

..... 2015

LONDON UNDERGROUND LIMITED

and

DEVELOPMENT SECURITIES (SOUTHWARK) LIMITED

And

DEVELOPMENT SECURITIES PLC

AGREEMENT

relating to

Southwark Station, London and land at The

Cut, London



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THIS AGREEMENT is made on the day of 2015

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** (company number 01900907) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL ("**LUL**"); and
- (2) **DEVELOPMENT SECURITIES (SOUTHWARK) LIMITED** (company number 08212651) whose registered office is at Portland House, Bressenden Place, London SW1E 5DS ("**DevSec**"); and.
- (3) **DEVELOPMENT SECURITIES PLC** (company number 01528784) whose registered office is at Portland House, Bressenden Place, London SW1E 5DS ("**DS PLC**")

RECITALS

The Parties are entering into this agreement and the Pre-Development Services Agreement to collaborate in securing planning permission(s) for the Property and the resolution of any Development Constraints affecting the development of the Property pursuant to such planning permission(s).

WHEREBY IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement the "**Common Terms Schedule**" means a schedule of defined terms dated the same date as this Agreement and signed by the Parties by way of identification (and a copy of which is annexed to this Agreement at Annexure 4) and terms defined in the Common Terms Schedule have the same meaning when used in this Agreement.

2. INTERPRETATION

2.1 Where a Party is more than one person, their obligations are joint and several.

2.2 An obligation:

2.2.1 not to do or omit anything is also an obligation not to permit or tolerate it being done or omitted by anyone deriving title from the person owing the obligation or by its or their employees or agents and to prevent or, as appropriate, to require it being

- done;
- 2.2.2 to do or not omit anything is also an obligation to procure it; and
- 2.2.3 to make any payment requires it to be made so that the payee receives full value in cleared sterling funds on the date the payment is due.
- 2.3 References in this agreement to:
- 2.3.1 any clause or schedule are to those of this agreement and references to any paragraph are to those of the clause or schedule in which the reference appears;
- 2.3.2 a demand means a written one; and
- 2.3.3 anything which is stated to include anything else does not, by the inclusion, limit the generality of the matter referred to.
- 2.4 Clause and paragraph headings do not affect the construction of this agreement.
- 2.5 The words "operation of" shall, where used in relation to the Railway Assets and Premises and the Railway Undertaking, be deemed to mean the "safe, efficient and economic operation and maintenance of";
- 2.6 Reference to "safe" or "safety" where used in relation to the Railway Undertaking or the Railway Assets and Premises, shall be deemed to include the safety of staff, passengers and visitors on and around the Railway Assets and Premises and members of the public generally;
- 2.7 No requirement for LUL to act reasonably or not unreasonably to withhold a consent acceptance or approval, nor any stipulation that a conclusion or decision by LUL is to be reached on a reasonable basis, shall diminish LUL's having absolute discretion:
- 2.7.1 in relation to matters relating to safety of the Railway Undertaking or the Railway Assets and Premises; and/or;
- 2.7.2 where LUL has to comply with a statutory obligation; and/or;
- 2.7.3 where the relevant matter relates to the operation of the Railway Undertaking or the Railway Assets and Premises,

provided that LUL shall exercise such discretion in a proper manner, without seeking to obtain a commercial advantage, by reference to its statutory duties and provide reasons for its decisions.

- 2.8 Where there is any conflict between the LUL Standards and any term of this Agreement then the LUL Standards shall prevail.

3. **NON-FETTER**

For the avoidance of doubt nothing herein contained or implied shall prejudice or affect the statutory and/or public law rights, powers, duties and obligations of LUL in the exercise of its statutory functions in respect of the Railway Undertaking and Railway Assets and Premises.

4. **PRE-DEVELOPMENT SERVICES AGREEMENT**

- 4.1 The Owners shall each observe and perform the obligations on their part contained in the Pre-Development Services Agreement.

- 4.2 The Owners will respond promptly to any request made by the Development Manager pursuant to the Pre-Development Services Agreement for information, assistance, consent, or approval.

5. **SATISFACTORY PLANNING PERMISSION**

- 5.1 If Planning Permission is granted it shall be deemed to be a Satisfactory Planning Permission unless within ten (10) Business Days of receipt of the notification received by the Owners in accordance with paragraph 2.11 of Schedule 1 of the Pre-Development Services Agreement, LUL or DevSec serves notice in writing, giving reasons, on the other stating that in its opinion the Planning Permission is not a Satisfactory Planning Permission.

- 5.2 In the case of a dispute between LUL and DevSec as to whether the Planning Permission is a Satisfactory Planning Permission and in the event that either one of them serves notice pursuant to clause 5.1, the question of whether the Planning Permission constitutes a Satisfactory Planning Permission shall be determined by the relevant Expert in accordance with clause 13.

- 5.3 LUL shall be responsible for and shall take whatever measures necessary to assume responsibility for all payments pursuant to CIL in relation to the First Property and shall indemnify DevSec in respect thereof and any other liabilities under the CIL Regulations in respect of the First Property.

5.4 DevSec shall be responsible for and shall take whatever measures necessary to assume responsibility for all payments pursuant to CIL in relation to the Second Property and shall indemnify DevSec in respect thereof and any other liabilities under the CIL Regulations in respect of the Second Property.

6. DEVELOPMENT CONSTRAINTS

6.1 Internal Development Constraints

6.1.1 The Owners shall provide the Development Manager with all reasonable assistance in relation to the release variation or other resolution of the Internal Development Constraints.

6.1.2 The Owners shall enter into such agreements (or where a Group Company of DevSec purchases either Algarve House or the SBC Property, DevSec will procure that such Group Company (as appropriate) shall enter into such agreements) as are reasonably necessary to release, modify or otherwise resolve all Internal Development Constraints (other than the Internal Rights to Light Constraint which shall be dealt with pursuant to clause 8) from the First Property and the Second Property respectively within ten (10) Business Days of the later of:

(A) the Satisfactory Planning Date; and

(B) DevSec (or a Group Company of it) either entering into the SBC Property Acquisition or obtaining the SBC Property Release.

6.2 External Development Constraints

6.2.1 Save in relation to the Internal Rights to Light Constraint to which the provisions of clause 8 shall apply, the Owners shall provide the Development Manager with all reasonable assistance in relation to the release variation or other resolution of the External Development Constraints.

6.2.2 Subject to clause 9.3 the Owners shall promptly enter into the agreements negotiated and prepared by the Development Manager pursuant to Part B of Schedule 1 of the Pre-Services Development Agreement in accordance with the strategy formulated pursuant thereto from time to time.

6.2.3 Where reasonably necessary to obtain the release or modification or other resolution of an External Development Constraint, each Owner will provide

reciprocal releases of rights or other matters enjoyed over other land, provided that such right or matter is not necessary for the use and enjoyment of the First Property or the Second Property (as the case may be) or for the Development, and in the case of the First Property provided that the right is not necessary for the operation or safety of a Railway Undertaking or the Railway Assets and Premises.

7. SITE ASSEMBLY BY DEVSEC

- 7.1 DevSec (or a Group Company of it) will procure the purchase of Algarve House.
- 7.2 DevSec (or a Group Company of it) will use reasonable endeavours to either complete the SBC Property Acquisition or obtain the SBC Property Release as soon as reasonably practicable.

8. OVERSAILING LEASE [REDACTED]

- 8.1 The Owners will negotiate and develop the Oversail Heads of Terms and form of Oversailing Lease with a view to agreeing and entering into the Oversail Agreement by the Oversail Agreement Long Stop Date.
- 8.2 Subject to clause 8.1, the Oversail Agreement will provide for the grant of the Oversailing Lease to DevSec (or a Group Company of it) simultaneously with the release, variation or other resolution of [REDACTED].

8.3 [REDACTED]

- [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]

9. FUNDING

9.1 Consultant's Costs

The fees, costs and expenses of the Professional Team shall be borne by LUL and DevSec in the Agreed Proportions.

9.2 Site Assembly Costs

The costs of acquiring the Second Property shall be borne entirely by DevSec provided that it is agreed that DevSec will not be required to incur costs of greater than the SBC Property Cap in acquiring the SBC Property.

9.3 External Development Constraints Costs

9.3.1 The costs of removing External Development Constraints affecting the First Property shall be borne [REDACTED].

9.3.2 The costs of removing External Development Constraints affecting the Second Property shall be borne [REDACTED].

9.3.3 The costs of removing External Development Constraints affecting both the First Property and the Second Property shall be borne in the Agreed Proportions unless either of LUL or DevSec notifies the other that they do not consider such proportions to be appropriate in the circumstances, in which case the cost shall be borne in such proportions agreed between the Owners as representing the proportion properly attributable to each of the First Property and Second Property and in default of agreement of such proportions the matter shall be referred to the relevant Expert in accordance with clause 13.

9.3.4 Each of LUL or DevSec covenants to pay the costs set out in this clause 9.3 promptly upon receipt of a request from the Development Manager and so as to facilitate the removal of the relevant External Development Constraint to the extent that such costs are either:

(A) within the Budget in relation to the relevant External Development Constraint; or

(B) more than the amount specified in the Budget in relation to the relevant External Development Constraint but within the relevant Budget when considered in conjunction with any EDC Savings (subject to there being no double counting of any EDC Savings).

9.3.5 To the extent that any costs requested pursuant to this clause 9.3 are not within the Budget any additional sums are subject to the approval of the Owners.

9.4 Pre-contract Costs

Within (five) 5 Business Days of the date hereof, LUL will pay to DevSec the sum of

[REDACTED]
[REDACTED] in respect of LUL's contribution towards the costs of the Services provided by the Development Manager and paid up to 1 November 2014 as set out in the schedule of pre-contract services annexed at Annexure 1.

9.5 Default

9.5.1 In the event that either LUL or DevSec fails to make any payment due pursuant to this Agreement on the date that such payment falls due the other Party may make such payment and shall notify the defaulting Party that it has done so as soon as reasonably practicable.

9.5.2 If either of LUL or DevSec elects to make a payment pursuant to clause 9.5.1 that sum shall be recoverable from the defaulting Party as a debt due on demand together with Interest accruing from the date the initial payment is made until the date the defaulting Party reimburses the payment.

10. ALIENATION

10.1 No Party may assign novate charge or otherwise transfer its interest in this Agreement or any right or benefit contained by this Agreement save as provided in clauses 10.2 and 10.3.

10.2 LUL may assign its interest under this Agreement to:

10.2.1 TFL;

10.2.2 a TFL Group Member;

10.2.3 an Operator or any person discharging any part of the function of the Railway Undertaking on behalf of any such person or otherwise to a corporation, company or body which becomes a statutory successor to all or part of the Railway Undertaking,

and written notice of any such express assignment (permitted by this clause 10.2) shall be given to DevSec within ten (10) Business Days of the date of the assignment. If this Agreement devolves on any corporation, company or body which becomes a statutory successor to all or part of the Railway Undertaking by force of statute then any such notice shall be given as soon as reasonably practicable.

10.3 DevSec may assign or novate its interest in this Agreement to any Group Company of it subject to DS PLC providing a guarantee of the performance by the assignee of its obligations.

11. **PROJECT GOVERNANCE**

11.1 To facilitate the co-operation of LUL and DevSec and the achievement of the Commercial Objectives and the implementation of the Business Plan, LUL and DevSec agree to form the Project Board.

11.2 The purpose of the Project Board shall be to:

- (A) review, coordinate and oversee the performance and actions of the Development Manager pursuant to the Pre-Development Services Agreement;
- (B) make and approve all joint decisions of LUL and DevSec as Owners under the Pre-Development Services Agreement in a timely manner (the approval of any Authority Matter as defined in the Pre-Development Services Agreement requiring unanimous approval of the members of the Project Board);
- (C) effect the efficient exchange of information in connection with the Project; and
- (D) keep the Business Plan under review and update as required;
- (E) address, develop and implement procedures and processes to cover the foregoing including without limitation:
 - (1) establishing lines of communication between LUL, DevSec and the Development Manager;
 - (2) maintaining records and monitoring and controlling the Budget and the Development Manager's expenditure in connection with the Project;
 - (3) handling variations;
 - (4) monitoring procurement activities;
 - (5) LUL and DevSec approvals under the Pre-Development Services Agreement;
 - (6) resolve all issues, problems and obstacles arising during the course of the Project; and
 - (7) provide the appropriate levels of support, resource and management to facilitate the smooth implementation of the Project,

and all such other matters as relate to the Project pursuant to this Agreement or the

Pre-Development Services Agreement.

11.3 Any delay in providing approvals, comments, enquiries or objections or similar matters, and any dispute, difference or failure to reach agreement under this Agreement or the Pre-Development Services Agreement shall be reported to the Project Board.

11.4 Meetings

11.4.1 The Project Board shall convene fortnightly (or at such other intervals as the Project Board may agree) until this Agreement is either terminated pursuant to this clause 11 or clause 12, or until the Project is completed.

11.4.2 At least one representative of LUL and one representative of DevSec shall be present at any meeting for a quorum to conduct business. The Owners may from time to time invite third parties to participate in Project Board meetings (including, without limitation, the Development Manager).

11.4.3 The agenda for Project Board meetings shall be prepared by the members of the committee. The minutes of each meeting shall be taken and signed by the attendees and shall record all decisions taken at such meetings.

11.4.4 The activities of the Project Board are subject to and without prejudice to the detailed provisions of this Agreement. Decisions made at Project Board meetings shall not alter or exclude the respective duties or liabilities of the Owners hereunder, and minutes of meetings shall not form part of this Agreement.

11.4.5 At each meeting of the Project Board, DevSec will procure that the Development Manager will provide to LUL and DevSec a report updating on progress made and intended approach in relation to the SBC Property Purchase or the SBC Property Release (as appropriate).

11.5 Deadlock

11.5.1 In the event that the Project Board are unable to reach agreement in relation to a matter and that matter remains unresolved twenty (20) Business Days (or such shorter period as may be expedient in the circumstances and notified in writing to the Project Board) after having been first raised at a meeting of the Project Board, the matter shall be referred (in writing) to the Senior Executives.

11.5.2 The Senior Executives shall use reasonable endeavours to resolve the relevant

matter within ten (10) Business Days of having been notified of the unresolved matter, acting in good faith at all times.

11.5.3 If, following the procedure referred to in this clause 11.5 the Owners are unable to resolve the matter, either party may terminate this Agreement by serving a Termination Notice.

11.5.4 These deadlock provisions, and hence the ability to serve a Termination Notice, shall not apply where this Agreement provides for the dispute in question to be referred to the Expert for determination, whether under this agreement or the Pre-Development Services Agreement.

12. TERMINATION

12.1 Either DevSec or LUL may serve a Termination Notice in the following circumstances:

12.1.1 if the Application has not been submitted to the relevant authority by the Application Longstop Date;

12.1.2 (subject always to DevSec and LUL not having agreed to appeal or challenge any Planning Permission or Refusal or otherwise deal with any Proceedings in which case the provisions of clause 12.5 shall apply instead of this clause 12.1.2) if the Planning Condition has not been satisfied by the Planning Condition Longstop Date;

12.1.3 if Development Constraints Satisfaction Date has not occurred by the Development Constraints Longstop Date;

12.1.4 DevSec (or a Group Company of DevSec) have not completed the purchase of Algarve House by [REDACTED];

12.1.5 if the other Party is the subject of any Insolvency Event;

12.1.6 where there is a material default by the other Party of its obligations under this Agreement Provided That the Party not in default has first served a notice in writing on the defaulting Party requiring it to remedy the default in question and the defaulting Party fails to remedy the same within 20 Business Days of notification of such default (or such shorter or longer period as may be reasonable in the circumstances and specified in the notice of default);

12.1.7 where the other Party commits fraud, gross negligence or wilful default of the terms of this Agreement;

12.1.8 in the event that the Planning Condition has not been satisfied by the date falling 30 months after the date of this agreement; and

12.1.9 in the event the Owners have not agreed in writing the final form of the Oversailing Lease and entered into the Oversail Agreement in accordance with clause 8 by the Oversail Agreement Long Stop Date.

12.2 LUL may serve a Termination Notice:

12.2.1 if DevSec (or a Group Company of DevSec) has not entered into the SBC Property Acquisition or obtained the SBC Property Release by the date which is [REDACTED] after the date of this Agreement.

12.2.2 if DS PLC is the subject of an Insolvency Event.

12.3 Where one of LUL or DevSec ("Paying Party") elects to make a payment pursuant to clause 9.5.1 on the default of the other ("Defaulting Party") and the Defaulting Party does not reimburse the Paying Party for the amount of the Payment (together with Interest pursuant to clause 9.5.2 within twenty (20) Business Days of written demand the Paying Party may serve a Termination Notice.

12.4 Following service of a Termination Notice by either LUL or DevSec, this Agreement shall terminate twenty (20) Business Days following such notice (but without prejudice to any antecedent right or entitlement of either Party in respect of any breach by any other party of the terms of this agreement).

12.5 The termination of this Agreement shall be without prejudice to the accrued rights of the Parties in respect of any antecedent breach or liability.

13. **DISPUTES**

13.1 Should a dispute or difference arise between the LUL and DevSec in relation to whether or not a Planning Permission is a Satisfactory Planning Permission or in relation to the proportions to be paid by LUL and DevSec in relation to the release of External Development Constraints affecting both the First Property and the Second Property either Party may refer such dispute to an Expert for final settlement and determination in accordance with this clause 13.

13.2 **Selection and appointment of Expert**

In the event that the named Expert (as the case may be) refuses to accept the appointment,

becomes unable or unwilling to act or for any other reason cannot be appointed, the following provisions of this Clause 13.2 shall apply:

13.2.1 The Expert shall be an individual who has recent and substantial experience in the field of the subject matter of the dispute and is a partner or director of a leading firm which itself has recognised expertise in the subject matter of the dispute.

13.2.2 The Expert shall be independent of the Parties to the dispute.

13.2.3 The Party wishing the appointment to be made shall give notice to that effect to the other Party and with such notice shall give details of the matter which it is proposed shall be referred to and determined by the Expert.

13.2.4 The Parties to the dispute shall endeavour to agree upon the identity of a single Expert to whom the matter in dispute shall be referred for determination, but if within five Business Days after service of the notice referred to in clause 13.2.3 the Parties to the dispute have not agreed upon the identity of an Expert then either Party may request that the President of the RICS selects an Expert.

13.2.5 Upon selection of the Expert, the Parties to the dispute or either of them, shall forthwith notify the Expert of his selection and request him to confirm to both Parties within three Business Days whether or not he is willing and able to accept the appointment.

13.2.6 The Parties to the dispute will co-operate with each other to appoint the Expert and ensure that the terms of the appointment of the Expert are agreed with him within five (5) Business Days of service of the notice referred to in clause 13.2.3, subject always to clause 13.4.

13.3 Reappointment

If:

13.3.1 an Expert upon whose identity the Parties to the dispute have agreed refuses to accept the appointment;

13.3.2 an Expert whom the RICS has selected refuses to accept the appointment;

13.3.3 at any time the appointed Expert becomes unable or unwilling to act,

the Parties to the dispute shall appoint another Expert to begin the reference afresh (or

complete it if the Parties so agree) in accordance with the procedure set out in clause 13.2.

13.4 Procedure for Expert determination

13.4.1 Following appointment of the Expert and his acceptance of such appointment, the Party initiating the reference shall within five (5) Business Days of such acceptance serve upon the Expert and the other Party to the dispute a notice of referral of the dispute setting out the substance of the matters to be decided by the Expert and attaching any documents which it considers may be relevant.

13.4.2 The terms of the Expert's appointment shall provide for the Expert to give directions as to the procedure for determination of the dispute within five (5) Business Days of the referral to him, and the Parties to the dispute shall comply with the directions given by the Expert, save that neither Party shall be obliged to provide any document or information to the Expert or to the other Party if that Party would be entitled in proceedings before the High Court to refuse to provide such document or information by reason of legal privilege.

13.4.3 The determination shall take the form of a detailed document stating the Expert's reasons for his decision.

13.4.4 In respect of the matters referred to him:

- (A) the Expert shall act as an expert and not as an arbitrator and the law relating to arbitration shall not apply to the proceedings;
- (B) any and all communications between and submissions made by either of the Parties to the dispute and the Expert shall be made in writing and a copy thereof provided simultaneously to the other Party and no meeting between the Expert and the Parties or either of them shall take place unless both Parties have been notified and have had a reasonable opportunity to attend any such meeting;
- (C) the Expert shall be entitled to use his knowledge and experience in coming to his determination;
- (D) the terms of the Expert's appointment shall require him to publish his determination in writing to the Parties to the dispute within twenty (20) Business Days after the referral to him, unless both Parties agree in writing to an extension of such period;

(E) the Expert may if he in his absolute discretion so chooses provide a written draft of his determination to each of the Parties to the dispute not less than ten (10) Business Days before he intends to publish it and the Parties may make comments on such draft at any time up to five (5) Business Days after the Expert has provided it to them, but if the Expert does provide a written draft of his determination to each of the Parties he shall not make his determination until at least ten (10) Business Days after he has so provided it;

13.4.5 If either Party to the dispute fails to comply with the Expert's directions or withdraws from the procedure the Expert shall nevertheless be entitled to proceed to make his determination.

13.4.6 The Expert's determination (including any corrections made under clause 13.6) shall be final and binding upon the Parties save in the case of fraud, collusion or manifest error.

13.5 Legal costs and Expert's fees and expenses

13.5.1 The Expert may in his determination provide that one or other or both of the Parties to the dispute pay the Expert's fees and the expenses of any professional advice, consultation and secretarial assistance provided to the Expert in such proportions as he may specify.

13.5.2 In the absence of such provision, each Party shall bear its own legal costs and the fees and expenses of the Expert shall be borne in equal shares by the Parties.

13.6 Clerical or manifest error

The Expert shall have the power on the application of either Party to the dispute to correct any clerical, arithmetical or other manifest error in his determination provided that he does so within five Business Days of the publication of such determination.

14. NOTICES

14.1 Any notice, notification or any other formal communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post to the contact details as set out in clause 14.2.

14.2 The contact details referred to in clause 14.1 are:

14.2.1 if to LUL, to:

Address: Windsor House, 42-44 Victoria Street, London SW1H 0TL

marked for the attention of the Company Secretary.

14.2.2 if to DevSec, or to DS PLC to:

Address: Portland House, Bressenden Place, London SW1E 5DS

marked for the attention of the Company Secretary.

14.3 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

14.3.1 if delivered personally, when left at the address referred to in clause 14.2;

14.3.2 if sent by post:

(A) within the UK, two Business Days after posting it; and

(B) outside the UK, five Business Days after posting it,

provided always that a notice given in accordance with the above but received on a day which is not a Business Day, or after 5:00p.m. on a Business Day, will only be deemed to be given on the next Business Day.

15. **CONFIDENTIALITY AND TRANSPARENCY**

15.1 Each Party agrees in respect of Confidential Information disclosed to it pursuant to this Agreement or discovered further to the operation of this Agreement:

15.1.1 to keep the Confidential Information in strict confidence and secrecy;

15.1.2 not to use the Confidential Information save for complying with its obligations under this Agreement;

15.1.3 subject to clauses 15.1.4 and 15.2, not to disclose the Confidential Information to any other person (save that the Parties may disclose Confidential Information to professional advisers engaged by them in connection with this Agreement subject in each case to the party receiving the Confidential Information being required to keep the information confidential and (except where the recipient of the Confidential

Information is under a professional duty of confidentiality) providing the Party providing it with an undertaking to keep the Confidential Information disclosed to it confidential in similar terms to the provisions of this clause 15;

15.1.4 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees, agents and sub-contractors who of necessity need the same in the performance of this Agreement and for the Pre- Development Services Agreement and/or any agreements entered into pursuant to the obligations in those agreements and in such circumstances to ensure that such employees, agents and sub-contractors are aware of the confidential nature of the Confidential Information and (except where the recipient of the Confidential Information is under a professional duty of confidentiality) agree to provide the Party providing the Confidential Information with an undertaking to keep the Confidential Information disclosed to it confidential in similar terms to the provisions of this clause 15.

15.2 The obligations set out in clause 15.1 shall not apply to any Confidential Information which:

15.2.1 can be shown by documentary or electronic evidence as being already in the lawful possession and at its free disposal (in the case of DevSec and DS PLC otherwise than directly or indirectly from LUL or any other TFL Group Member, and in the case of LUL otherwise than directly or indirectly from DevSec or DS PLC or any Group Company of them);

15.2.2 is required by law (including pursuant to FOI Legislation) or by order of a court of competent jurisdiction, or by any governmental or other regulatory authority (including, without limitation, any relevant securities exchanges), to be disclosed but only to the extent required by such law or order or authority Provided That, to the extent it is legally permitted to do so, it gives the other Parties as much notice of such disclosure as possible and takes into account the reasonable requests of the other Parties in relation to the content of such disclosure;

15.2.3 is or lawfully becomes generally available to the public (other than as a result of its disclosure by the receiving Party in breach of this clause 15); or

15.2.4 the Parties agree in writing is not confidential or may be disclosed.

15.3 If a Party is required pursuant to clause 15.2.2 to make a disclosure of Confidential Information, that Party shall as soon as reasonably practicable and to the extent permitted by law and/or regulatory body notify the other Parties of the full circumstances of the required

disclosure including the relevant law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

- 15.4 Each Party acknowledges that damages would not be an adequate remedy for any breach of this clause 15 and that (without prejudice to all other rights, powers and remedies which a Party may be entitled to as a matter of law) a Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this clause 15 and no proof of special damages shall be necessary for the enforcement of the provisions of this clause 15.
- 15.5 The obligations of confidentiality in this clause 15 shall survive the termination of this Agreement.
- 15.6 The Parties acknowledge that Clause 16 shall take precedence over this clause 15 to the extent of any inconsistency.
- 15.7 DevSec and DS PLC acknowledge that LUL is subject to the Transparency Commitment and accordingly and notwithstanding any other provision of this Agreement hereby give their consent to LUL to publish the Contract Information to the general public (but with any information which is exempt from disclosure in accordance with the FOI Legislation redacted and subject to redacting any commercially sensitive information).
- 15.8 Where LUL is required by virtue of the Transparency Commitment to disclose any part of the Contract Information, LUL shall seek to redact all or part of the Contract Information prior to its publication and in so doing LUL will take account of the exemptions and exceptions that would be available in relation to information requested under the FOI Legislation and consult with DevSec regarding any redactions to the Contract Information to be published (but so that the final decision regarding publication and/or redaction of the Contract Information shall remain in the absolute discretion of LUL).
- 15.9 Neither LUL nor DevSec shall be entitled to note this agreement against the other's registered title.

16. **FREEDOM OF INFORMATION**

- 16.1 DevSec and DS PLC acknowledge that LUL:

16.1.1 is subject to the FOI Legislation and agree to provide necessary assistance and cooperation as may be reasonably requested by LUL to enable LUL to comply with its obligations under the FOI Legislation; and

- 16.1.2 may be obliged under the FOI Legislation to disclose Confidential Information without consulting or obtaining consent from any other Party and, subject to the provisions of this clause 16, may ultimately at its discretion disclose such Confidential Information.
- 16.2 Without prejudice to the generality of clause 16.1, DevSec and DS PLC shall:
- 16.2.1 transfer to LUL each Information Request relevant to the Confidential Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving such Information Request; and
- 16.2.2 in relation to Confidential Information held by them requested in the Information Request and belonging to LUL or any TfL Group Member and which is in the possession or control of DevSec or DS PLC, provide LUL with details about and/or copies of all such Confidential Information that LUL reasonably requests within five (5) Business Days of a written request from LUL (or such other period as LUL may reasonably specify) and in such forms as LUL may reasonably specify.
- 16.3 LUL shall take reasonable steps to notify DevSec and DS PLC of an Information Request (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of the Public Authorities under Part 1 of the Freedom of Information Act 2000) to the extent that it is permissible and reasonably practical for it to do so.
- 16.4 LUL shall be responsible for determining whether Confidential Information is exempt from disclosure under the FOI Legislation and for determining what Confidential Information (if any) will be disclosed in response to an Information Request in accordance with the FOI Legislation and neither DevSec nor DS PLC shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by LUL provided that LUL will have due regard to any representations made by DevSec or DS PLC for the protection of commercially sensitive information and/or whether any information is exempt from disclosure in accordance with the FOI Legislation, but LUL shall not be fettered by such representations.
- 16.5 This clause 16 shall survive termination of this Agreement.
17. **GOOD FAITH**
- 17.1 LUL and DevSec shall each act in good faith in their dealings with each other in relation to all matters which are the subject of this Agreement and the Pre-Development Services Agreement and to do such things and acts as may be required to implement their respective

obligations under this Agreement.

17.2 Neither LUL nor DevSec shall not seek to secure a commercial advantage over the other in their dealings with one another pursuant to this Agreement.

18. **BRIBERY ACT 2010**

18.1 The Parties agree to:

18.1.1 comply with the Bribery Act 2010 and all other legislation relating to anti-bribery and anti-corruption (the "Anti-Corruption Laws");

18.1.2 maintain in place until the expiry of this Agreement policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with this clause and will enforce them where appropriate;

18.1.3 promptly report to the other Party any request or demand for any undue financial or other advantage of any kind which would be contrary to the Anti-Corruption Laws, that they receive, arising out of, or in connection with, the performance of this Agreement.

19. **VALUE ADDED TAX**

19.1 **Exclusive of VAT**

All sums payable pursuant to this Agreement shall be deemed to be exclusive of any VAT which is chargeable on the supply or supplies for which such sums are the consideration for VAT purposes.

19.2 **Payment of VAT**

Where, pursuant to the terms of this Agreement, any Party (the "**Supplier**") makes a supply to any other Party (the "**Recipient**") for VAT purposes and VAT is or becomes chargeable on such supply, the Recipient shall, subject to the receipt by the Recipient of a valid VAT invoice in respect of such supply from the Supplier, pay to the Supplier (in addition to and at the same time as any other consideration for that supply) a sum equal to the amount of such VAT.

20. **LAW AND JURISDICTION**

20.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability shall be governed by and

construed in accordance with English law and within the exclusive jurisdiction of the English courts, to which the Parties irrevocably submit.

21. EXCLUSION OF THIRD PARTY RIGHTS

The Parties confirm that no term of this agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to it.

22. ENTIRE AGREEMENT, REPRESENTATIONS AND DECLARATIONS

22.1 This agreement constitutes the entire agreement between the Parties to the exclusion of every other antecedent statement and agreement.

22.2 The Parties acknowledge that they have not entered into this agreement in reliance upon any statement or other agreement (other than those which have been given by the other Party's solicitors in a written reply to an enquiry made by that Party's solicitors before the exchange of this agreement).

23. SEVERANCE

If any provision of this agreement is held to be invalid or unenforceable, it shall be deemed to be deleted (so far as invalid or unenforceable) and the remaining provisions of this agreement shall continue in force.

24. NO PARTNERSHIP

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership between the Parties or constitute any Party the agent of another Party.

25. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

26. GUARANTEE

In consideration of LUL entering into this agreement DS PLC as a principal obligor agrees with LUL that:

26.1 Guarantee

DevSec will comply with its obligations contained in this agreement and, to the extent it does

not, DS PLC will comply with them and will indemnify LUL against any loss it suffers as a result of any non-compliance, without deduction or set-off.

26.2 **Preservation of the Guarantee**

DS PLC's obligations under this clause are not affected by:

- 26.2.1 any delay or other indulgence, compromise or neglect in enforcing the obligations of DevSec;
- 26.2.2 any legal limitation, immunity, incapacity, insolvency or the winding-up of DevSec or by DevSec otherwise ceasing to exist;
- 26.2.3 any act or omission in connection with any right or remedy against DevSec or with any other security for compliance with the obligations of DevSec;
- 26.2.4 any other act or omission which, but for this provision, would have released DS PLC from liability,

or any combination of any such matters and DS PLC's obligations are not released by, but shall be construed so as to require compliance with, the terms of the agreement as amended or varied from time to time and DS PLC shall, if LUL requests, join in any such amendment or variation in order to acknowledge and confirm that requirement.

26.3 **Subrogation rights**

DS PLC:

- 26.3.1 may not participate in, or exercise any right of subrogation in respect of, any security held by LUL for the performance of the obligations of DevSec;
- 26.3.2 will unconditionally waive any right of contribution by DevSec towards DS PLC's liability under this clause, to the extent the waiver is requisite for preserving that liability;
- 26.3.3 acknowledges that DS PLC's obligations under this clause are and shall remain additional to and separate from any other security which LUL may at any time hold for the discharge of the obligations of DevSec and shall be complied with irrespective of any such other security;
- 26.3.4 shall not:
 - (A) claim in competition with LUL in any proceedings or any type of

arrangement in connection with the insolvency of DevSec; or

(B) exercise any other right or remedy against DevSec irrespective of whether or not DevSec is insolvent,

in respect of any performance of DS PLC's obligations under this clause unless and until all of those obligations are fully performed (and, if, notwithstanding, DS PLC does receive any money pursuant to any such claim, right or remedy, it shall hold the money on trust for LUL until those obligations are fully performed); and

26.3.5 warrants that it has not taken and agrees that it will not take any security over the assets of DevSec for any liability owed to DS PLC and, if any such security is acquired, DS PLC shall hold it for the benefit of LUL.

IN WITNESS whereof the Parties have respectively signed this agreement each acting by authorised signatories.

On one part

SIGNED by

Director/Authorised Signatory for
and on behalf of LUL

On other part

SIGNED by

Director/Authorised Signatory for
and on behalf of DevSec

SIGNED by

Director/Authorised Signatory for
and on behalf of DS PLC

ANNEXURE 1

Schedule of Pre-Contract Services and Costs

ANNEXURE 2

Business Plan

ANNEXURE 3

Oversailing Lease

ANNEXURE 4
Common Terms Schedule