the Adjudicator shall within five (5) Working Days after service of the notice under clause 11.2(a) above provide its written submissions in respect of the Dispute to the Adjudicator. Any submission from the other Party to be considered by the Adjudicator shall be provided in writing within such period as shall be determined by the Adjudicator following his or her appointment. If either Party so requests, or if the Adjudicator decides it would be advantageous, the Adjudicator may call a hearing in order to resolve the Dispute. The Parties shall comply with any decision of the Adjudicator in relation to the Dispute and the Adjudicator's decision shall be binding unless and until revised by the English Courts pursuant to clause 11.4 or by agreement between the Parties.

- (e) The Adjudicator shall be deemed not to be an arbitrator and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- (f) The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this agreement.
- (g) Any communication between a Party and the Adjudicator shall be communicated contemporaneously also to the other Party.
- (h) The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith and any employee or agent of the Adjudicator shall be similarly protected from liability.
- (i) Notwithstanding any other provision of this clause 11.2, the Adjudicator shall have no ability to decide on any dispute in connection with issues which compromise the Landlord's ability to exercise its statutory function in particular in relation to the operation of the Transport Undertaking or the Transport Assets and Premises.

11.3 Costs of the Dispute

The Adjudicator shall be entitled to make an award of costs in respect of the reference to adjudication. If the Adjudicator does not make an award of costs in respect of such reference each Party shall bear its own respective costs of any reference to adjudication. The costs of the Adjudicator (including the fees and expenses of any person consulted by him) shall be apportioned at the Adjudicator's discretion and in default of such apportionment, shall be shared equally between the Parties.

11.4 Litigation

- (a) If either the Landlord or the Developer wishes to challenge the Adjudicator's decision then either the Landlord or the Developer may, within twenty (20) Working Days after receiving notice of the Adjudicator's decision, notify the other of its intention to issue proceedings in court in respect of the Dispute provided that:

- (i) such proceedings are issued within sixty (60) Working Days following receipt of the Adjudicator's decision; and
 - (ii) if proceedings are issued, the Adjudicator's decision shall not be enforceable pending the outcome of the proceedings.
- (b) Neither Party shall be limited in the litigation to the evidence nor arguments previously put before the Adjudicator.
 - (c) The courts shall have full power to open up, review and revise any decision, approval, recommendation or determination made, notice or certificate of whatever nature given under this agreement and the decision of the Adjudicator in respect of the Dispute.
 - (d) The Parties shall continue to comply with, observe and perform all their obligations in this agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause 11 and shall immediately give effect to every decision of the Adjudicator and/or the court.

11.5 Notwithstanding any other provision of this clause 11, where a remedy of urgent injunctive relief is sought by any Party, that Party will be entitled to commence such action through the courts without first proceeding through the Executive Dispute Procedure.

12 TERMINATION

- 12.1 Subject to clause 12.5, without affecting any other right or remedy available to it, the Landlord may immediately determine this agreement by serving notice on the Developer and (where applicable) the Developer's Guarantor and the Funder at any time if there is an Event of Default.
- 12.2 On service of notice by the Landlord on the Developer and the Developer's Guarantor in accordance with clause 12.1, this agreement shall (subject to the provisions of clause 21) immediately determine and cease to have effect without prejudice to any pre-existing right of action of any Party (including any right of action of the Landlord against the Developer's Guarantor) in respect of any breach by any Party of its obligations under this agreement or in respect of liability to pay sums accruing up to the date of such determination.
- 12.3 If notice is served by the Landlord pursuant to clause 12.1, the Developer shall, if so requested by the Landlord, remove anything installed, built or used on the Transport Assets and

Premises as part of the Works, make good any damage to the Transport Assets and Premises caused by the Works and reinstate the same to the Landlord's satisfaction. For the avoidance of doubt, this sub-clause 12.3 shall survive termination of this agreement.

- 12.4 In relation to an Event of Default arising under limb (c) of the definition of Event of Default, the Landlord shall not exercise its rights in clause 12.1 if the Event of Default in respect of which notice has been served pursuant to clause 12.1 has been remedied before service of such notice.
- 12.5 In relation to an Event of Default arising under limb (b) or limb (c) of the definition of Event of Default, the Landlord shall as soon as reasonably practicable serve notice on the Funder, (of whom the Landlord has been given notice), that an Event of Default has occurred, giving details of the breach (a "**Default Notice**") and the Landlord shall not exercise its rights to terminate in clause 12.1 if any Funder has at its own expense:
- (a) in relation to an Event of Default arising under limb (b) of the definition of Event of Default, within one month after service of the Default Notice by the Landlord on the Funder; or
 - (b) in relation to an Event of Default arising under limb (c) of the definition of Event of Default, within one month after the expiry of the notice period notified by the Landlord under limb (c)

tendered to the Landlord a deed of covenant duly executed by the Funder or its nominee in a form reasonably acceptable to the Landlord binding the Funder or (at the Funder's option) such nominee of the Funder (the "**Covenantor**") to be responsible for the obligations on the part of the Developer under this agreement (save where such obligations have already been performed) as if the Covenantor had originally been named as the Developer in this agreement and the Funder or the Covenantor has provided to the Landlord a credible proposal (including a programme) to complete the Works in accordance with the end date in the Developer's programme.

Self Help Remedy

- 12.6 Following an Event of Default but subject to clause 12.4 and clause 12.5, on serving not less than one month's written notice on the Developer and on any Funder of whom the Landlord has been given notice, the Landlord may (at its own election) enter upon so much of the Property as necessary in order to carry out or complete the Transport Works or such of the

Works as may be necessary (in the Landlord's opinion) to protect the operation of the Transport Undertaking and the Transport Assets and Premises (the "**Self Help Works**") and the Landlord may recover the cost of the same as a debt from the Developer.

12.7 Following expiry of a notice served pursuant to clause 12.6, the Developer shall immediately:

- (a) novate by deed to the Landlord, without other consideration, the benefit of the Appointments and contracts with the Professional Team as may be relevant to the Self Help Works and shall pay all outstanding sums under those contracts; and
- (b) novate by deed, without other consideration, the benefit of any agreement contract, deed, bond, warranty, guarantee or other arrangement in connection with the construction or completion of the Self Help Works which is vested in the Developer, including the Acceptable Permission and all other drawings to the Landlord to the extent they relate to the Self Help Works or as otherwise may be reasonably required by the Landlord for its operational purposes.

13 COSTS

13.1 The Developer shall indemnify the Landlord and TfL against all costs, charges and expenses properly incurred and irrecoverable VAT properly incurred by the Landlord and TfL in connection with or as a consequence of this agreement or the Works including those:

- (a) relating to the checking, approving, inspecting, testing and monitoring of the Works and advice in relation to them including any liaison that may be required with any third party (including any Group of TfL) in respect of such liaison;
- (b) relating to any surveys carried out in connection with the Works;
- (c) in relation to the supervision by its employees or contractors of the Works;
- (d) relating to the provision of staff or other measures as the Landlord or TfL may consider necessary or desirable for the safety, security or protection of the Transport Undertaking or the Transport Assets and Premises;
- (e) in relation to all planning related matters in connection with the Works;

- (f) arising from the modification, in connection with the Works of any arrangements for the operation of the Transport Assets and Premises or the Transport Undertaking;
- (g) associated with the modification of the Transport Assets and Premises arising from the Transport Works which is agreed as part of the Landlord's Assurance Regime;
- (h) relating to the approval of the Building Contract, any Principal Sub-Contracts and the Appointments and the identity of the Building Contractor, Principal Sub-Contractors and the Professional Team;
- (i) relating to the approval or acceptance of any design, detailed plans, elevations, sections and other drawings and specifications, calculations, construction method statements and programmes for the Development Works;
- (j) relating to the obtaining of any other approvals, acceptances or consents in respect of the Works;
- (k) in providing such safety induction or training to the Developer or its agents, employees, contractors or suppliers as may be properly required by LUL Standards or otherwise required by the Landlord or TfL in relation to persons working on or near the Transport Assets and Premises;
- (l) in providing appropriate project management (as required) for the overall co-ordination and management of the various departments and the contractors of the Landlord affected by and actively involved in the Works;
- (m) in producing the Technical Interface Parameters and the Development Operational Interface Plan;
- (n) comprising Internal Time Costs incurred in connection with the Works;
- (o) comprising any Liability to Taxation arising from the Works; and
- (p) incurred in connection with the carrying out and completion of any of the Enabling Works;
- (q) any costs incurred by the Landlord in carrying out the Self Help Works (as defined in clause 12.6);

- (r) any costs incurred by the Landlord in relation to insurances as referred to in paragraph 6.9 of Schedule 4;
- (s) (if the Landlord opts to carry out any part of the Transport Works, at its absolute discretion pursuant to paragraph 3.16 of Schedule 2) incurred in connection with the carrying out and completion of the Transport Works; and
- (t) other costs and expenses properly incurred by the Landlord pursuant to the provisions of this agreement in connection with the Works.

13.2 The costs payable by the Developer pursuant to clause 13.1 shall include:

- (a) the reasonable and proper costs incurred by the Landlord or TfL as a result of engaging external advisers, contractors or consultants for works or services provided in connection with or as a consequence of this agreement or the Works; and
- (b) any costs payable by the Landlord to the PFI Contractor for Works or services provided in connection with or as a consequence of this agreement or the Works.

13.3 In relation to all costs of the Landlord payable by the Developer under this clause 13:

- (a) all such costs must be properly incurred;
- (b) such costs may include associated overheads; and
- (c) any such costs shall not include any costs properly attributable to a breach by the Landlord of its obligations under this agreement.

13.4 Save in relation to costs falling within clause 13.1(r) (which shall be payable on demand) the costs payable by the Developer pursuant to clause 13.1 shall be paid to the Landlord within twenty (20) Working Days of written demand.

14 NOTICES

14.1 Sending Notices

- (a) All notices to be given by a Party to the other Party under, or in connection with, this agreement shall be in writing and signed by or on behalf of the Party giving it. It shall

be served by delivering it by hand, or sending it by pre-paid recorded delivery, special delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom), to the address set out in this clause 14 and in each case marked for the attention of the relevant Party (or as otherwise notified from time to time in accordance with the provisions of this clause 14). Any notice so served by hand or post shall be deemed to have been duly given:

- (i) in the case of delivery by hand, when delivered;
- (ii) in the case of prepaid recorded delivery, special delivery or registered post, at 10am on the second Working Day following the date of posting; and
- (iii) in the case of registered airmail, at 10am on the fifth Working Day following the date of posting

provided that in each case where delivery by hand occurs after 5pm on a Working Day or on a day which is not a Working Day, service shall be deemed to occur at 9am on the next following Working Day.

- (b) References to time in this clause 14 are to local time in the country of the addressee.

14.2 **Proof of Service**

In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party set out in this clause 14 (or as otherwise notified by the Party to the other Party) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, special delivery or registered post.

14.3 **Addresses for Service**

- (a) The addresses of the Parties for the purpose of clause 14 are as follows:

Developer

Address: []

For the attention of: []

Developer's Guarantor

Address: []

For the attention of: []

Landlord

Address: 55 Broadway, London, SW1H 0BD

For the attention of:

- (i) the Infrastructure Protection Engineer (in relation to the matters referred to in Schedule 1); or
- (ii) the Project Engineer (in relation to the matters referred to in Schedule 2); or
- (iii) the Property Development Director (in relation to all other matters in this agreement)

in each case specifying the details of the Development and or the Property to which the notice relates.

- (b) Where a notice is served on the Landlord by the Developer, the Developer shall also provide a copy of such notice to TfL Legal (Head of Property and Planning Law) 55 Broadway, London, SW1H 0BD.

14.4 Change of Address

A Party may notify the other Party to this agreement of a change to its name, relevant addressee, address for the purposes of this clause 14, provided that, such notice shall only be effective on:

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

14.5 **Additional Notice Provisions**

- (a) All notices under or in connection with this agreement shall be in the English language.
- (b) Notice given under this agreement shall not be validly served if sent by email (save in the case of the provision of consents to any matter by either Party).
- (c) This clause 14 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15 **CONFIDENTIALITY AND TRANSPARENCY/FOI**

The Parties agree to adhere to the provisions contained in Schedule 6.

16 **INTEREST**

Save where otherwise provided in this agreement, any sums due from one Party to another if not paid within ten (10) Working Days of the due date shall bear interest payable at the Default Rate calculated on a daily basis from the due date to the date of payment in cleared funds after as well as before judgment.

17 **VALUE ADDED TAX**

- 17.1 For the purposes of this clause 17 the expressions "**supply**" "**taxable supply**" "**input tax**" and "**VAT invoice**" shall bear the same meanings as they do in the VAT Act. References in this agreement to any person, or any right, entitlement or obligation of any person under the laws in relation to VAT, shall (where appropriate and unless the context otherwise requires) be construed, at any time when such person is treated as a member of a VAT Group, to include a reference to the representative member, or the right, entitlement or obligation under such laws of the representative member, of that group at such time.
- 17.2 Unless expressly stated to the contrary in this agreement, any payment or other consideration given for a supply made under this agreement is exclusive of any VAT chargeable on the supply.

- 17.3 Subject to clause 17.5, where, pursuant to the terms of this agreement, a Party (for the purposes of this clause 17.3, the "**Supplier**") makes or is deemed to make a supply to another Party (for the purpose of this clause 17.3, the "**Recipient**") for VAT purposes and VAT is or becomes chargeable on such supply, the Recipient shall, in addition to and at the same time as the other consideration payable for such supply, pay to the Supplier a sum equal to the amount of such VAT, subject to the Supplier having provided the Recipient with a valid VAT invoice in respect of such supply and if the Supplier fails to do so the Recipient shall not be obliged to pay to the Supplier a sum equal to such VAT until three (3) Working Days after receipt of the VAT invoice.
- 17.4 Where, pursuant to the terms of this agreement, a Party (for the purposes of this clause 17, the "**Payer**") is required to pay, repay or reimburse another Party (for the purpose of this clause 17.4, the "**Payee**") for any cost, fee, charge, disbursement or expense (or any proportion of it) incurred by the Payee, the Payer shall also pay, repay or reimburse the Payee for any part of such costs, fee, charge, disbursement or expense (or proportion of it) which represents VAT that the Payee is not entitled to recover (whether by way of credit, repayment or otherwise).
- 17.5 The Parties recognise that the arrangements described in this agreement include the provision and receipt of supplies of goods and/or services as non-monetary consideration on which it will be necessary to put a value for VAT accounting purposes. Each Party agrees they will work together in order to do that so as to be able to exchange the appropriate VAT invoices in respect of those supplies by the time at which the relevant supply is payable. Where VAT invoices are exchanged but they are not for identical amounts, the amount payable in respect of VAT by each Party to the other will be offset against one another and payment of the appropriate balancing amount will be made to the other Party by the Party issuing the lower value invoice.
- 17.6 The Developer will not and will ensure that any other person which occupies or uses the Property will not do so in such a way or otherwise act (and warrants that it has not otherwise acted and that it does not have the intention or expectation that either it or any such other person will act) in a manner that would or might cause an option to tax exercised, or which could be exercised, by the Landlord in relation to the Property not to have effect in respect of, or not to apply to, any supplies of goods and/or services made by the Landlord (including any predecessor) (a "**Disapplication**") provided that there shall be no breach of this clause 17.6 unless the Disapplication arises by reason of the operation of paragraphs 5 to 17 of schedule 10 to the VAT Act.

- 17.7 The Landlord may in its absolute discretion and only to the extent that it shall stipulate in writing waive the restrictions and obligations placed upon the Developer by clause 17.6.
- 17.8 The Developer warrants and undertakes to the Landlord that it has not and will not issue a certificate pursuant to paragraphs 6 or 10 of schedule 10 to the VAT Act.
- 17.9 The Developer shall indemnify the Landlord and keep the Landlord indemnified against any VAT for which the Landlord may become liable, and any loss arising from the Landlord failing to recover, or being liable to repay or pay, any VAT, and any interest, fines and/or penalties relating to any VAT, resulting from any breach of clause 18.6 or 17.7, and against any tax on any amounts due or paid under this indemnity to the Landlord for which the Landlord may be held liable.

18 NO PARTNERSHIP

Nothing in this agreement is intended (or shall be deemed) to establish any partnership or joint venture between the Landlord and the Developer.

19 SEVERABILITY

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

20 NON FETTER

- 20.1 The Landlord will exercise its rights and powers and perform its duties and obligations in a manner which is consistent with the terms of this agreement provided that nothing contained or implied in this agreement or any consent or approval granted pursuant to it shall fetter, prejudice or affect the statutory rights, powers, duties and obligations of the Landlord or any Group in the exercise of its/their statutory or public functions (whether directly or under authorisation/ delegation) as a statutory body or public authority, which, in the case of TfL or any Group, includes and involves the functions of the strategic transport authority for Greater London
- 20.2 No approval nor any refusal to approve by the Landlord under this agreement shall relieve the Developer [or the Developer's Guarantor] from its obligations under this agreement.

21 SURVIVAL OF PROVISIONS

The provisions of clauses [12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and Schedule 6 shall remain in full force and effect notwithstanding termination of this agreement.

[NOTE: To be finalised when the agreement is finalised, but to include VAT provisions, dispute resolution, confidentiality/FOL/transparency and third party rights.]

22 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Save that TfL has the right to enforce the terms of this agreement in accordance with the Contracts (Rights of Third Parties) Act 1999, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

23 GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

24 JURISDICTION

Subject to clause 11, each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

25 GUARANTEE

The Developer's Guarantor agrees to provide a guarantee for the obligations of the Developer arising under this agreement pursuant to the terms of Schedule 8.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

Infrastructure Protection

Note to Bidders: Application of Schedule 1 and Schedule 2

[Note: The provisions of Schedule 1 will apply to all works to be carried out as part of the Development. Schedule 1 contains the provisions necessary for the Landlord to be sure that the works will not adversely affect the operation and infrastructure of the railway.

They contain a mechanism for the Landlord to review documentation relating to the entire development, and then refine the scope of the works to which Infrastructure Protection controls need to be applied, having regard to where the works are and their potential to affect the railway.

Schedule 2 applies to all Transport Works (i.e. .works which are carried out to create or alter assets that are (or are to be) owned or used by the Landlord for use in their transport undertakings). The requirement to include this will be decided once the scheme is finalised.

As stated in the introduction to Schedule 2, where works include Transport Works, the effect of Schedule 1 and Schedule 2 is cumulative i.e. both Schedule 1 and Schedule 2 will apply, but in the case of conflict, the provisions of Schedule 2 will prevail.]

1 ENGINEERING CONSENTS

1.1 The Parties acknowledge that certain aspects of the Works may have an effect on or the potential to have an effect on the operation of the Transport Undertaking or the Transport Assets and Premises or involve works on, or access to the Transport Assets and Premises whilst those parts of the Transport Assets and Premises are in operational use. Accordingly the Developer shall seek engineering consents from the Landlord in relation to the Works pursuant to the terms of this Schedule 1, provided that:

- (a) nothing in this agreement shall require the Landlord to give or to procure the giving of any consent or agreement or approval which would detrimentally affect the operation of the Transport Undertaking or the Transport Assets and Premises. Where the Landlord decides to reject the Developer's approach for consent, agreement or

approval on grounds in this paragraph 1.1(a) then the Landlord must give the reasons for such decision; and

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

2 APPROVAL OF WORKS DOCUMENTS

2.1 The Developer agrees that it will not commence any works on or near the Property until:

- (a) it has received the Landlord's approval of the Works Documents relating to the relevant element of the Works; and
- (b) has given the Landlord not less than 20 Working Days' notice of its intention to commence the Works.

2.2 The Developer is to prepare a Concept Design Statement for each element of the Works and submit the same to the Landlord with a request for approval in principle by the Landlord. Following receipt of such approval, the Developer is to design and carry out the Works in accordance with the relevant approved Concept Design Statement.

2.3 The Developer is to prepare a Document Submissions Programme and shall submit it to the Landlord with a request for approval by the Landlord. Following such approval, the Developer shall submit Works Documents to the Landlord for approval in accordance with the approved Document Submissions Programme.

2.4 The Developer is not to make any variation of or modification to the details approved by the Landlord under the terms of this paragraph 2 without first obtaining the written approval of the Landlord.

2.5 Any dispute as to whether the subject matter of a consent, agreement or approval may affect the operation of the Transport Undertaking or the Transport Assets and Premises may only be referred to the Head of Engineering for determination and shall not be subject to resolution in accordance with clause 11.

- 2.6 Any decision of the Landlord to withhold consent, grant approval or acceptance, or impose conditions under the terms of this agreement or any direction, comment, approval or consent given by the Landlord or enquiry, decision or inspection made by the Landlord under the terms of this agreement shall not in any way reduce or eliminate the Developer's liability, obligations, covenants and conditions under this agreement.
- 2.7 The LUL Standards which apply to the relevant Works shall be the prevailing LUL Standards as at the date of the approval of the Works Documents which relates to such Works subject to any changes required by law.
- 2.8 Any consent or approval given pursuant to this Schedule 1 shall expire six (6) months after the date such consent or approval is given by the Landlord, save where the Developer has substantially commenced the element of the Works to which the consent or approval relates. If a consent or approval has expired, the Developer shall resubmit the relevant Works Documents to the Landlord for approval and with that submission shall identify the changes made, or confirm that no changes have been made and the LUL Standards which apply to the relevant Works shall be the then prevailing LUL Standards as at the date of such further submission and approval.
- 2.9 The Parties agree that:
- (a) within thirty (30) Working Days of submission to the Landlord of the Concept Design Statement and within twenty (20) Working Days of submission to the Landlord of the Document Submissions Programme or any Works Documents, (or in each case such other period as shall be agreed between the Developer and the Landlord), together, in each case, with a request for approval pursuant to this Schedule 1, the Landlord shall:
 - (i) confirm no objection to the information or documentation submitted; or
 - (ii) specify (with reasons) any objections and may, (but shall not be obliged to) suggest what changes might be required so that the Landlord can approve the information or documentation submitted in which event the Developer shall revise and resubmit the information or documentation and the provisions of this paragraph 2.9 shall apply to the revised information or documentation, save that the period for responding to the submission shall be ten (10) Working Days following re-submission; or

- (iii) request further information (which may entail a meeting) relating to the relevant submission; or
- (iv) request additional time to consider the submission (including where the consent or input of any third party is required in relation to such submission).

2.10 Where a submission is made by on or behalf of the Developer which contains substantial omissions such that it is not possible properly to evaluate the content of the submission the Landlord shall alert the Developer to that fact and on the next re-submission of that submission the deadline for response by the Landlord shall be twenty (20) Working Days, not ten (10) Working Days.

2.11 If the Landlord fails to respond to a request for approval pursuant to paragraph 2.9 within the specified period the Developer may on expiry of the relevant period escalate its request for approval by written notice to the Infrastructure Protection Manager who shall have ten (10) Working Days from the receipt of the Developer's notice to respond on behalf of the Landlord.

2.12 If the Infrastructure Protection Manager fails to respond within the period specified in paragraph 2.11, the Developer may invoke the Executive Dispute Procedure.

3 DESIGN OF THE WORKS

3.1 The Works shall be designed with the skill and care to be expected of a competent and properly qualified designer experienced in designing works of a similar nature type location and complexity to the Works so as to be and to be capable of being carried out:

- (a) free from Deleterious Materials;
- (b) in accordance with the relevant approved Works Documents including the approved Concept Design Statement;
- (c) where applicable, in accordance with the Technical Interface Parameters;
- (d) in accordance with the Acceptable Permission, any Planning Agreement, any party wall awards and the Requisite Consents;
- (e) in compliance with all Legislation, including the CDM Regulations;

- (f) in accordance with all relevant codes of practice and British Standards and European Standards at design approval;
- (g) so as to ensure that they do not adversely affect the safety or operation of the Transport Undertaking and where applicable in accordance with LUL Standards; and
- (h) in accordance with the obligations contained in this agreement.

4 IMPLEMENTATION OF THE WORKS

Prior to Commencement of the Works

- 4.1 Prior to commencing each and every stage or phase of any Works the Developer is to obtain all Requisite Consents that may from time to time be necessary to enable the Developer lawfully to commence and to carry out that stage or phase of the Works or, if any Works are destroyed or damaged, to reinstate them.
- 4.2 Prior to the commencement of the Works, the Developer is to procure and deliver to the Landlord the pre-construction health and safety plan for the Landlord's written approval (not to be unreasonably withheld or delayed).
- 4.3 The Developer is not to commence the Works without first procuring the carrying out, at its own cost, of a detailed condition survey of any part of the Landlord's Neighbouring Property likely to be affected by the Works by a reputable and appropriately qualified professional (approved as an Approved Consultant and appointed in accordance with Schedule 5) (the Landlord being entitled to require that access is on an accompanied and supervised basis). Within five (5) Working Days of undertaking the survey the Developer shall provide a copy of such survey report to the Landlord with all relevant supporting information that the Landlord may require.
- 4.4 If the survey report referred to in paragraph 4.3 contains a recommendation that further investigations are required, the Developer shall arrange, at its own cost, for such further investigations, if the Landlord so requires.
- 4.5 The process of procuring the carrying out of a condition survey and providing a copy to the Landlord (and the appointment of the consultant and provision of a warranty unless covered by the original appointment and warranty) pursuant to paragraph 4.3 is to be repeated (on an accompanied and supervised basis if required by the Landlord) at the Developer's cost

immediately following completion of the Works and, where reasonably requested by the Developer or by the Landlord, at appropriate interim points during the course of the Works.

4.6 The Parties will (acting reasonably) work together to prepare and agree the Development Operational Interface Plan before the commencement of the Works.

4.7 The Developer is to procure that:

- (a) proper provision is made on the Property for the security and protection of the Transport Assets and Premises and for the ongoing operation of the Transport Undertaking in accordance with the Development Operational Interface Plan during the carrying out of the Works and for the protection of any materials, plant and equipment;
- (b) if required by the Landlord, the Developer is to provide the Landlord with suitable site accommodation for the Landlord's nominated site inspector in accordance with the Landlord's reasonable specifications (which shall be communicated in writing to the Developer) and LUL Standards;
- (c) proper precautions are taken for the safety of all persons upon or in the vicinity of the Transport Assets and Premises including maintaining such hoardings, fences, security patrols, safeguards and arrangements of lighting the Works and other security measures as the Landlord (acting properly) or any competent statutory or other authority may consider necessary in the interest of public safety or the safety of employees or passengers of the Landlord or other persons upon the Transport Assets and Premises or (if the Landlord shall take any such precautions) repay to the Landlord the proper costs of so doing;
- (d) proper provision is made for the support of land, buildings and boundaries adjoining the Transport Assets and Premises and for the protection of all services benefiting land adjoining or near to the Transport Assets and Premises; and
- (e) no obstruction is caused or permitted to be caused (save during the proper carrying out of works and only to the extent that they have been approved by the Landlord) to the means of access to:
 - (i) any plant, machines and equipment; and

- (ii) service ducts and risers

serving the Transport Assets and Premises or the Landlord's Neighbouring Property.

4.8 In connection with and to facilitate the Works, the Developer shall, (in each case at its own cost):

- (a) procure that the rights and interests of third parties are not infringed by the carrying out of the Works;
- (b) comply with any agreements, deeds, documents, rights, easements, exceptions, reservations and covenants, restrictive or otherwise, affecting the Property, the Transport Assets and Premises or the title to the Property or the Transport Assets and Premises;
- (c) not permit any encroachment or easement to be made or acquired against or over the Transport Assets and Premises or the Property;
- (d) secure necessary access to or use of any land not owned by the Landlord and required temporarily or permanently in connection with any Works;
- (e) negotiate the terms of agreements with owners and occupiers of neighbouring property for the release of rights of way, light and air or any other legal or equitable rights over the Property or the Transport Assets and Premises which would be infringed by or prevent or impede the carrying out of the Works; and
- (f) take all necessary steps (including the placing and processing of orders) to arrange with the appropriate party for any temporary or permanent diversion of any conduits and for any road closure or traffic diversions as may be necessary for the carrying out of the Works in such a manner as not to render the Landlord in any way liable in respect of such matters provided always that the Developer shall not interfere with the access to or any of the utilities or conduits or access to them without the prior written approval of the Landlord (such approval not to be unreasonably withheld or delayed unless the utilities or conduits serve the Transport Assets and Premises in which case the Landlord shall be entitled to withhold such approval in its absolute discretion). The Landlord may elect to carry out at the Developer's expense (as agreed in advance with the Developer, acting reasonably) any such temporary or permanent modification or diversion of the Landlord's own services or works arising from the Works.

Entry by the Developer

- 4.9 If the Developer requires access to the Transport Assets and Premises in order to carry out surveys, tests, monitoring, inspections and investigations and other works in relation to the Works or if the Developer requires to place scaffolding or oversail a crane on the Transport Assets and Premises, it must serve notice on the Landlord in writing and provide all relevant Works Documents relating to the same. Where such request is approved by the Landlord (in its absolute discretion), the Landlord shall grant the Developer a licence in the Landlord's standard form from time to time.

[Note: Wording to grant these licences may be incorporated into this agreement where it is known prior to exchange of this agreement that such licences will be required and the detail of such arrangements (e.g. term, overrun fee, etc) is known.]

- 4.10 The Developer shall itself, and shall procure that the Professional Team and the Building Contractor and any sub-contractors agents, advisers, workmen and all other parties instructed or authorised by the Developer or the Building Contractor comply with all proper instructions, rules, restrictions and regulations which may be imposed by the Landlord in relation to access to the Transport Assets and Premises.

[Note: Where works are to be carried out on the Property and the Transport Assets and Premises, TfL may require the two to be managed as a single common site.]

Manner of Carrying Out the Works

- 4.11 The Developer shall ensure that the Works are carried out in a manner which does not cause any nuisance, annoyance, inconvenience, injury, loss, danger, disruption or interference to the Transport Undertaking or the Transport Assets and Premises or to the Landlord or its officers, servants, agents or persons on the Transport Assets and Premises.
- 4.12 The Developer is to carry out or procure entirely at its own expense that the Works are carried out in accordance with the obligations contained in this agreement.
- 4.13 The Works shall be carried out and completed:
- (a) in a good and workmanlike manner and free from any defect;
 - (b) free from Deleterious Materials;

- (c) in accordance with the approved Works Documents;
- (d) in accordance with the Development Operational Interface Plan;
- (e) in accordance with the Technical Interface Parameters;
- (f) in accordance with the requirements of the insurances arranged under Schedule 4;
- (g) in accordance with the Building Contract;
- (h) diligently and expeditiously and with all reasonable despatch;
- (i) in accordance with the Acceptable Permission, any Planning Agreement, the Requisite Consents and any party wall award;
- (j) in compliance with all Legislation, including the CDM Regulations;
- (k) in accordance with all relevant codes of practice and British and European Standards at the date of the commencement of the Works;
- (l) where applicable in accordance with LUL Standards; and
- (m) in accordance with the obligations contained in this agreement.

4.14 At all times whilst carrying out the Works, the Developer will itself and will procure that its contractors, agents, advisers and workmen will at all times:

- (a) comply in all respects with the provisions of the Works Documents approved pursuant to this Schedule 1 as the same may be added to, amended or varied from time to time as permitted by this agreement and comply in all respects with the Technical Interface Parameters;
- (b) comply with paragraphs 4.6(a) to 4.6(e) (inclusive);
- (c) comply in all respects with the requirements and procedures of the Landlord that have been notified to the Developer in respect of the delivery of materials for use in connection with the Works including the days and hours on and within which deliveries may be made;

- (d) comply in all respects with the requirements of the Landlord notified in writing to the Developer in respect of the security and protection of the Property and make arrangements reasonably satisfactory to the Landlord for the security and protection of the Works and the materials being used in relation to them;
- (e) comply with the current requirements (as at the date of this agreement) of the Landlord in relation to crime and disorder, prohibited acts and work related road risk and will give reasonable consideration to a request of the Landlord to comply with any similar requirements adopted by the Landlord after the date of this agreement;
- (f) (save to the extent and degree expressly authorised under this agreement pursuant to the approved Works Documents) not damage or cause or permit its servants agents or contractors or any other persons to damage the Transport Assets and Premises;
- (g) comply with the relevant LUL Standards and in the case of any conflict between the standards and requirements referred to in this paragraph 4 then the Developer shall consult with the Landlord who shall determine which standards or requirements shall prevail and such determination shall be final and binding; and
- (h) keep all escape routes in relation to the Property and the Transport Assets and Premises free and unobstructed at all times.

4.15 It is agreed that in respect of the Works, the Developer shall be the only Client for the purposes of the CDM Regulations. The Developer shall comply with all its obligations as client under the CDM Regulations in relation to the Works.

4.16 If the Developer proposes a material change to its programme in respect of the Works it must consult with the Landlord as to that change as soon as reasonably practicable and comply with such further requirements as the Landlord shall notify the Developer of in writing.

4.17 The Works shall, at all times, be at the Developer's risk and, save as expressly provided in this agreement, the Landlord shall have no responsibility or liability in respect of them or be under any obligations to insure the same.

Developer's Representative

4.18 At all times whilst carrying out the Works, the Developer is to nominate or appoint a suitably graded, trained and experienced representative who is identified to and approved by the

Landlord (such approval not to be unreasonably withheld or delayed) as the designated representative of the Developer ("**Developer's Representative**") who shall:

- (a) supervise and co-ordinate and be responsible for the supervision and co-ordination of all aspects and all elements of the Works programme, plant and materials and general health and safety matters;
- (b) be the day to day contact for the Landlord; and
- (c) communicate to the Building Contractor and the Professional Team any instructions properly given by the Landlord in accordance with the terms of this agreement.

4.19 The Developer is to procure that such person or his deputy (or any alternate appointed and approved in accordance with paragraph 4.17) shall be available on site during the Building Contractor's normal working hours and shall be available by telephone 24 hours a day throughout the duration of the Works.

4.20 In the event the Landlord has material problems communicating with and/or receiving co-operation from the Developer's Representative as a result of the Developer's Representative's default (where the Landlord is entitled to such communication and/or co-operation pursuant to this agreement) the Landlord shall be entitled (after consultation with the Developer) to require that the Developer replaces the Developer's Representative.

5 INSPECTION, MEETINGS, INFORMATION

5.1 The Developer is to make available or procure the availability for inspection by the Landlord at all reasonable times, copies of all registers, forms and certificates that the Developer, its contractors, agents, sub-contractors or Building Contractor's sub-contractors are obliged to hold or maintain by virtue of any Legislation in respect of any scaffold, material, plant and machinery, equipment or operation used in connection with any Works.

5.2 The Landlord shall be entitled to have a resident site inspector on site at all times and shall be entitled at all reasonable times to make representations to the Developer and the Developer's Representative about the Works and to inspect the Works and to test and take samples of materials and workmanship and may give instructions in respect of the carrying out of the Works to:

- (a) the Developer and the Developer's Representative; or

- (b) (where the Landlord has reasonable grounds to believe that there is an immediate danger or emergency) any consultants, contractors or other persons on the Property, (provided always that the Landlord confirms such instructions to the Developer's Representative in writing within five (5) Working Days).

5.3 The Developer, its consultants, contractors, agents, workmen, the Building Contractor's consultants and sub-contractors and any others engaged in the execution of the Works may be required by the Landlord to stop work or remove from any Works any scaffold, material, plant and machinery or equipment which the Landlord considers may cause damage or be a hazard to the Transport Undertaking or the Transport Assets and Premises and/or which does not comply with the Works Documents previously approved by the Landlord.

5.4 If during the carrying out of the Works the Developer shall:

- (a) use any materials or execute any works (not being materials or works for which specific provision is made in the Works Documents previously approved by the Landlord) which the Landlord shall reasonably consider inferior or unfit for the purpose intended;
- (b) execute any work which the Landlord shall reasonably consider imperfect; or
- (c) make any deviation of substance from the materials approved by the Landlord

the Developer shall, as soon as practicable upon written notice from the Landlord requiring it so to do, take steps to remedy the same and if the Developer fails to commence and diligently to rectify the same within twenty-five (25) Working Days after such notice then it shall be lawful for the Landlord and its respective agents and workmen to take such steps and the costs and expenses of so doing shall be paid by the Developer on demand.

5.5 The Developer is to keep the Landlord informed of material measures taken and stages reached by the Developer in performing its obligations, the progress of and material problems or delays affecting the Works and shall on request supply promptly to the Landlord 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 Works.

5.6 The Developer is to hold site meetings not less than once every two weeks and procure that the Building Contractor, the Developer's Representative and members of the Professional

Team attend such meetings to review or plan progress or deal with any other matter relating to the carrying out of the Works.

[NOTE: Frequency to be considered for this site and having regard to agreements entered into with the contractors and complexity of work being undertaken.]

5.7 The Developer is to:

- (a) give the Landlord not less than ten (10) Working Days written notice of any site meetings called under paragraph 5.6 unless it has been agreed that site meetings will be held at regular intervals on dates and at times agreed in advance;
- (b) permit the Landlord, if it so desires, to attend and participate in those site meetings;
- (c) permit the Landlord to make representations in connection with the Works; and
- (d) supply the Landlord with copies of full minutes of the site meetings, whether or not they attend.

5.8 In respect of any representations made by the Landlord under this paragraph 5 the Developer is to:

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

5.9 Where the Landlord, acting reasonably, believes that it would be useful to have a meeting between the Developer, Developer's Representative, Infrastructure Protection Engineer[, Project Engineer], Building Contractor and/or Professional Team member (as may be appropriate) in relation to the Works, the Landlord shall notify the Developer and the Developer shall facilitate such request as soon as reasonably practicable following receipt of the same.

- 5.10 The Developer is promptly to notify the Landlord of any notice it receives from any Public Authority or from any adjoining owner relating in any way to the Transport Assets and Premises, the Property or any of the Works and must supply a copy of every such notice to the Landlord within five (5) Working Days after receipt of it.

6 COMPLETION OF THE WORKS

- 6.1 Prior to the Practical Completion Date the Landlord shall be entitled at all reasonable times and from time to time on reasonable prior notice being given, to inspect the Works, but without hindering their progress. The Landlord may make representations in respect of the Works to the Developer and the Developer shall (and shall procure that the person issuing the Certificate of Practical Completion shall) give all due consideration to and take proper account of such representations.
- 6.2 Following completion of any part of the Works, the Developer is to give to the Landlord not less than ten (10) Working Days' prior notice in writing of the date and time at which an inspection of any Works is to be carried out in anticipation of the issuance of a Certificate of Practical Completion.
- 6.3 The Developer shall permit the Landlord and those authorised by it to attend the inspection referred to in paragraph 6.2 and the Developer shall (and shall procure that the person issuing the Certificate of Practical Completion shall) give all due consideration to and take proper account of any representations made by the Landlord at that time.
- 6.4 The Developer shall procure that a copy of the Certificate of Practical Completion in respect of the Works is delivered to the Landlord as soon as practicable after its issue.
- 6.5 The Landlord and the Developer agree that the issue of the Certificate of Practical Completion in respect of the Works shall not be delayed by the existence (if at all) of any minor defects shrinkages omissions snagging items or other faults which do not have the potential to have an adverse effect on the Transport Assets and Premises. The Developer is to remedy (or procure the remediation of) such defects, shrinkages omissions snagging items or faults as soon as reasonably practicable.

6.6 As soon as reasonably practicable following the Practical Completion Date, the Developer shall:

- (a) procure that the Building Contractor carries out any further works that are required to make good any defects, shrinkages, omissions snagging items and faults to the reasonable satisfaction of the Landlord; and
- (b) procure that all defects in the Works for which the Building Contractor is responsible under the relevant Building Contract (once entered into) that arise within the relevant Defects Liability Period are made good by the Building Contractor to the reasonable satisfaction of the Landlord.

6.7 Any disputes as to whether the Works have been completed shall be determined pursuant to clause 11 of this agreement.

7 AS BUILT DRAWINGS AND HEALTH AND SAFETY FILE

7.1 On or before the date of issue of the Certificate of Practical Completion the Developer is to deliver, free of cost, to the Landlord, for record purposes, two complete sets (one set in hard copy and another set in an electronic format specified by the Landlord) of "as-constructed" drawings of the substructure, superstructure and cladding and any other elements of the Works requested by the Landlord. The Developer shall procure that the Landlord is granted an irrevocable royalty-free licence to use such information for all purposes connected with the Property, the Works, the Transport Undertaking or the Transport Assets and Premises and to enable the Landlord to carry out the operation, maintenance, repair, renewal and enhancement of the Transport Assets and Premises and perform its functions as infrastructure manager and operator of the Transport Undertaking and the Transport Assets and Premises, such licence to include the right to grant sub-licences.

7.2 The Developer is to procure and deliver to the Landlord as soon as practicable following the Practical Completion Date (but not later than four weeks after that date) a copy of the Health and Safety File [(including manufacturer's warranties in favour of the Landlord for all plant, equipment, machinery and apparatus comprising the Works for such elements requested by the Landlord)] prepared, maintained, completed and updated as required by the CDM Regulations.

8 ENTRY BY THE LANDLORD TO THE PROPERTY

- 8.1 The Developer shall permit the Landlord, LUL and their staff contractors and customers to enter upon the Property in accordance with the Development Operational Interface Plan.
- 8.2 The Developer shall upon receipt of reasonable prior notice (save in the case of emergency when no notice shall be required) permit the Landlord, the Landlord's consultants and the Landlord's contracting team, to enter upon the Property at all times in order to enable the Landlord to carry out any works necessary for the operation of the Transport Undertaking or the Transport Assets and Premises, subject always to the reasonable security arrangements of the Developer and the reasonable and proper safety requirements imposed by the Developer and/or the Building Contractor and the persons so entering causing the minimum interference, interruption to, or restriction of the Works as reasonably practicable and making good to the reasonable satisfaction of the Developer any physical damage caused to the Property or to the Works.
- 8.3 At any time after the date of this agreement but subject to the provision of reasonable prior notice the Landlord and its contractors, agents, advisers, workmen and others engaged in the execution of the works described in paragraph 8.1 shall be permitted to have a crane or cranes oversail the Property and/or all other property in which the Developer has an interest for the purpose of undertaking the works described in paragraph 8.1, as licensee, without payment of any fee.
- 8.4 The Developer shall not do or omit to do anything that would cause any Deleterious Materials to escape, leak or be spilled on the Property or the Transport Assets and Premises or to migrate to or from such premises.

9 NON WARRANTY AND STATE AND CONDITION AND LOSS OF PROFIT

State and Condition

- 9.1 The Developer acknowledges that:
- (a) it has inspected the Property and the interface with the Transport Assets and Premises and has formed its own view as to its/their suitability for the Developer's own purposes and has entered into this agreement solely on the basis of such inspection, the Developer's own judgement and the terms of this agreement and not in reliance

wholly or partly upon any representation whether written, oral or implied made by, or on behalf of, the Landlord;

- (b) the Landlord gives no warranty or representations as to the state and condition of the Property nor the Transport Assets and Premises or their suitability for the Works;
- (c) it is aware of the state and condition of the Property, the Landlord's Neighbouring Property and any premises adjoining the Property and shall take such extra precautions as may be necessary in order to protect the same; and
- (d) the Developer accepts full responsibility for the state and condition of the Property and shall have no claim against the Landlord in relation to it, nor the state of the Transport Assets and Premises.

Loss of Profit

- 9.2 The Landlord shall not be liable for any claims for loss of profits, loss of business or indirect losses or consequential damages of any kind arising from the exercise by the Landlord of its rights or any breach by the Landlord of its obligations contained in this agreement and the Developer waives all of its rights (if any) in respect of such claims.
- 9.3 The Landlord shall not be liable to the Developer for any costs or expenses incurred by or any loss or damage or other liability suffered by the Developer as a result of a decision properly given by the Landlord pursuant to this agreement after due consideration on any question relating to the operation of the Transport Undertaking or the Transport Assets and Premises.

Emergencies and Adverse Effects

- 9.4 If the Landlord properly considers the method of carrying out the Works adversely affects or is likely to adversely affect (including as a result of the levels of noise, electromagnetic interference, vibration or dust) the operation of the Transport Undertaking or the Transport Assets and Premises, the Landlord shall notify the Developer of the relevant adverse effect and of the immediate requirements of the Landlord and the Developer shall immediately, at its own cost, comply with the proper requirements of the Landlord in order to prevent, halt and/or rectify the adverse effect referred to above and then the Developer and the Landlord shall consult as to an appropriate method for the safe carrying out of such works to avoid any recurrence of such adverse effect, such method to be agreed as soon as reasonably

practicable after the date of notification by the Landlord of its opinion in accordance with this paragraph 10.4.

9.5 Where any incident has occurred as a result of the Works which has caused an unexpected adverse effect on the operation of the Transport Undertaking or the Transport Assets and Premises then the Landlord may suspend any consents or approvals given by it relating to such works or their implementation and require the cessation of such works pending a review of any consents relating to such works and in light of such review the Landlord may:

- (a) confirm an existing consent and end the suspension of that consent;
- (b) revise any consent given (including by the addition or amendment of conditions); or
- (c) require the Developer to make further proposals and submissions to address the cause and effect of a possible similar or related incident,

and the provisions of this Schedule 1 shall apply in respect of submissions made by the Developer under paragraph 10.5(c) provided that whilst the suspension exists no Event of Default shall arise as a consequence of such suspension.

9.6 Notwithstanding any other provision of this agreement, the Landlord shall be entitled to require the Developer to vary the scope of the Works or to suspend or accelerate any part of such works, or to vary the method, sequence or programme of carrying out of any part of such works, in the event of, or to prevent any emergency, or to address any urgent requirement as to safety or security, without the approval of the Developer and the Landlord shall notify the Developer immediately following any such variation.

9.7 Upon the happening of an event of emergency which poses an immediate threat to the safety of the Transport Undertaking or the Transport Assets and Premises, the Landlord:

- (a) may (where it has not been possible immediately to contact the Developer, or at the same time as contacting or attempting to contact the Developer) issue an instruction directly to the Building Contractor for the implementation of such works as are properly required for the purposes of addressing such emergency and the Landlord shall provide a copy of any such instruction to the Developer as soon as practicable after it is issued; or

(b) may itself undertake such works as are properly required for the purposes of addressing such emergency.

9.8 The Developer shall pay the costs and expenses incurred by the Landlord under paragraph 10.7(b) in accordance with clause 13.

SCHEDULE 2

Transport Works

[Note: Where the Works include Transport Works, the Parties agree that the provisions of this Schedule 2 shall apply in addition to the provisions of Schedule 1 save in the case of inconsistency in which case the provisions of this Schedule 2 shall prevail.

Where matters are referred to in this Schedule 2 as being submitted for the Landlord's approval, such matters are submitted for the Landlord's comment, review and acceptance.

In relation to any Transport Works that are to be carried out to create assets for use by the Landlord or by any operator of rail services which are the responsibility of the Landlord, the standards applicable under this Schedule 2 are LUL Standards' in relation to such Transport Works.]

1 PROGRAMME FOR THE DESIGN AND CONSTRUCTION OF THE TRANSPORT WORKS

Preparation of the Transport Works Programme

- 1.1 The Developer shall consult with the Landlord when preparing the Transport Works Programme.
- 1.2 The Developer shall (to the extent it has not already done so) submit the Transport Works Programme to the Landlord for the Landlord's approval.

Variations

- 1.3 Once approved by the Landlord, the Developer shall not vary the Transport Works Programme without the Landlord's approval. If any changes are proposed to the Transport Works Programme then the Developer shall provide details of such proposed changes to the Landlord, for the Landlord's approval, as soon as reasonably practicable on becoming aware of the necessity for such changes.

2 ASSURANCE FOR THE TRANSPORT WORKS

2.1 The Developer shall:

- (a) demonstrate in accordance with the Landlord's Assurance Regime throughout the design, construction, delivery and testing of the Transport Works and taking into use of the Transport Works compliance with the Landlord's Requirements and LUL Standards; and
- (b) ensure that its processes for the preparation and development of a Concept Design Statement and detailed designs in respect of the Transport Works and the construction, delivery, testing, commissioning and maintenance of the Transport Works are fully compliant in all respects with the Landlord's Requirements, LUL Standards and the Landlord's Assurance Regime.

2.2 The Developer shall take such steps and provide to the Landlord such information as the Landlord may reasonably require pursuant to the Landlord's Assurance Regime to enable the Landlord to verify the Developer's compliance with LUL Standards and the Landlord's Requirements in accordance with paragraph 3.5 and to obtain all Requisite Consents in relation to the Transport Works.

2.3 Following its verification exercise pursuant to paragraph 2.3, the Landlord shall either confirm to the Developer that it has no objection to concept or otherwise inform the Developer of any conditions thereto.

2.4 The Developer shall review the Developer's Assurance Plan no less frequently than every three months and following any material change to the information described by the Developer's Assurance Plan so as to identify any changes that may be necessary or any improvements that might be made.

2.5 The Developer shall inform the Landlord of the findings of each review of the Developer's Assurance Plan, and shall inform the Landlord no less than twenty (20) Working Days in advance of any proposed change to the Developer's Assurance Plan requesting the Landlord's acceptance of such change. The Developer shall not implement any change to the Developer's Assurance Plan until the change has been accepted by the Landlord, acting reasonably. On acceptance by the Landlord of such change the Developer shall provide the Landlord promptly for its records with a revised copy of the Developer's Assurance Plan

incorporating such changes and shall then comply with the Developer's Assurance Plan as amended.

2.6 In respect of Assurance in relation to the Transport Works, the Developer shall ensure that the Landlord is kept fully and promptly informed of any matters:

- (a) required by LUL Standard S1538;
- (b) of a nature or category identified to the Developer by the Landlord in writing as requiring notification to the Landlord; and/or
- (c) which the Developer (having regard to the relevant LUL Standards) reasonably considers may be of relevance to the delivery of the Transport Works in accordance with LUL Standards (including LUL Standard S1538).

3 DETERMINATION AND DESIGN OF THE TRANSPORT WORKS

Determination of Transport Works

3.1 The Developer shall provide the Landlord with such information as the Landlord shall from time to time require (acting reasonably) in order for it to understand the Developer's proposals for the Transport Works, and to understand their characteristics and the manner of their implementation to the extent relevant to the Transport Undertaking or the Transport Assets and Premises in order to enable the Landlord to identify the extent to which such works should properly be characterised as Transport Works for the purposes of this agreement.

3.2 As soon as reasonably practicable but in any event within twenty (20) Working Days of receiving the information referred to in paragraph 3.1, the Landlord shall reply in writing to the Developer identifying:

- (a) those areas of the Works that in the Landlord's reasonable opinion, based upon the information submitted, constitute the Transport Works and with effect from the date of receipt of such notice the works identified therein shall be the Transport Works for the purposes of this agreement [but subject to clarification and revision in accordance with the terms of this agreement]; and/or
- (b) those areas of the Transport Works in relation to which the Landlord requires to be notified of any changes; and/or

- (c) those parts of the Works in relation to which the Landlord requires more information before deciding whether or not they form part of the Transport Works.

3.3 The Developer shall keep the Landlord informed of any material changes to the design of the Development and the method of the implementation of the Works which might reasonably be considered to have a material impact on the scope of the Transport Works and the Landlord shall be entitled to serve notice on the Developer identifying any part of the Works which it reasonably believes should from time to time be included in or excluded from the Transport Works.

3.4 No element of the Works shall be carried out until the process set out in paragraphs 3.1 to 3.3 (inclusive) has been followed in respect of that element of the Works and the extent of the Transport Works to be undertaken as part of that element of the Works has been clearly identified and approved by the Landlord in writing.

Design of the Transport Works

3.5 The Developer shall procure that the design of the Transport Works shall comply with:

- (a) the Landlord's Requirements
- (b) the User Requirement Statement;
- (c) Legislation;
- (d) all applicable LUL Standards;
- (e) the recommendations and requirements of any Public Authority; and
- (f) the Planning Permission.

3.6 To the extent it has not already done so, the Developer shall as soon as reasonably practicable after the date hereof, submit to the Landlord for approval Concept Design Statement(s) in respect of the Transport Works produced in compliance with the requirements of paragraph 3.5 and in accordance with the approved Developer's Assurance Plan and the Document Submissions Programme containing the information required for such statements under LUL Standard S1538.

- 3.7 The Developer shall thereafter (having regard to any issues or comments raised by the Landlord in respect of the Concept Design Statement(s)) submit to the Landlord for approval detailed design statements and information in respect of the design of the Transport Works produced in compliance with the requirements of paragraph 3.5 and in accordance with the approved Developer's Assurance Plan and the Document Submissions Programme containing the information required for a compliance submission under LUL Standard S1538 (being the Developer's "**Compliance Submission**").
- 3.8 The Landlord shall notify the Developer in writing of any comments on the Developer's Compliance Submission in respect of the Transport Works (and on compliance with the requirements of this agreement in relation thereto) as soon as reasonably practicable after receipt and the Developer shall have regard to such comments.
- 3.9 In its comments made pursuant to paragraph 3.7, the Landlord may require the Developer to incorporate in any documents submitted:
- (a) such alterations and modifications as are necessary in order to comply with paragraph 3.5; and/or
 - (b) such other alterations and modifications to the Transport Works as the Landlord may require if in its opinion the operation of the Transport Undertaking or the Transport Assets and Premises might be adversely affected
- and such comments may relate both to the documents contained in the submission under consideration (and any omissions therefrom) and to any previously submitted documents on which the content of the documents under consideration may have an impact and any alterations and modifications made in response to the Landlord's comments on a submission.
- 3.10 The Landlord's acceptance of the Compliance Submission shall be indicated by confirmation by the Landlord to the Developer that a compliant position has been achieved in accordance with LUL Standards as will be evidenced by the issue to the Developer by the Landlord of a Letter of No Objection and from the date of issue of the Letter of No Objection the approved Developer's Compliance Submission shall (without prejudice to the requirement for the Developer to satisfy any conditions set out in the Letter of No Objection in respect thereof) be known as the "**Design Document**".
- 3.11 The Developer shall ensure that its submission documents declare where any areas of the design require further development. If there are any such areas or there is a level of detail of

design which only becomes available after the date on which the design was submitted to the Landlord for the review which resulted in issue of the relevant Letter of No Objection then such further design detail shall be regarded as falling outside the Letter of No Objection and will require a further submission to the Landlord for review in accordance with this paragraph 3 and approval (if acceptable).

Whole Life Costs and Maintainability for Transport Works

- 3.12 The Developer will have due regard to the standard and durability of materials and products in the context of whole life costs and the need to ensure maintainability and the Landlord may include in its comments in respect of the proposals and design for the Transport Works comments on the same including comments as to the Landlord's experience of such matters and as to the materials and products which would be used by the Landlord if it were undertaking the Transport Works on its own account rather than the Developer.

Records of Design and Asset Information for the Transport Works

- 3.13 The Developer shall notify the Landlord of the documentation in respect of the Transport Works (including in relation to all material components and finishes) that it proposes to supply in order to satisfy the LUL MAID Requirements. This information shall include all the documentation that a supplier or an installer would properly consider would be required by a maintainer of the relevant asset (assuming no prior knowledge on the part of such maintainer) of the maintenance requirements for the particular materials, components or finishes used. The Developer shall have regard to any comments properly made by the Landlord in respect of the documents proposed by the Developer and the Landlord and the Developer shall each act reasonably with a view to reaching an agreed position as to the way in which the LUL MAID Requirements will be met.

Production Drawings Components and Materials for the Transport Works

- 3.14 Following issue of the Letter of No Objection in respect of the Transport Works the Developer shall provide confirmation to the Landlord that the production drawings, specifications and selection of materials components and finishes for the Transport Works:

- (a) are fully consistent with the Design Document in respect of which the Letter of No Objection was issued;

- (b) are fully consistent with the requirements of paragraph 3.5 and (to the extent applicable to the design of the Transport Works) paragraph 3.17; and
- (c) take proper account of the Landlord's written comments made in accordance with paragraph 3.12 as to the standard and durability of materials and products in the context of whole life costs and the need to ensure maintainability,

and:

- (i) the Developer shall notify the Landlord promptly in accordance with the Developer's Assurance Plan of the production of all production drawings and details of materials components and finishes relating to the Transport Works and shall provide access to them for the Landlord;
- (ii) the Landlord shall be entitled to comment on any inconsistencies between such drawings and details and the Design Document or the requirements of paragraph 3.5 (to the extent applicable as aforesaid) paragraph 3.17 or any written comments made in accordance with paragraph 3.12 in relation to any issues of whole life cost, maintainability or quality of materials; and
- (iii) the Landlord shall be entitled to require the Developer to correct any such inconsistencies.

Protective Works Relating to the Transport Works

- 3.15 The Landlord shall be entitled during the process of identification of the Transport Works, the provision of comments in relation to the Transport Works and acceptance under this Schedule 2, and method of implementation of the Transport Works to specify Protective Works required to form part of the Transport Works where it properly considers they are necessary in which case the Developer shall procure the design of such Protective Works and shall submit details thereof to the Landlord for comment and acceptance in accordance with this Schedule 2.
- 3.16 Prior to the commencement of the Works, the Landlord and the Developer shall consult with one another to establish whether any Transport Works shall be carried out by the Landlord, it being acknowledged that the final decision as to which of such works are to be carried out by the Landlord rests to be determined by the Landlord.

Carrying out of Transport Works

- 3.17 In addition to the obligations set out in paragraph 4 of Schedule 1, the Developer shall procure that the Transport Works are carried out and completed so as to comply with:
- (a) the Transport Works Programme; and
 - (b) the matters listed in sub-paragraphs (a) to (f) of paragraph 3.5.

Process for Issue of Certificate of Transport Works Completion

- 3.18 The Developer shall instruct the Certifier to inspect the Transport Works with a view to the issue of the Certificate of Transport Works Completion in accordance with the terms of the Certifier's Appointment. The inspection shall take place in accordance with the Transport Works Programme provided that the date for such inspection referred to in such Transport Works Programme may be adjusted by the Developer giving the Landlord not less than ten (10) Working Days prior written notice to that effect.
- 3.19 The Landlord (accompanied by such other representatives of the Landlord or such persons as are duly authorised by the Landlord as he shall require and notify to the Developer in writing or by email in advance) will be entitled to accompany the Certifier on the inspection of the Transport Works and to make representations on the proposal to issue the Certificate of Transport Works Completion and including as to any that will prevent the Landlord from taking assets into maintenance and the Developer is to instruct the Certifier to take proper account of any reasonable representations made by the Landlord.

Snagging Items and Rectification of Defects

- 3.20 The Developer is to supply a copy of the Certificate of Transport Works Completion to the Landlord as soon as reasonably practicable after the date of the inspection of the Transport Works together with the Snagging List.
- 3.21 The Developer shall at the same time as providing the Snagging List provide the Landlord with a programme for the prompt rectification of the Snagging Items within such period as is reasonable having proper regard to the item in question (and shall have regard to the Landlord's comments on such programme) and shall, whether or not requested to do so by the Landlord, procure that any items specified in the Snagging List are addressed following the

date of issue of the Snagging List in accordance with such programme and the Landlord's reasonable comments thereon.

- 3.22 Without prejudice to the previous provision, but subject to access being available in accordance with paragraph 3.23 the Developer shall ensure that any defects, shrinkages or other faults appearing in the Transport Works during the Defects Liability Period are remediated as soon as possible and where possible within the Defects Liability Period and for these purposes a 'defect' shall include any defect in or omission from the information required to meet the LUL MAID Requirements.
- 3.23 The Landlord shall allow the Developer and all persons reasonably authorised by the Developer to have access to the Transport Assets and Premises in order to remedy any such snagging items or defects provided that each such person so entering shall:
- (a) cause the minimum amount of interference and disruption as is reasonably possible to any works being carried out by the Landlord or TfL and to the operation of the Transport Undertaking and the Transport Assets and Premises;
 - (b) comply with any reasonable directions of the Landlord;
 - (c) be accompanied, if the Landlord so requires, by a representative of the Landlord; and
 - (d) forthwith make good to the reasonable satisfaction of the Landlord any damage or injury caused to the Transport Works or the Transport Assets and Premises.

Conditions for Issue of Certificate of Transport Works Completion

- 3.24 The Certificate of Transport Works Completion may not be issued where there is any defect, imperfection, omission or fault in the Transport Works which is not a Snagging Item.
- 3.25 The Certificate of Transport Works Completion shall not be issued until
- (a) a Completion and Consent to Operate Report has been submitted by the Developer to the Landlord and the Landlord has issued its written approval thereof (such approval not to be unreasonably withheld or delayed); and
 - (b) the Developer (or its nominated fire engineer on its behalf) has issued written confirmation to the Landlord that the Transport Works are complete and the Landlord's

fire compliance team has issued written authority in accordance with the process set out in LUL Standard S1088 that the new or altered element of the Transport Assets and Premises may be used for the operation of the Transport Undertaking.

3.26 The Developer shall on or before the Transport Works Practical Completion Date (as a condition precedent to the Certificate of Transport Works Completion being issued):

- (a) save insofar as they have previously been supplied at its own expense deliver to the Landlord:
 - (i) copies of each completed Building Contract and Principal Sub-Contract and of each completed Appointment in connection with the carrying out and completion of the Transport Works, such copies to be certified copies but subject to redaction of any commercially sensitive information as the Developer may reasonably require;
 - (ii) copies of all necessary fire approvals and certifications;
 - (iii) copies of all appropriate signed test certificates;
 - (iv) a list of concessions to LUL Standards together with copies of all acceptance documents from the Landlord in respect of such concessions (if any);
- (b) save insofar as they have previously been supplied at its own expense deliver to the Landlord, the warranties in respect of each of the Building Contract, Appointments and Principal Sub-Contracts referred to in sub paragraph 3.26(a); and
- (c) in relation to any asset where:
 - (i) there are Snagging Items; or
 - (ii) the Developer has not provided the materials required pursuant to paragraphs 3.27 and 3.28

in each case which prevent the Landlord from taking the relevant asset into maintenance, the Developer shall procure maintenance support in accordance with LUL Standards in compliance with paragraph 3.27 (in respect of Relevant Plant) and in respect of any other such assets shall put in place maintenance arrangements in

accordance with LUL Standards, and in each case to provide to the Landlord a copy of each such maintenance contract the Developer;

- (d) any special tools and access equipment required for maintenance and spares of items that could wear out or develop a defect within the first twenty four (24) months of use (in accordance with a spares list agreed between the parties each acting reasonably);
- (e) the documentation necessary in order to satisfy the LUL MAID Requirements; and
- (f) other documentation reasonably and properly required by the Landlord for the Transport Works

provided that if the Landlord agrees (in its absolute discretion) in writing that any item required to be delivered under this paragraph 3.26 before the date of issue of the Certificate of Transport Works Completion can be delivered after the date of issue of the Certificate of Transport Works Completion the Developer shall not be relieved of its obligation to deliver the same shall deliver the same as soon as possible thereafter.

- 3.27 The Developer shall procure that all suppliers of the plant and machinery installed as part of the Transport Works (the "**Relevant Plant**") be contracted with on terms which ensure that each element of the Relevant Plant is maintained by the original supplier or by way of maintenance support purchased by the Developer in each case from the date on which the same is installed until the date on which that element of the Relevant Plant can be taken into maintenance by the Landlord and in the event that any Snagging Items are identified in relation to that element of the Relevant Plant at the Practical Completion Date that would prevent such items being taken into maintenance or the Developer is unable to deliver any of the materials referred to in paragraph 3.26 in respect of an element of the Relevant Plant by the proposed date of issue of the Certificate of Transport Works Completion, the Developer will procure the continuation of such maintenance support until such time that the Developer has delivered to the Landlord the relevant materials relating to that element of the Relevant Plant and rectified any Snagging Item that has prevented the Relevant Plant from being taken into maintenance.

As-Built Drawings

- 3.28 The Developer is to deliver free of cost to the Landlord for its records an as-built 3D CAD model together with all as-built 2D drawings for all disciplines. The as-built 3D CAD model and 2D drawing files will be produced in such electronic format as the Landlord may require. The

CAD files will provide viewing only capability for the 3D CAD model but full drawing manipulation of the 2D CAD information.

Issue of Certificate of Making Good of Transport Works Defects

- 3.29 The Developer shall instruct the Certifier to inspect the Transport Works with a view to the issue of the Certificate of Making Good of Transport Works Defects in accordance with the terms of the Certifier's Appointment. The inspection shall take place in accordance with the Transport Works Programme provided that the date for such inspection referred to in such Transport Works Programme may be adjusted by the Developer giving the Landlord not less than ten (10) Working Days prior written notice to that effect.
- 3.30 The Landlord (accompanied by such other representatives of the Landlord or such persons as are duly authorised by the Landlord as he shall require and notify to the Developer in writing or by email in advance) will be entitled to accompany the Certifier on the inspection of the Transport Works and to make representations on the proposal to issue the Certificate of Making Good Transport Works Defects and including as to any that will prevent the Landlord from taking assets into maintenance and the Developer is to instruct the Certifier to take proper account of any reasonable representations made by the Landlord.
- 3.31 If the Certifier decides following the inspection referred to in paragraph 3.29 that the Certificate of Making Good Transport Works Defects should not be issued he shall give notice to the Landlord of his decision and the provisions of paragraph 3.29 and following shall apply in respect of any subsequent inspection save that the Certifier shall give the Landlord ten (10) Working Days prior written notice of the date and time of the inspection.
- 3.32 If the Certifier issues the Certificate of Making Good Transport Works Defects and the Landlord is of the opinion that it should not have been issued then it may within 5 Working Days after its issue (as to which period time shall be of the essence) refer the matter for determination in accordance with Clause 11, in which case the following shall apply:
- (a) If it is determined in accordance with Clause 11 that the Certificate of Making Good Defects was properly issued, the Landlord shall pay all the costs of the reference.
 - (b) If it is determined in accordance with Clause 11 that the Certificate of Making Good Defects was not properly issued then the Landlord may also apply for determination thereunder as to what works need to be carried out in order to achieve a state of completion of the Transport Works sufficient for the certificate to be issued ("**Remedial**

Works") and the Developer shall as soon as practicable commence and diligently proceed to carry out the Remedial Works.

SCHEDULE 3

Supplemental Property Mechanism

[NOTE: The following provisions will apply where the Leases have been granted and subsequently needs to be varied or supplemented to reflect necessary changes to the extent of the demise, rights granted and reserved and any covenants to reflect the development scheme. Before implementing the Supplemental Property Mechanism, the Landlord will consider the tax implications for the development of the Property and endeavour to implement arrangements that have the most efficient tax treatment for the parties, having regard to the Landlord's status as a public body. This mechanism will need to be operated in this case at the very least to revise the plans relating to the rights reserved under the lease, following completion of the Development]

- 1 The Parties anticipate that following the grant of an Acceptable Permission, the finalisation of the design of the scheme for the Development and prior to the Practical Completion Date, they may need to make certain changes to the Leases (including as necessary entering into supplemental deeds) to take account of the approved detailed design of the Development and the Development, as built, and to preserve the beneficial use and enjoyment of the Landlord's Neighbouring Property, the Property and any additional premises formed as part of the Development, following the physical changes to any of them as a result of the carrying out of the Works in accordance with the approved detailed design.
- 2 The Parties agree that for the purposes of paragraph 1 only, clauses or other provisions in the Leases and any plans or drawings annexed to the Leases may need to be varied, inserted, omitted or supplemented, including making changes as necessary to:
 - (a) the description of the Property to be demised by the Leases provided that such amendment or variation is made in accordance with the provisions of paragraph 7 of this Schedule;
 - (b) the rights granted and reserved by the Leases;
 - (c) the encumbrances to which the Leases is subject; and
 - (d) the covenants and obligations of the parties to the Leases(together the "**Required Changes**").

- 3 If the Developer wishes to make any Required Changes for the purposes of paragraph 1 only, it shall as soon as reasonably practicable and in any event by no later than sixty (60) Working Days prior to the [insert target date for practical completion in the Developer's programme] serve upon the Landlord a proposal fully and fairly detailing its Required Changes including any revised or new plans or drawings it wishes to incorporate in the Leases or in any supplemental lease or deed.
- 4 If the Landlord wishes to make any Required Changes for the purposes of paragraph 1 only, it shall as soon as reasonably practicable and in any event by no later than sixty (60) Working Days prior to the *[insert target date for practical completion in the Developer's programme]* serve upon the Developer a proposal fully and fairly detailing its Required Changes including any revised or new plans or drawings it wishes to incorporate within the Leases or any supplemental lease or deed.
- 5 As soon as reasonably practicable following receipt of a proposal pursuant to paragraphs 3 or 4 (as the case may be), the Landlord and the Developer (as the case may be) shall both acting reasonably subject to paragraphs 6 and 7 with due diligence and in good faith use reasonable endeavours:
- (a) to agree all of the Required Changes;
 - (b) to enter into such deeds as may be necessary to give effect to such of the Required Changes as may be agreed pursuant to sub-paragraph (a) subject to obtaining the consents and approvals required referred to in sub-paragraph (c);
 - (c) to seek all requisite consents and approvals (including those required pursuant to the GLA Act 1999) that may be required in order to enter into the deeds referred to in sub-paragraph (b) above; and
 - (d) to procure the registration at the Land Registry of any deeds that are required to be registered at the Land Registry.
- 6 For the purposes of this Schedule 3, the Developer agrees and acknowledges that the Landlord shall have absolute discretion and the decision of the Landlord is final:
- (a) in relation to matters relating to safety and security;
 - (b) where the Landlord has to comply with a statutory obligation; and

- (c) where the relevant matter relates to the operation of the Transport Undertaking or the Transport Assets and Premises.

7 Any amendments to the areas demised under the Leases will:

(A) include:

- 1) (subject to paragraph 7(B) of this Schedule), the subsoil beneath the land edged red on Plan [●];
- 2) all of the land edged red on the Plan [●] (save as provided in in relation to the area shaded yellow on Plan [●]); and
- 3) airspace as indicated in [●];

(B) exclude:

- 1) the Transport Assets and Premises;
- 2) the Exclusion Zone; and
- 3) the Parapet Wall.

8 The Landlord and the Developer shall use all reasonable endeavours to structure the documenting of any Agreed Required Changes so as to minimise the tax liabilities arising from those land transactions.

9 Where there is to be an extension to the Property to be demised to the Developer following the making of any Agreed Required Changes the Landlord agrees to grant in favour of the tenant of the Leases a supplemental lease ("**Supplemental Lease**"). The Supplemental Lease shall be granted with full title guarantee and:

(a) with vacant possession (save in respect of

- (i) any rights relating to the operation of the Transport Undertaking or the Transport Assets and Premises which the Landlord shall have granted after the date of this agreement or buildings or structures which the Landlord shall have erected after the date of this agreement; and

- (ii) any rights relating to the proper enjoyment of the Landlord's Neighbouring Property which the Landlord shall reasonably require after the date of this agreement);
 - (b) at a nil premium or, if higher, a premium equivalent to the amount by which the value of the Property would have increased if the additional land had formed part of the Property at the date of grant of the Leases;
 - (c) at a rent equivalent (pro rata) to that reserved in the Leases; and
 - (d) for a term co-terminus with the then unexpired residue of the term of the Leases.
- 10 Any Supplemental Lease and all other deeds required to give effect to Agreed Required Changes shall be drafted by the Landlord's Solicitors at the expense of the Developer and shall in the case of the Supplemental Lease (save as detailed above) be in the same form (mutatis mutandis) as the Leases in so far as applicable to the Property to be demised by it.
- 11 The Landlord warrants to the Developer that:
- (a) it is registered with VAT registration number 756 2770 08 ;
 - (b) it has validly made a VAT Election;
 - (c) it has not revoked the VAT Election and will not do so; and
 - (d) it will use its reasonable endeavours to recover whether by repayment or credit any input tax which it may incur in relation to any costs for which it has a right of reimbursement pursuant to clause 13.
- 12 The Developer warrants to the Landlord that:
- (a) it is registered with VAT registration number [●];
 - (b) it has validly made, or will prior to the date of completion of any document pursuant to this Schedule 3, make a VAT Election which will have effect on such date; and

- (c) its VAT Election has been, or will prior to the date of completion of any document pursuant to this Schedule 3 be, notified in writing to HM Revenue and Customs and has not been and will not be revoked.

SCHEDULE 4

INSURANCE AND INDEMNITY

1 INSURANCE OF THE WORKS

1.1 During the carrying out of the Works and until the expiry of the Defects Liability Period the Developer is to insure the Works (or procure the same to be insured) under a "construction all risks" insurance. Such insurance shall:

- (a) cover all risks of physical loss destruction or damage to the Works;
- (b) be an amount sufficient to cover the Reinstatement Cost;
- (c) be in respect of the composite interests and in the joint names of, inter alia, the Developer and the Landlord;
- (d) include a multiple insureds clause and non-vitiation clause; and
- (e) be on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover and shall be in such form as the Landlord shall require, acting reasonably.

1.2 If the Works are damaged or destroyed:

- (a) the Developer is immediately to take all actions required to ensure the operation of the Transport Undertaking and the Transport Assets and Premises;
- (b) the Developer is to seek the Landlord's consent to the rebuilding, repair, reinstatement or other proposal of the Developer for the Works in accordance with Schedule 1 and/or Schedule 2;
- (c) the Developer is to use its best endeavours promptly to obtain the maximum payment of insurance moneys;
- (d) the Developer shall procure that the Building Contractor (or such other replacement contractor approved by the Landlord such approval not to be unreasonably withheld or delayed) rebuilds, repairs or otherwise reinstates the Works and the Property in a

good and substantial manner in accordance with the terms of this agreement and the Building Contract (or replacement building contract);

- (e) the Developer shall procure that the issue of the Certificate of Practical Completion shall not take place unless and until the necessary rebuilding, repairing and reinstating of the Works and the Property has been completed;
- (f) if the moneys received in respect of such insurance are insufficient for the purpose of rebuilding, repairing or reinstating the Works and the Property the Developer is to make good any deficiency out of its own moneys; and
- (g) for the avoidance of doubt, the Developer's obligations under paragraph 1.2(a) shall not be contingent on the Developer having received any insurance moneys for such damage or destruction.

2 PUBLIC LIABILITY INSURANCE

2.1 During the carrying out of the Works and until the expiry of the Defects Liability Period, the Developer is to maintain (or procure that there is maintained):

- (a) public liability insurance to cover losses in respect of death or personal injury to third parties, loss of or damage to third party property (including the Transport Assets and Premises and the Landlord's Neighbouring Property) and any delay disruption or interruption to or suspension of the Transport Undertaking in an amount not less than £50,000,000 (fifty million pounds) in respect of any one claim and with a financial loss extension of £1,000,000 (one million pounds); and
- (b) non-negligence insurance (or insurance effecting the same cover as public liability insurance with no requirement for the negligence of the insured to be demonstrated) which it is acknowledged may be covered by the same policy in respect of public liability generally as referred to in paragraph 2.1(a) in an amount not less than £50,000,000 (fifty million pounds) in respect of any one claim

and such insurances shall also cover any liability which the Developer or the Landlord incurs directly or indirectly under the provisions relating to compensation from time to time of any Track Access Agreement.

2.2 The insurances in paragraph 2.1(a) shall be:

(a) in respect of the composite interests and in the joint names of, inter alia, the Developer and the Landlord and shall include:

(i) a non-vitiation clause;

(ii) 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;

(iii) a multiple insureds clause

such clauses to be approved by the Landlord (such approval not to be unreasonably withheld or delayed);

(b) endorsed such that any care, custody or control exclusion contained within the policy shall not apply to any assets or property belonging to or the responsibility of the Landlord (including the Transport Assets and Premises);

(c) on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover and shall be in such form as the Landlord shall require, acting reasonably.

3 EMPLOYER'S LIABILITY INSURANCE

3.1 The Developer shall maintain employer's liability insurance as required by law.

3.2 The Developer shall use reasonable endeavours to procure that the Building Contractor, Professional Team, Principal Sub-Contractors and any other contractors and consultants engaged on the Works shall maintain employer's liability insurance as required by law and in the case of the Building Contractor for not less than £10,000,000 (ten million pounds) in respect of any one claim and in the case of the Professional team, Principal Sub-Contractors not less than £5,000,000 (five million pounds) in respect of any one claim.

4 PROFESSIONAL INDEMNITY INSURANCE

4.1 The Developer shall procure that:

- (a) the Principal Designer
- (b) the Building Contractor
- (c) the Professional Team and Principal Sub-Contractors,

each maintain professional indemnity insurance to cover their liabilities in respect of the designs or other professional services provided by them in relation to the Works (save as otherwise agreed in writing by the Landlord) for an amount not less than £10,000,000 (ten million pounds) and such insurances shall be maintained during the carrying out of the Works and for a period of twelve (12) years from the Practical Completion Date.

5 GENERAL INSURANCE PROVISIONS

5.1 If, following approval of the Works Documents pursuant to Schedule 1 and/or Schedule 2 (where applicable), the Landlord considers that any of the insured sums specified in this Schedule 4 are insufficient or too high, the Landlord may notify the Developer in writing specifying such alternative sums to be insured as the Landlord (in its absolute discretion) shall consider appropriate and the Developer shall insure or procure the insurances required pursuant to this Schedule 4 in such alternative sums as if such sums were set out in this agreement.

5.2 If:

- (a) the Works commence or are ongoing for more than eight (8) years from the date of this agreement; or
- (b) there is a material increase in the duration of the Works from the programme detailed in the Works Documents and approved by TfL pursuant to the provisions of this agreement; or
- (c) there are material changes to the Works after they have been commenced; or
- (d) there are material changes in the terms of the insurances obtained or obtainable,

the parties shall carry out a review of the insurances and sums required to be insured pursuant to this agreement and shall agree such revisions as they consider (both parties acting reasonably) appropriate in light of any changes in law such that there is no legal requirement

to have employer's liability insurance and to ensure that revised sums provide protection commensurate with the level of cover achieved as at the date of this agreement having regard to inflation and any other relevant factors but provided that the sums stated shall not be decreased at any such review.

- 5.3 Where the Landlord has a framework for insurance policies on such terms as are appropriate for the nature of the Development, the Landlord may, in its absolute discretion, require the Developer to procure such policy from the Landlord's framework.
- 5.4 The Developer is to procure that the insurances required under the Building Contract for the Works are maintained in accordance with that Building Contract and the Developer shall not waive or vary that Building Contract in such a way as to adversely affect the insurance required.
- 5.5 The policies maintained pursuant to paragraphs 1 and 2 shall include a loss payee clause which provides that claim proceeds, whether interim or final:
- (a) in respect of loss or damage to the Works shall be applied in reinstatement of the Works; and
 - (b) in respect of insurances against liabilities to third parties (including the Landlord) shall be paid to the aggrieved party or, where that liability has been met by an insured party pursuant to an indemnity or express contractual obligation under this agreement, shall be paid to the indemnifier or the person liable for such obligations.
- 5.6 The Developer shall ensure that the insurances required by this agreement are maintained with reputable insurers and shall pay all premiums fees insurance premium tax deductibles and excesses.
- 5.7 The Developer shall produce:
- (a) copies of any insurance policies being maintained under paragraphs 1, 2 and 3 of this Schedule 4; and
 - (b) confirmation in the form of brokers' letters or similar that any other insurances required by this agreement are being maintained and renewed (including the professional indemnity insurance and employer's liability insurance maintained by the Professional Team and the Building Contractor); and

such documents shall be provided prior to the commencement of the Works and subsequently, whenever reasonably requested (as long as such requests are not made more often than once in any period of twelve (12) months except in circumstances where a policy is known to expire within such period).

- 5.8 The Developer shall immediately notify the Landlord if the Developer is unable to procure maintain or renew any of the insurances required by this agreements at commercially reasonable rates or if any of the terms or conditions of insurance are amended or renewed to the detriment of the Landlord, in which event the Landlord may require and the Developer shall provide alternative security to the Landlord's reasonable satisfaction in relation to the risk in respect of which insurance is not available.
- 5.9 If the Developer fails to effect or procure any insurance required by this agreement or produce the policy or policies of insurance or evidence of payment of the premium when required the Landlord shall be entitled to take out and maintain such insurance and the Developer shall pay to the Landlord on demand any sums reasonably and properly expended by the Landlord in so doing.
- 5.10 The Developer shall not settle any claims which it may make against its insurers and relating to any areas affected by the Works without consulting the Landlord and shall as soon as practicable after becoming aware of any claim notify the Landlord of all the circumstances giving rise to the claim.
- 5.11 The Developer shall before commencing the Works provide the Landlord with confirmation from an independent firm of insurance brokers that the insurers with whom the Developer and the Building Contractor have placed the insurances required by this agreement have been made aware of the terms of this agreement.
- 5.12 The Developer shall not do or suffer to be done anything which renders any of the policy or policies of insurance referred to in this agreement void or voidable and shall use reasonable endeavours to procure that the Building Contractor and any other contractor or consultant of any tier engaged in the Works shall not do or suffer to be done anything which would rend any of the policies of insurance void or voidable.
- 5.13 Save to the extent that they give rise to double insurance (in which case the obligation to maintain insurances in accordance with this Schedule 4 shall take prevail) the Developer and the Landlord shall comply with the insurance obligations set out in the Leases.

- 5.14 Without prejudice to liability for any breach, the obligations on the Developer to procure or maintain insurance pursuant to this Schedule 4, (with the exception of the insurance required pursuant to paragraphs 3 and 5), shall cease upon the date the Defects Liability Period expires (but without prejudice to liability for any antecedent breach).

6 LIMITATION OF LIABILITY

- 6.1 The Developer is not to be relieved of liability for any breach of its obligations in this agreement by:

- (a) the consent or approval of the Landlord to any matter under this agreement, whether or not this agreement expressly requires the consent or approval of the Landlord;
- (b) the issue of the Certificate of Practical Completion or the absence of any objection by the Landlord to it being issued or the terms which it contains;
- (c) the making good of defects by the Building Contractor under the terms of the Building Contract;
- (d) the right of the Developer or the Landlord to make a claim against the Building Contractor or members of the Professional Team or the Principal Sub-Contractors;
- (e) any delay or neglect by the Landlord in enforcing the terms of this agreement or any time allowed by the Landlord for their performance; or
- (f) any legal limitation, immunity, disability, incapacity or other circumstances relating to the Developer, whether or not known to the Landlord.

- 6.2 The Landlord shall not be liable by way of indemnity or otherwise in respect of any loss (including consequential economic loss) damage or delay to the Developer, its employees contractors, agents or sub-contractors or any other person resulting from:

- (a) any approval or otherwise by the Landlord of the Works or any documentation in connection with any Works;
- (b) any stoppage of or disruption or delay to the Works as a consequence of the Landlord exercising its rights under and in accordance with the provisions of this agreement;

- (c) any recommendation, requirement or condition made by the Landlord in respect of the Works in accordance with the provisions of this agreement; or
- (d) the Developer, its employees, contractors, agents or sub-contractors being prevented or delayed from entering upon or being properly required to vacate the site by reason of any emergency or exigency, regulation or operation relating to the Transport Undertaking or the Transport Assets and Premises.

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

6.4 The Landlord shall not be liable to the Developer for any costs or expenses incurred by or any loss or damage or other liability suffered by the Developer as a result of a decision given by the Landlord pursuant to this agreement after due consideration on any question relating to the operation of the Transport Undertaking or the Transport Assets and Premises notwithstanding that such decision may result in the Developer being unable to proceed with the Works or any part of them or being delayed in the carrying out of any works or incurring additional expenses or liability as a result of the decision.

7 DEVELOPER'S INDEMNITY

7.1 The Developer is to indemnify the Landlord and their employees and agents against all costs, claims, loss, demands or liabilities, actions, charges, proceedings, expenses and damages (including Internal Time Costs) properly incurred or suffered by them and their employees and agents in respect of any of the following matters arising directly or indirectly from or in relation to the Works:

- (a) the death of, injury to or accident to any person;
- (b) the damage to or loss of any property;
- (c) delays to any works carried out by the Landlord;
- (d) any disruption or interruption to or suspension of the operation of the Transport Undertaking or the Transport Assets and Premises not authorised by any approvals given under or in relation to this agreement;

- (e) any breach of the Requisite Consents, Legislation or common law;
- (f) any nuisance or disturbance suffered by any third party caused by the carrying out of the Works;
- (g) any fine or penalty;
- (h) any breach of this agreement by the Developer;
- (i) completion by the Landlord of any works pursuant to its rights to do so under the terms of this agreement;
- (j) any costs payable by the Landlord in negotiating and entering into and any liability under any Planning Agreement entered into in connection with the Works, including any Planning Agreement entered into pursuant to Schedule 6;
- (k) a breach of any term or obligation under a Planning Agreement or any Planning Permission; and
- (l) against any liability which the Landlord incurs under Schedule 4 and Schedule 8 (or such other provisions relating to compensation from time to time) of any Track Access Agreement

save to the extent caused or contributed to or by:

- (i) any negligent acts or negligent omissions of the Landlord; or
- (ii) any wilful non-negligent act or neglect of the Landlord (but only to the extent not related to the operation of the Transport Undertaking and the Transport Assets and Premises).

7.2 The Landlord shall:

- (a) use all reasonable endeavours as soon as reasonably practicable to give notice to the Developer of any claims, demands, actions or proceedings brought, made or threatened to be brought or made against the Landlord in respect of any matter to which the indemnity in paragraph 8.1 relates;

- (b) not admit liability, settle, accept or compromise any claims, demands, actions or proceedings without allowing the Developer a reasonable opportunity to make representations in relation to them; and
- (c) take reasonable steps to mitigate any such costs, claims, losses, demands, liabilities, actions, charges, proceedings, expenses and damages,

provided always that the Landlord's covenants in paragraphs 8.2(b) and (c) shall not apply to the extent that complying with the same would adversely impact on the operation of the Transport Undertaking and the Transport Assets and Premises.

- 7.3 The Developer covenants to pay to the Landlord an amount equal to the amount of any Liability to Taxation which arises as a result of or in connection with the transactions contemplated in this agreement including but not limited to any payments made by the Developer to the Landlord pursuant to this agreement.
- 7.4 The amount of the Liability to Taxation will be the amount of the actual payment of Taxation which the Landlord is liable to make and the Landlord will be under no obligation to use any losses available to it to reduce any Liability to Taxation.
- 7.5 The due date for the making of a payment by the Developer under paragraphs 8.1 and 8.3 will be the date falling ten (10) Working Days after the Landlord has served notice on the Developer demanding such payment.
- 7.6 Except as required by law all payments by the Developer under paragraphs 8.1 and 8.3 will be made free and clear of all deductions and withholdings in respect of Taxation.
- 7.7 If any deduction or withholding is required by law to be made from any payment by the Developer under paragraphs 8.1 and 8.3 or if (ignoring any available relief) the Landlord is subject to Taxation in respect of any payment by the Developer under paragraphs 8.1 or 8.3, the Developer covenants with the Landlord to pay to the Landlord such additional amount as is necessary to ensure that the net amount received and retained by the Landlord (after taking account of such deduction or withholding or Taxation) is equal to the amount which it would have received and retained had the payment in question not been subject to the deduction or withholding of taxation provided that if payment is made to any person other than the Landlord this paragraph 8.7 shall not apply to the extent that such deduction or withholding would not have had to be made had the payment been made to the Landlord and further provided that in the event that the Landlord obtains any credit in respect of the amount withheld or deducted it

shall as soon as reasonably practicable account to the Developer for such proportion of any such credit as shall leave the Landlord in no better or worse position than if no such deduction or withholding had been required to be made.

7.8 The Developer shall not be liable in respect of any Taxation that becomes payable as mentioned in paragraph 8.3 above to the extent that:

- (a) recovery has been made in respect of the matter giving rise to the Taxation by the Landlord under any other provision contained in this agreement; or
- (b) such Taxation would not have arisen but for, or is increased by, any voluntary act outside the ordinary course of business of the Landlord or omission of the Landlord after the date of this agreement.

7.9 The Landlord agrees to submit its tax returns in a timely manner and conduct its tax affairs and negotiate in good faith with HM Revenue and Customs in respect of any Liability to Taxation for which the Developer is liable under this agreement.

7.10 The Landlord may (in its absolute discretion) agree to limit the Developer's liability under this paragraph 8, having regard to the potential risks to the Transport Undertaking and the Transport Assets and Premises arising from the Works and confirmation of any such limit shall be notified to the Developer in writing.

SCHEDULE 5

Design and Construction Contracts

[Note: If construction procurement changes the provisions of this Schedule 5 will need to be amended accordingly.]

1 APPOINTMENT OF THE BUILDING CONTRACTOR AND THE PROFESSIONAL TEAM

- 1.1 Prior to entering into any Appointment or Building Contract in respect of the Works the Developer shall submit to the Landlord the names of the consultants and/or contractors whom it intends to appoint or employ (the "**Appointment List**"). The Landlord shall be entitled within twenty (20) Working Days of receipt of an Appointment List to require the Developer to remove a consultant and/or contractor from the Appointment List, in which event the Developer shall not appoint such consultant and/or contractor. If the Landlord fails to issue a request to remove a consultant and/or contractor within twenty (20) Working Days of receipt of an Appointment List, the Appointment List shall be deemed approved and the Developer shall be entitled to appoint any of the consultants and/or contractors on such Appointment List. Any consultant and/or contractor whom the Landlord does not require (or is deemed not to require) to be removed from an Appointment List shall be an "**Approved Consultant**" or "**Approved Contractor**" (as the case may be).
- 1.2 The Developer shall prior to the commencement of the Works:
- (a) include within the tender requirements in respect of the Building Contract and Appointments a requirement for the Building Contractor or relevant Professional Team member to maintain professional indemnity cover on terms compliant with Schedule 4.
 - (b) procure that the tender documents for the Building Contract or Appointment provide that and shall ensure that any guarantor of the Building Contractor's or relevant Professional Team member's (as the case may be) obligations under the Building Contract or Appointment will also guarantee the Building Contractor's or relevant Professional Team member's (as the case may be) obligations under the warranty; and
 - (c) enter into the Building Contract and within ten (10) Working Days thereafter deliver to the Landlord a copy of the Building Contract certified by a solicitor as a true copy of the original;

- (d) procure that on entering into the Building Contract the Building Contractor shall execute a warranty in favour of the Landlord in relation to the Works and deliver the same to the Landlord;

1.3 The form of any proposed Building Contract and any Appointments:

- (a) are to be approved by the Landlord (such approval not to be unreasonably withheld or delayed provided that the Landlord shall have absolute discretion in relation to matters relating to the operation of the Transport Undertaking and/or the Transport Assets and Premises, and health and safety issues);
- (b) are to be executed as a deed with a 12 year limitation period;
- (c) in the case of the Building Contract only, shall specify the Defects Liability Period;
- (d) shall require the Approved Consultant and Approved Contractor to provide a warranty in favour of [each of] the Landlord [and its Group (where applicable)] upon entry into the relevant Appointment and Building Contract (as applicable) or, if later, on or before the date of the commencement of the Works;
- (e) shall not contain any financial cap on or an exclusion of the liability of the Approved Consultant or Approved Contractor (unless otherwise agreed with the Landlord) nor any net contribution clause;
- (f) shall include a clause which prevents the relevant Approved Consultant and Building Contractor from relying on any approval, consent or instruction of the employer under the Appointment or Building Contract (as relevant) as a defence to a claim made against it for breach of the Appointment or Building Contract (as relevant) (i.e. a 'no approvals' clause) but for the avoidance of doubt this does not exclude a legitimate dispute as to whether any approval, consent or instruction was or was not given or as to the nature, extent or effect of any such approval, consent or instruction;
- (g) shall, in the case of the Building Contract, require the Approved Contractor to maintain professional indemnity cover, both during the carrying out of the Works and for a period of twelve (12) years after the Practical Completion Date, in relation to the liabilities, obligations and duties under the Building Contract in respect of the Works in the sum specified by the Landlord pursuant to Schedule 4 in the aggregate with provision for at least three automatic reinstatements;

- (h) shall, in the case of the Appointments which include services relating to such parts of the Works which will or may impact on the operation of the Transport Undertaking and/or the Transport Assets and Premises, require the Approved Consultants to maintain professional indemnity cover, both during the carrying out of the Works and for a period of 12 years after the Practical Completion Date, in relation to the obligations and duties under the Appointment in respect of the Works in the sum specified by the Landlord pursuant to Schedule 4 for each and every claim with provision for at least three automatic reinstatements;
- (i) shall, in the case of the Appointments which include services relating to such parts of the Works which will not impact on the operation of the Transport Undertaking or the Transport Assets and Premises, require the Approved Consultants to maintain professional indemnity cover, both during the carrying out of the Works and for a period of 12 years after the Practical Completion Date, in relation to the obligations and duties under the Appointment in respect of the Works for a sum that is normal and customary within the industry for the type of works to be carried out;
- (j) shall, in the case of the Building Contract, include as a pre-condition to the issue of the [certificate][statement] of [practical][substantial] **[Note: This will depend on the type of building contract]** completion under the Building Contract that the requirements of this agreement in respect of issue of the Certificate of Practical Completion have been satisfied (including that the items referred to in Schedule 1 and Schedule 2 to be issued before the date of issue of a Certificate of Practical Completion have been issued) and that there are no defects in the Works other than defects in the nature of Snagging Items; and
- (k) shall include a clause in the following terms (subject to any changes which the Parties acting reasonably may agree) granting rights pursuant to the Contracts (Rights of Third Parties) Act 1999 with immediate effect upon execution of the relevant Building Contract or Appointment without any further steps being required and not being capable of amendment or waiver without the written consent of the Landlord:

*"The [Client] has in relation to the [Property][Project] **[Note: This will depend on the type of building contract]** entered into an agreement or agreements, which will upon the occurrence of certain events entitle Transport for London to issue instructions to the [Building Contractor] [and the] [Professional Team member] for the implementation of such works on or about the [Property][Project] as may be necessary for the purposes of addressing a concern presented by the occurrence of such events with*

regard to the safety, security, construction or operation of any transport operations or assets of Transport for London".

If the Landlord issues such an instruction the [Building Contractor] [and the] [Professional Team member] shall comply with it and shall be entitled to assume that, as between the [Client] and the Landlord, circumstances have occurred which allow the instruction to be issued.

1.4 Any proposed Principal Sub-Contracts:

- (a) are to be executed as a deed with a 12 year limitation period;
- (b) shall require the Principal Sub-Contractor to provide a warranty in favour of the Landlord; and
- (c) shall require the Principal Sub-Contractor to maintain professional indemnity cover, both during the carrying out of the Works and for a period of twelve (12) years after the Practical Completion Date, in relation to the obligations and duties under the Appointment in respect of the Works:
 - (i) (in the case of Appointments relating to such parts of the Works which will or may impact on the operation of the Transport Undertaking or the Transport Assets and Premises) for a sum specified by the Landlord pursuant to Schedule 4 in respect of each and every claim with provision for at least three automatic reinstatements; and
 - (ii) (in the case of the Appointments which include services relating to such parts of the Works which will not impact on the operation of the Transport Undertaking or the Transport Assets and Premises) in a sum that is normal and customary within the industry for the type of works to be carried out.

1.5 The Developer shall supply to the Landlord a broker's certificate confirming the professional indemnity cover of the Building Contractor, each Principal Sub-Contractor and each member of the Professional Team on the date of this agreement or, if later, on the date of the Building Contract or the relevant Appointment or Principal Sub-Contract.

- 1.6 The Developer is not without the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed) to dismiss any member of the Professional Team or any Building Contractor.
- 1.7 If the employment of any Approved Contractor or Approved Consultant is determined or otherwise ceases, the Developer shall procure entry into a new Building Contract or Appointment with any Approved Contractor or Approved Consultant as soon as practicable and the provisions of paragraphs 1.1 to 1.6 (inclusive) shall apply to such new Building Contract or Appointment.
- 1.8 The Developer shall deliver to the Landlord within ten (10) Working Days after the date of the new Building Contract, a copy of the new Building Contract or Appointment entered into in accordance with paragraph 1.7, certified by a solicitor as a true copy of the original.
- 1.9 In the Building Contract and Appointment the Building Contractor and the relevant Professional Team member shall be required to perform their respective obligations and services in a manner consistent with the Technical Interface Parameters except to the extent that the Technical Interface Parameters contains design obligations, in which case the Building Contractor and the relevant Professional Team member shall be required to use the reasonable skill and care to be expected of a competent and properly qualified designer of the relevant discipline experienced in carrying out similar design in relation to similar works to perform their respective obligations and services in a manner consistent with the Technical Interface Parameters.
- 1.10 At the Landlord's reasonable request (and it shall be reasonable for the Landlord to make such a request on more than one occasion throughout the term of this agreement), the Developer shall provide to the Landlord a list of all members of the Professional Team and all Principal Sub-Contractors.
- 1.11 The Developer shall procure:
- (a) the due performance and observance of the obligations of the Professional Team and the Building Contractor with respect to the Development; and
 - (b) compliance by its consultants, contractors, agents and sub-contractors with all Legislation which may affect the Property or which relate to the Transport Undertaking or the Transport Assets and Premises and which affect or may affect the design or construction of any Works.

1.12 The Developer may not:

- (a) waive, release, nor estop itself from enforcing or seeking redress for any breach of any Building Contract or Appointment to the extent the same would prejudice (other than in a non-material way) the Landlord's ability to recover under any of the warranties provided or to be provided in relation to the Works;
- (b) do or omit to do anything which would entitle any member of the Professional Team or the Building Contractor to treat its Appointment or the Building Contract as terminated by breach; or
- (c) receive any commissions, inducements, or pecuniary or other advantages at any time arising from the appointment of the members of the Professional Team or the Building Contractor

1.13 Without prejudice to paragraph 1.3 the Developer shall procure and deliver a duly executed warranty from the Building Contractor and each Principal Sub-Contractor in relation to the Works in favour of the Landlord.

1.14 Without prejudice to paragraph 1.3 the Developer shall procure and deliver duly executed warranties from each member of the Professional Team in relation to the Works in favour of the Landlord.

1.15 The Developer shall not (whether before or after entry into the Building Contract or the Appointments) vary the form of the Building Contract or the Appointments from the forms agreed pursuant to paragraph 1.3 in any way which may:

- (a) adversely affect the Landlord's rights; and/or
- (b) adversely affect the Landlord's ability to exercise such rights

under the warranties given by the Building Contractor and each member of the Professional Team without the consent of the Landlord (not to be unreasonably withheld or delayed).

SCHEDULE 6

Confidentiality, Transparency and FOIA

[Note: The Landlord is subject to the following obligations]

1 FREEDOM OF INFORMATION REQUESTS

- 1.1 The Developer acknowledges for itself and its Group that each of TfL and the Landlord is a 'public authority' as defined under the FOIA Legislation and the EIR legislation and are subject to the requirements of the FOIA Legislation and the EIR Legislation. For the purposes of this Schedule 6 only, references to the "Landlord" shall (unless the context otherwise requires) be references to the Landlord and/or TfL.
- 1.2 The Developer agrees (and will respectively procure that its Group agree) to assist and co-operate with the Landlord so as to enable the Landlord to comply with its obligations under the FOIA Legislation and/or the EIR Legislation (as applicable).
- 1.3 The Developer acknowledges (and will procure that its Group acknowledge) that the Landlord may be obliged to disclose Confidential Information, Developer Project Information and/or Landlord Project Information pursuant to the FOIA Legislation and/or the EIR Legislation without consulting with, obtaining consent from and/or taking account of any representations provided to it by the Developer and/or its Group (whether or not the Developer Project Information and/or Landlord Project Information is considered by the Developer and/or its Group to be confidential and/or commercially sensitive). The Landlord may consider where appropriate and at its full discretion any exemptions/exceptions that may apply on a case by case basis.
- 1.4 Without prejudice to paragraphs 1.1 to 1.4 (inclusive), the Developer will (at its own expense) and will procure that the Developer's Personnel and/or its Group and/or their Personnel (at their own expense) will transfer to the Landlord (or such other person and/or nominated individual notified by them to the Developer) each Information Request relevant to the Landlord Project Information (which would be valid if received by the Landlord) that it receives, as soon as practicable and in any event within two (2) Working Days of receiving such Information Request.
- 1.5 In this paragraph 1.5 references to "Information" shall be references to Information held by the Developer and/or its Group on behalf of the Landlord and/or its Group, as relevant, and any

obligations in this paragraph 1.5 imposed on the Developer and/or its Group shall be construed accordingly so as to only refer to the Information they respectively hold. The Developer will (and will procure its Personnel will) at its expense (and will procure that its Group, and their Personnel will, at their expense):

- (a) provide the Landlord, as relevant, with details about and/or copies of all such Information that the Landlord, as relevant, requests and such details and/or copies will be provided within five Working Days of a request from the Landlord (or such other period as the Landlord may reasonably specify), and in such form as the Landlord may reasonably specify;
- (b) use reasonable endeavours to assist and co-operate with the Landlord, as relevant, to enable the Landlord, as relevant, to comply with its obligations under the FOIA Legislation and/or the EIR Legislation (as applicable), including to respond to the Information Request and deal with its disclosure obligations and/or the duty to provide advice and assistance to applicants making an Information Request; and
- (c) provide the Landlord, as relevant, with all necessary assistance as set out in paragraph 1.5(b) as reasonably requested by the Landlord, as relevant, to enable the Landlord to respond to the Information Request within the time for compliance under the FOIA Legislation and/or the EIR Legislation (as applicable).

1.6 The Landlord, as relevant, will be solely responsible for determining whether Information is exempt/excepted information under the FOIA Legislation and/or the EIR Legislation (as applicable) for determining what Information will be disclosed in response to an Information Request and any subsequent internal review request or investigation by the Information Commissioner's Office and whether the Information is to be published in accordance with the FOIA Legislation and/or the EIR Legislation (as applicable).

1.7 The Developer (and the Developer will procure that its Group) will not itself (and will not allow any of the Developer's Personnel and/or its Group and/or their Personnel to) respond to any person making an Information Request relevant to the Landlord Project Information and/or the Developer Project Information, save to acknowledge receipt, unless expressly authorised to do so by the Landlord, as relevant.

1.8 The Developer acknowledges (and the Developer will procure that its Group acknowledge) that, to the extent that the Landlord, as relevant, requests the Developer's and/or its Group' representations (noting that there is no requirement on such parties to do so under the FOIA

Legislation and/or the EIR Legislation as applicable), failure to provide appropriate representations for the non-disclosure of Information under the FOIA Legislation and/or EIR Legislation to the Landlord, as relevant, may prevent the Information from being withheld.

- 1.9 The parties acknowledge that, notwithstanding any other provisions of this agreement, designation by any of the parties of any information, Developer Project Information and/or Landlord Project Information as Confidential Information (as defined in paragraph 2.1) is indicative only of the status of such information and that irrespective of such designation the Landlord, as relevant, may disclose or publish such information to the extent the Landlord, as relevant, deems required by the FOIA Legislation and/or the EIR Legislation.

2 CONFIDENTIALITY AND TRANSPARENCY

- 2.1 For the purposes of paragraph 1 and this paragraph 2, "**Confidential Information**" means all information (whether written or oral and whether received before or after the date of this agreement) that by its nature may reasonably be regarded as confidential to a Party or its Group, whether commercial, financial, technical or otherwise, including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the relevant party and for the purposes of this paragraph 2:

- (a) "**Disclosing Party**" shall be the party directly or indirectly providing the Confidential Information and to whom the obligation of confidence set out in this paragraph 2 is owed; and
- (b) "**Receiving Party**" shall be the party to whom a Disclosing Party's Confidential Information is directly or indirectly disclosed.

- 2.2 Subject to paragraphs 2.3, 2.4 and 2.5 the Receiving Party will:

- (a) keep any and all Confidential Information secret and will not, directly or indirectly, disclose or publish any Confidential Information that it may acquire without the Disclosing Party's prior written consent;
- (b) not disclose or publish Confidential Information to any other person other than with the prior consent of the Disclosing Party;

- (c) not use Confidential Information for any purpose other than the performance of its obligations under this agreement and/or any agreements ancillary or supplemental to it;
- (d) immediately notify the Disclosing Party in writing as soon as it becomes aware of any breach (or suspected breach) of confidence in relation to the Confidential Information by the Receiving Party, any of its Group or any person to whom the Receiving Party (or its Group or personnel) have directly or indirectly disclosed or published Confidential Information;
- (e) keep the Confidential Information safe and secure and will, comply with any reasonable and practicable security guidelines as may be notified in writing by the Landlord to the Developer from time to time and will also exercise not less than reasonable care; and
- (f) not take any copies of the Confidential Information without the prior written consent of the Disclosing Party save as is strictly necessary in order to perform its obligations under this agreement and/or any agreements ancillary or supplemental to it and any such copies will be deemed to be Confidential Information and will be kept separate from the Receiving Party's and/or its Group' own information.

2.3 The obligations set out in this paragraph 2 will not apply to any Confidential Information which:

- (a) can be demonstrated by the Receiving Party to have been, at the time of disclosure, in the public domain, other than through a breach of this agreement by the Receiving Party or any Recipient; and
- (b) can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party, from written records or other substantive evidence, to have been received by the Receiving Party or its Group at any time from a third party who did not acquire it in confidence and who is free to make it available to the Receiving Party without limitation.

2.4 A Receiving Party and/or its Group may disclose Confidential Information to the extent such disclosure ("**Permitted Disclosure**") is required:

- (a) by law, an order of a court of competent jurisdiction or any governmental or regulatory body (including, for the avoidance of doubt, in relation to stock exchange

announcements) to which the Receiving Party and/or its Group may be subject but then only to the extent of such legally required disclosure;

- (b) to the extent that disclosure of the Confidential Information is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail and Road, the Mayor of London, the office of the Mayor of London, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agent and sub-contractors; or
- (c) to be disclosed to any Government Department for normal reporting, commercial, financial, budgetary, operational or approval purposes.

2.5 The Developer acknowledges (and shall procure that its Group acknowledge) that the Landlord is subject to the Transparency Commitment under which the Landlord may be required to publish certain information in relation to this agreement and/or any agreements ancillary or supplemental to it and/or the Works to the general public (together, the "**Main Terms**"). Accordingly, notwithstanding any other provision of this agreement, the Developer gives its consent (and shall procure its Group give their consent) for the Landlord to publish the Main Terms to the general public provided that, to the extent permitted by law, the Landlord:

- (a) shall consult with the Developer regarding any such proposed publication and redactions to the information to be published pursuant to this paragraph 2.5;
- (b) shall consider the Developer's objections to disclosure;
- (c) may as a result apply appropriate FOIA Legislation and/or EIR Legislation exemptions/exceptions to relevant information; and
- (d) may accordingly redact all or part of the Main Terms prior to their publication.

SCHEDULE 7

Planning

1 PLANNING APPLICATION

- 1.1 Where the Developer proposes to submit a new planning application for the Development, or an amendment or variation to a Planning Permission, or an application for approval of any details, reserved matters or other matter pursuant to a Planning Permission (or any subsequent amendment or variation of such applications), including any application for listed building consent and conservation area consent (where applicable), (the "**Planning Application**"), the terms of the Planning Application shall be approved by the Landlord before it is submitted to the Planning Authority. If the Landlord does not respond within twenty (20) Working Days after being provided with the draft Planning Application, the Developer shall be entitled to give the Landlord a further notice requesting a response and if the Landlord fails to respond within five (5) Working Days of receipt of such further notice then it will be taken to have approved the draft Planning Application.
- 1.2 The Landlord shall be entitled to refuse its approval in respect of submissions made pursuant to paragraph 1.1 which:
- (a) do not comply with the appropriate Works Documents approved by the Landlord pursuant to Schedule 1; or
 - (b) which in the Landlord's opinion may have the potential to have an adverse effect on the operation of the Transport Undertaking or the Transport Assets and Premises,
- but shall otherwise not unreasonably withhold or delay its approval.
- 1.3 Any Planning Application is to be submitted in the joint names of the Developer and the Landlord.

2 PLANNING AGREEMENTS

- 2.1 The Developer and the Landlord and the Developer's Guarantor are to enter into any Planning Agreement required by the Planning Authority as a pre-condition of the grant of Planning Permission subject to the following conditions being satisfied:

- (a) the Planning Agreement does not contain terms which:
 - (i) require any works to be carried out or any moneys to be paid, other than legal costs, before the implementation of the Planning Permission by the carrying out of material operations as defined in section 56 of the Planning Act;
 - (ii) take effect before the date of the Planning Permission, save in respect of payment of legal costs; or
 - (iii) are Landlord Onerous Conditions unless waived in accordance with this Schedule 7; and
- (b) the Planning Agreement is in a form approved by the Developer and the Landlord, such approval not to be unreasonably withheld or delayed when the requirements of this paragraph 2 are met.

2.2 Notwithstanding paragraph 2.1 to the extent that any Planning Agreement imposes liability on the Landlord, the Developer is to indemnify the Landlord on a full indemnity basis against all actions, claims, demands and proceedings taken or made against the Landlord and all costs, damages, expenses, liabilities and losses incurred by the Landlord arising from any breach of that Planning Agreement by the Developer or the Developer's successors in title to the Property.

2.3 If the Developer and the Landlord enter into a Planning Agreement to which there is annexed an agreed form of Planning Permission or the agreed form of Planning Permission is otherwise referred to in that Planning Agreement, that Planning Permission will (if granted in the agreed form) be an Acceptable Permission and the provisions of paragraph 3 (other than paragraph 3.6) will not apply.

3 ACCEPTABLE PERMISSION

3.1 Within ten (10) Working Days of receipt of any Planning Permission (and associated Planning Agreement) the Developer shall forward a copy to the Landlord, together with a notice stating whether or not it accepts the same as an Acceptable Permission.

3.2 If the Developer gives notice that the Planning Permission is not an Acceptable Permission then the provisions of this Schedule 7 shall apply to any subsequent Planning Application.

- 3.3 If the Developer gives notice that it believes an Acceptable Permission has been granted (as contemplated under paragraph 3.1), within twenty (20) Working Days of receipt of that notice the Landlord will give notice to the Developer stating whether or not it accepts the same as an Acceptable Permission and must:
- (a) act reasonably (save in respect of any matter that may have an adverse effect on the operation of the Transport Undertaking or the Transport Assets and Premises); and
 - (b) give reasons if it does not accept the Planning Permission as an Acceptable Permission.
- 3.4 If no notice is given by the Landlord pursuant to paragraph 3.3, the Developer shall be entitled to give the Landlord a further notice requesting a response and if the Landlord fails to respond within five (5) Working Days of receipt of such further notice then such Planning Permission shall be deemed to be an Acceptable Permission.
- 3.5 In the event that the Landlord gives notice to the Developer stating it does not agree that the Planning Permission is an Acceptable Permission:
- (a) the Developer and the Landlord will consult in good faith with a view to resolving the disagreement;
 - (b) following (a), the Developer may:
 - (i) submit a revised Planning Application, or other application, to the Planning Authority and the procedure set out in paragraphs 3.1 and 3.3 will repeat until an Acceptable Permission is obtained; or
 - (ii) if the Parties are unable to resolve the disagreement (save where the disagreement relates to the operation of the Transport Undertaking or the Transport Assets and Premises), refer the matter to an Expert for determination in accordance with paragraph 7.
- 3.6 The Landlord may (in its absolute discretion) waive any Landlord Onerous Conditions (in whole or part) by notice to that effect given to the Developer at any time and, if it does so, the Planning Permission shall be deemed to be an Acceptable Permission (to the extent so waived) on the date of such notice.

3.7 A Planning Permission will be an Acceptable Permission only if the provisions of paragraph 2.3 apply or:

- (a) the Developer gives notice that it believes an Acceptable Permission has been granted; and
- (b) if the Landlord gives notice that it believes an Acceptable Permission has been granted or the Expert determines that, in his opinion, an Acceptable Permission has been granted.

3.8 In this paragraph 3, references to a Planning Permission containing or not containing Landlord Onerous Conditions includes any such conditions contained or, as the case may be, not contained in a Planning Agreement required as a pre-condition to the grant of that Planning Permission.

4 APPEAL OR PLANNING PROCEEDINGS

4.1 The Developer is to indemnify the Landlord on a full indemnity basis against all proper and reasonable legal fees and other costs, expenses and liabilities incurred by the Landlord in relation to any Appeal or Planning Proceedings, including any costs, expenses, damages, losses and liabilities awarded against the Landlord.

5 INFORMATION

5.1 The Developer shall supply the Landlord with copies of any Planning Decision and any formal requests from the Planning Authority as soon as reasonably practicable after the same are received by the Developer and any other notices or communications from or to the Planning Authority reasonably requested by the Landlord.

5.2 The Developer shall keep the Landlord fully informed and updated on progress of all Planning Applications, Appeals, Planning Proceedings, and provide details of correspondence, meetings, negotiations, proposals and proceedings relating to them and shall allow representatives of the Landlord to attend at such meetings and to participate in them and have due regard to the proper requirements of the Landlord in relation to the same.

6 CIL

- 6.1 If CIL will be chargeable in respect of the Development or the Works then before the Development or Works are commenced (as defined in CIL Regulation 7) the Developer shall submit or procure that there is submitted to the relevant collecting authority an assumption of liability notice in respect of the Development and the Works pursuant to CIL Regulation 31 and shall not withdraw or permit the withdrawal or transfer of such notice without the consent of the Landlord.
- 6.2 The Developer shall keep the Landlord indemnified against all proceedings costs claims demands and expenses arising out of or in connection with any CIL chargeable in respect of the Development or the Works, and in respect of any contributions required under any Planning Agreement.

7 EXPERT DETERMINATION

Where the matter is referred to an Expert for determination pursuant to this Schedule 7:

- 7.1 the Parties shall provide such information as the Expert shall require in order to make his determination of the matter and the Expert shall be instructed to make his determination on the basis of such information and any further written information submitted to the Expert by either Party (a copy of which shall be submitted in each case to the other Party at the same time as the Expert);
- 7.2 any Expert appointed pursuant to paragraph 7.1, shall act as an expert and not as an arbitrator and shall be entitled to seek and rely upon such other independent professional advice and assistance as he shall in his absolute discretion deem desirable when considering the relevant matter. The decision of the Expert (including his decisions as to the payment of his fees) shall be final and binding upon the Parties without appeal (save in the case of manifest error);
- 7.3 if an Expert appointed pursuant to paragraph 7.1 relinquishes their appointment or dies or if it becomes apparent that they shall be unable to complete their duties under their appointment then a new Expert shall be appointed;
- 7.4 his decision is to be final and binding on the Parties (save in the case of manifest error); and

- 7.5 his fees, including those of his appointment, are to be borne between the Parties to the relevant dispute as he determines or, in the absence of determination, shared equally between the Parties.

8 STATUTORY CONSULTEE

For the avoidance of doubt, the terms of this Schedule 7 are without prejudice to the right of TfL to participate in the planning process as a statutory consultee and the provisions of clause 20.

SCHEDULE 8

Developer's Guarantor's Guarantee

1 DEFINITIONS AND INTERPRETATION

Comment [a1]: The numbering has gone wrong

In this Schedule 8:

- 1.1 the following expressions will have the following meanings unless inconsistent with the context:

Control	in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of the ability to appoint directors and/or representatives to that person, holding shares (or equivalent interest(s)) in that person, possessing voting power(s) in respect of that person, exercising contractual powers in respect of that person or otherwise and " Controls " and " Controlled " will be construed accordingly;
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2 Guarantee

- 2.1 In consideration of the mutual obligations and undertakings given in entering into this agreement, the Developer's Guarantor irrevocably and unconditionally guarantees and covenants that:

- (a) to the Landlord:
- (i) the due and punctual payment of the Developer's respective liabilities and obligations, whether present or future, express or implied, actual or contingent, under or arising out of this agreement; and
 - (ii) the observance and performance of the Developer's respective liabilities and obligations, whether present or future, express or implied, actual or contingent, under or arising out of this agreement;
- (b) in case of default or delay on the part of the Developer the Developer's Guarantor will pay and make good to the Landlord immediately on demand (as if it were principal

obligor of the Developer) anything whatsoever which ought to be paid performed observed or complied with as aforesaid including all losses damages and expenses thereby arising or incurred by the Landlord in respect of any of the aforementioned matters and

(c) agrees to indemnify the Landlord against all liabilities which the Landlord incurs as a result of:

(i) the Developer's failure to perform observe and comply in full and on time its respective obligations under or arising out of this agreement; or

(ii) any of the obligations (or purported obligations) of the Developer under this agreement being or becoming void, voidable or unenforceable,

(d)

2.2 Neither the liability of the Developer's Guarantor under this paragraph 2.2 nor the rights, powers and remedies conferred on the Landlord under this paragraph 2 or by law will in any way be released, prejudiced, diminished or affected by any of the following:

(a) any neglect delay or forbearance on the part of the Landlord in endeavouring to obtain payments as and when the same become due or in taking steps to enforce any of the said obligations; or

(b) any time or other indulgence which may be given to the Developer or any other waiver, concession, allowance of time, compromise or forbearance given to, or made with, any Party (as the may be) in respect of its obligations under this agreement; or

(c) any amendment, novation, supplement, extension, restatement, modification, or other variation of the terms of this Works Agreement or the Works (however fundamental or onerous) with or without the consent of the Developer's Guarantor (and whether or not such variation shall increase the liability of the Developer or the Developer's Guarantor under this Works Agreement); or

(d) any unenforceability, illegality or invalidity of any obligation of any Party (including the Landlord) under this Works Agreement or any other document; or

(e) the invalidity or avoidance of this Works Agreement; or

- (f) the Developer or any other Party who may have guaranteed or otherwise may be liable in respect of all or any of the obligations of the Developer ceasing to exist or having an administrator appointed in respect of it or all or any of the covenants conditions or obligations on the part of the Developer or any other Party as aforesaid ceasing (whether permanently or temporarily) to be enforceable against the Developer or other Party as aforesaid (as the case may be) or being released or compromised; or
- (g) the Developer or any other Party who may have guaranteed or otherwise may be liable in respect of any of the obligations of the Developer entering into a company voluntary arrangement, scheme of arrangement or other arrangement with its creditors; or
- (h) the existence or validity of any other security taken by the Landlord in respect of any of the obligations or covenants of the Developer or any release of such security or any enforcement or failure to enforce such security or any part of it or any remedies the Landlord may have in respect of it against any Third Party or the release in whole or part of any guarantor or of all or any of the obligations of any guarantor; or
- (i) any act, omission, event, circumstance or other matter which but for this provision would or might operate to affect reduce or extinguish the liability of the Developer's Guarantor under this Works Agreement in whole or in part; or
- (j) the insolvency, incapacity, disability or any change in the constitution, name, control or style of, the Developer or the Developer's Guarantor or any other person;

and the obligations of the Developer's Guarantor shall subsist in relation and by reference to the obligations on the part of the Developer as from time to time varied.

- 2.3 The obligations of the Developer's Guarantor under this Works Agreement shall be a continuing guarantee in addition to any other guarantee or security now or hereafter held by the Landlord in respect of any of the obligations on the part of the Developer and shall continue until all of the obligations on the part of the Developer pursuant to this Works Agreement have been discharged and performed in full and this covenant shall impose upon the Developer's Guarantor the same obligations (but not confer any benefit or rights as Developer's Guarantor) as if this Works Agreement had been entered into directly with it as Developer's Guarantor and it is hereby agreed and declared that the liability of the Developer's Guarantor is as principal covenantor with the Landlord and not merely collateral to the principal liability of the Developer.

- 2.4 The Landlord shall not be obliged to take any steps or proceedings or obtain any judgment against the Developer or any Third Party before exercising any of its rights against the Developer's Guarantor under this Works Agreement nor to make or file any claim in any bankruptcy or liquidation of the Developer or any Third Party and the liabilities of the Developer's Guarantor under this Works Agreement may be enforced irrespective of whether any demands steps or proceedings are being or have been made or taken against the Developer or any Third Party or whether the obligations of any other guarantor or Third Party are released or waived in whole or in part.
- 2.5 The Developer's Guarantor covenants with the Landlord that it shall not, without first obtaining the Landlord's written consent:
- (a) seek to recover, whether directly or by set-off, lien, counterclaim or otherwise, nor accept any money or other property, nor exercise any rights, in respect of any sum or security which may be or become due to the Developer's Guarantor on any account by the Developer, nor claim, prove for or accept any payment in any composition by, or any winding up of the Developer; or
 - (b) claim as a creditor of the Developer in competition with the Landlord.
- 2.6 Without prejudice to the foregoing the Developer's Guarantor agrees that it shall not seek to discharge, affect, compromise or impair the Developer's liability under this Works Agreement in any voluntary arrangement, scheme of arrangement, or other arrangement with creditors proposed by or entered into by the Developer nor be a party to any such arrangement.
- 2.7 As a separate, additional, continuing and primary obligation, if the Developer's Guarantor proposes or enters into any voluntary arrangement, scheme of arrangement, or other arrangement with its creditors which has the effect directly or indirectly of discharging, affecting, compromising or impairing its liability or the Developer's liability under this Works Agreement the Developer's Guarantor agrees to indemnify the Landlord on demand against any losses, damages or expenses (including legal fees) incurred by or on behalf of the Landlord as a result of any such discharge, effect, compromise or impairment.
- 2.8 As a further separate, additional, continuing and primary obligation, if any Party other than the Developer's Guarantor or the Landlord proposes or enters into any voluntary arrangement, scheme of arrangement, or other arrangement with its creditors which has the effect directly or indirectly of discharging, affecting, compromising or impairing the Developer's Guarantor liability under this Works Agreement the Developer's Guarantor agrees to indemnify the

Landlord on demand against any losses, damages or expenses (including legal fees) incurred by or on behalf of the Landlord as a result of any such discharge, effect, compromise or impairment.

- 2.9 The Developer's Guarantor undertakes that, in the event of any claim in respect of this guarantee being made against the Developer's Guarantor, the Developer's Guarantor will not make any claim against the Landlord or any director or employee of the Landlord in respect of any statement or representation made by such person and on which the Landlord or on whom the Developer and the Developer's Guarantor may have relied before agreeing to any term of this agreement.
- 2.10 Nothing in this Schedule 8 shall be construed to give the Landlord any greater rights against the Developer's Guarantor than the Landlord has or would have had against the Developer under or arising out of this agreement and the Developer's Guarantor shall have available to it the same rights of defence, set-off and counterclaim as are or would be available to the Developer under this agreement.
- 2.11 Each obligation of the Developer's Guarantor under paragraph 2.1 is independent of each other.

2.12

3 CHANGE OF CONTROL

At no time during the term of this agreement, shall the Developer's Guarantor be Controlled by a Prohibited Person.

4 DURATION

- 4.1 This guarantee shall continue in full force and effect in respect of the initial Developer's Guarantor from the date of this agreement until the earlier of:
- (a) the Developer discharging all its actual or contingent liabilities and obligations under and arising out of this agreement;
 - (b) the date upon which a replacement guarantor or alternative acceptable support arrangement is contractually executed pursuant to paragraph 3.

EXECUTED as a **DEED** by affixing of the common seal for)
RAIL FOR LONDON LIMITED)
in the presence of)

.....

Authorised Signatory

EXECUTED as a **DEED**)
by **DEVELOPER**)
acting by [NAME])

Member

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation

EXECUTED as a **DEED** by
[DEVELOPER'S GUARANTOR]
acting by two directors or a director
and its secretary being persons who are
acting under the authority of and for and on behalf of that Company

.....

[SIGNATURE OF FIRST DIRECTOR]

Director

.....

[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]

[Director **OR** Secretary]