



HERBERT
SMITH
FREEHILLS

..... **2015**

LONDON UNDERGROUND LIMITED
and
DEVELOPMENT SECURITIES (SOUTHWARK) LIMITED
and
DEVELOPMENT SECURITIES (PROJECTS) LIMITED

PRE-DEVELOPMENT SERVICES AGREEMENT
in connection with a proposed development above
and adjoining Southwark Underground Station

Herbert Smith Freehills LLP

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BETWEEN:

- (1) LONDON UNDERGROUND LIMITED (company number 01900907) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL ("**LUL**");
- (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 (PROJECTS) LIMITED (company number 02850465) whose registered office is at Portland House, Bressenden Place, London SW1E 5DS ("**Development Manager**").

BACKGROUND

- (A) LUL owns the First Property and DevSec (or a Group Company of it) will purchase Algarve House and will use reasonable endeavours to purchase the SBC Property.
- (B) The Owners intend to carry out the Development on their respective properties and for that purpose the Owners are appointing the Development Manager to perform the Services.
- (C) The Development Manager has agreed to provide the Services in consideration of the Fees and on then terms and conditions contained in this Agreement.

1. Definitions and Interpretation

- 1.1 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 1) and terms defined in the Common Terms Schedule have the same meaning when used in this Agreement.
- 1.2 In this Agreement, unless the context requires otherwise:
 - 1.2.1 the contents page, headings and sub-headings in this Agreement are for ease of reference only and do not affect the meaning of this Agreement;
 - 1.2.2 words in the singular include the plural and vice versa;
 - 1.2.3 the masculine includes the feminine and vice versa;
 - 1.2.4 save where this Agreement provides to the contrary, an obligation to do any act or thing may be satisfied by procuring or causing it to be done;
 - 1.2.5 any reference to a party is to a Party to this Agreement and includes the respective successors or permitted assigns of the original Parties;
 - 1.2.6 where examples are given by using words or phrases such as "include", "including" or "in particular", the examples do not restrict the meaning of the related general words;
 - 1.2.7 a reference to a person includes an individual, firm, partnership, company, corporation, association, organisation or trust (in each case whether or not having a separate legal personality);
 - 1.2.8 a reference to a clause, paragraph or schedule is to a clause or paragraph of or schedule to this Agreement and a reference to this Agreement includes its schedules and appendices;
 - 1.2.9 a reference to a company includes any company, corporation or any other body corporate (wherever incorporated);

- 1.2.10 a reference to legislation is a reference to all legislation having effect in the United Kingdom at any time, including directives, decisions and regulations of the Council or Commission of the European Union, Acts of Parliament, orders, regulations, consents, licences, notices and bye-laws made or granted under any Act of Parliament or directive, decision or regulation of the Council or Commission of the European Union, or made or granted by a local authority or by a court of competent jurisdiction and any approved mandatory codes of practice issued by a statutory body;
- 1.2.11 a reference to a statute or statutory provision includes:
- (A) that statute or statutory provision as amended, modified or replaced (before, on or after the date of this Agreement);
 - (B) any statute or statutory provision which re-enacts (with or without modification) such statute or statutory provision; and
 - (C) any subordinate legislation or any mandatory codes of practice made (before, on or after the date of this Agreement) under that statute or statutory provision;
 - (D) a reference to this Agreement or to any other document shall include any variation, amendment or supplement made to this Agreement or that other document;
- 1.2.12 if a Party is more than one person then their obligations are joint and several;
- 1.2.13 any obligation by a Party not to do any act or thing shall include an obligation not to permit or suffer such act or thing to be done;
- 1.2.14 the words "subsidiary", "group undertaking", "subsidiary undertaking", "parent undertaking" and "undertaking" have the same meaning as their respective definitions in the Companies Act 2006;
- 1.2.15 where a Party is required to notify another Party of a matter or provide approval, such notification or approval must be made in writing;
- 1.3 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";
- 1.4 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;
- 1.5 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:
- 1.5.1 in relation to matters relating to safety of the Railway Undertaking or the Railway Assets and Premises; and/or;
 - 1.5.2 where LUL has to comply with a statutory obligation; and/or;
 - 1.5.3 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.

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

2. **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.

3. **Appointment**

3.1 In consideration of the Fees, the Owners hereby jointly appoint the Development Manager to carry out the Services, and the Development Manager hereby agrees to carry out the Services in accordance with the terms and conditions contained in this Agreement from the date of this Agreement until the Expiry Date or if earlier the date this Agreement is terminated pursuant to clause 12.

3.2 In the event of a Refusal, the Development Manager shall be under no obligation to continue to provide the Planning Services unless and until the Parties (in their absolute discretion) agree how to proceed.

3.3 The Development Manager shall not make any profit or commission out of the provision of the Services other than the Fees.

3.4 The Development Manager may procure the carrying out of the Services by others (whether by way of sub-contracting, delegation or otherwise) provided that with respect to matters which are required to be performed directly by the Development Manager under this Agreement, any cost incurred by the Development Manager in procuring performance by others will be for the account of the Development Manager (but this is without prejudice to the Development Manager's entitlement to Fees under this Agreement).

4. **Development Manager's Obligations**

4.1 In carrying out the Services and its other obligations in this Agreement the Development Manager shall:

4.1.1 do so in accordance with the terms of this Agreement;

4.1.2 act in a manner that has regard to and with a view to achieving the Commercial Objectives of and being consistent with the Business Plan;

4.1.3 consult and liaise, co-operate and share information as necessary with the Owners;

4.1.4 in respect of any matters for which the consent or approval of the Owners is required hereunder, to seek such consent or approval and comply with all consents and approvals given to it by the Owners on any such matters.

4.2 Where this Agreement requires the Development Manager to obtain the consent or approval of the Owners the request for consent or approval shall be:

4.2.1 accompanied by such reasonable information as is necessary to enable the Owners to make an informed decision and;

4.2.2 submitted at such time and within such time scale as shall permit the Owners sufficient time properly to consider the request.

4.3 The Development Manager shall:

4.3.1 comply with its obligations contained in the Appointments and use reasonable and commercially sensible endeavours to procure that each member of the Professional Team complies with its obligation contained in the Appointments;

4.3.2 subject to payment to the Development Manager by the Owners pursuant to Clause 7.1.6 to pay all fees due to each member of the Professional Team on the due dates for payment provided in the Appointments;

4.3.3



5. Professional Team

5.1 Save as set out in clause 5.4, the Development Manager will not amend or vary or terminate any of the Appointments or waive any rights against any member of the Professional Team without the consent of the Owners.

5.2 The Development Manager will not appoint any additional member of the Professional Team without the consent of the Owners.

5.3 In the event of any termination of any of the Appointments the Development Manager may appoint a new member of the Professional Team in substitution provided that:

5.3.1 the terms of the appointment are approved by the Owners;

5.3.2 the substituted member of the Professional Team provides a collateral warranty to each of the Owners;

5.3.3 if in the opinion of LUL (acting reasonably) the appointment of the substituted member of the Professional Team is an appointment which would be the subject of the Regulations then LUL may require that the selection process complies with the Regulations.

5.3.4 The Development Manager may permit members of the Professional Team to appoint sub-consultants where necessary for the advancement of the Project, subject to:

(A) the costs of such appointment being within the scope of the Budget;

(B) each appointment (including the form of it) being approved by the Owners;

(C) a collateral warranty (in a form approved by the Owners) being provided from each sub-consultant directly to each of the Owners.

5.4 DevSec shall procure that the appointments listed in schedule 4 shall be novated to the Development Manager (or new appointments entered into between DevSec and those consultants in the same form or such other form as may be agreed by LUL (acting reasonably)), and insofar those appointments do not provide for a duty of care to be given to LUL, DevSec shall procure that the relevant appointment shall so provide, and subject thereto LUL hereby acknowledges that the forms of appointments listed in schedule 4 and disclosed to it prior to the date hereof are approved by it.

6. Joint appointment

6.1 The appointment of the Development Manager is a joint appointment by LUL and DevSec and where the Development Manager is required to act on the instructions of the Owners or obtain the consent or approval of the Owners such instruction or consent or approval must (unless otherwise expressly stated in this Agreement) be given by both LUL and DevSec and the Development Manager shall not be obliged to act nor shall it be in breach of its obligations to act until it has received the instructions or approval of both LUL and DevSec

6.2 The obligations of each of LUL and DevSec to the Development Manager contained in this Agreement are several and neither of them shall have any liability to the Development Manager for the acts or defaults of the other.

7. Owners Obligations

7.1 Each of the Owners shall:

- 7.1.1 supply the Development Manager, in such time as may be reasonable having regard to the timing and nature of any request therefor, with any necessary and relevant information, approvals and data in the Owners possession, and which in each case is reasonably required by the Development Manager to enable the Development Manager to perform its obligations under this Agreement;
- 7.1.2 co-operate with the Development Manager to assist the Development Manager in performing its obligations under this Agreement;
- 7.1.3 in relation to any request or application by the Development Manager under this Agreement for approval or consent or information or assistance:
- (A) respond as quickly as reasonably practicable to such request or application; and
 - (B) not unreasonably withhold or delay any consent or approval requested by the Development Manager, save:
 - (1) where otherwise expressly provided in this Agreement;
 - (2) in respect of Paragraph 2 of Part A of Schedule 1, it shall be deemed reasonable to withhold consent where the relevant matter submitted for approval is inconsistent with the Concept Design;
 - (3) in respect of Part B of Schedule 1, it shall be deemed reasonable to withhold consent where the relevant matter submitted for approval is inconsistent with the Commercial Objectives;
- Provided That it is acknowledged that where any request for consent or approval in the opinion of LUL affects the operation or safety of the Railway Undertaking or the Railway Assets and Premises, then LUL shall have absolute discretion and shall not be obliged to act reasonably in considering such request for consent or approval and provided it is acknowledged that LUL and its Group Companies may, independently carry out a consultation role (in exercise of its statutory functions) with regards the Application and it is acknowledged that any objection in that capacity is not a breach of this provision;
- (C) if any response to the Development Manager is made orally, confirm the same in writing within five Business Days;
- 7.1.4 in relation to any application from the Development Manager under this Agreement for approval of an Authority Matter:
- (A) receive and consider the advice and recommendations of the Development Manager in connection with the Authority Matter but the Owners shall not be fettered by such advice or recommendations;
 - (B) be entitled to use its absolute discretion when responding to the application for such approval; and
 - (C) notify the Development Manager of its decision in writing in relation to the approval of the Authority Matter as soon as reasonably practicable and in any event within such response time as the Development Manager (acting

reasonably) notifies as being necessary for the purposes of carrying out the Project in a timely manner and give the Development Manager reasons for that decision,

- 7.1.5 subject to clause 12, pay the Fees on the dates and in the proportions and in the manner set out Schedule 3;
 - 7.1.6 following a notice from the Development Manager pursuant to clause 4.3.3 to put the Development Manager in funds to pay the fees, costs and expenses due pursuant to the Appointments by the date such fees, costs and expenses become payable the Owners to provide such funds in the Agreed Proportions [REDACTED]
 - 7.1.7 promptly enter into any Planning Agreements (being in a form previously approved by the Owners pursuant to paragraph 2.10 of Part 1 of Schedule 1 as are necessary to secure the grant of the Planning Permission (it being agreed that neither Owner will withhold consent or approval of any Planning Agreement to the extent that any provision of a Planning Agreement reflects a matter which has previously been expressly approved (in writing) by that Owner, (including for the avoidance of doubt any matter which is included in any approved Application)), or to the extent such matter has been determined by an Expert pursuant to clause 20);
 - 7.1.8 promptly enter into any document(s) releasing or modifying or otherwise resolving any External Development Constraints (being in a form(s) previously approved by the Owners pursuant to paragraph 3 of Part 2 of Schedule 1 (it being agreed that neither Owner will withhold consent or approval of any such document to the extent that any provision of it reflects a matter which has previously been expressly approved (in writing) by that Owner) or to the extent such matter has been determined by an Expert pursuant to clause 20);
 - 7.1.9 confirm (in writing) within ten (10) Business Days of receipt of the notification received by the Owners pursuant to paragraph 2.11 of Schedule 1 to this Agreement whether or not any Planning Permission granted is a Satisfactory Planning Permission (giving reasons where the notice states the Planning Permission is not a Satisfactory Planning Permission) unless there is a dispute between the Owners pursuant to the JV Agreement in which case such confirmation shall be within ten (10) Business Days of the determination of the dispute being notified to the Owners by the Expert pursuant to the JV Agreement.
- 7.2 Where a request for an approval or consent or information or assistance is submitted to LUL and/or the Owners and in the reasonable opinion of LUL the matter affects the operation or safety of the Railway Undertaking or the Railway Assets and Premises, if such response is not provided by LUL within fifteen (15) Business Days, for every day after the date that is fifteen (15) Business Days following the request from the Development Manager, during which LUL has failed to provide a response, the dates referred to within:
- 7.2.1 paragraphs 1.3 and 2.3 of Schedule 3 of this Agreement, and/or
 - 7.2.2 the Application Longstop Date;
 - 7.2.3 the Development Constraints Longstop Date; and/or
 - 7.2.4 the Planning Condition Longstop Date,
- (as appropriate with regard to the nature of the approval, consent, information or assistance requested) shall be extended by a corresponding day provided that LUL has been notified in writing of each extension.
- 7.3 In the event that there is a dispute between the Parties as to whether LUL have responded to a request for approval or consent or information or assistance pursuant to clause 7.2 then any

Party may refer such dispute to an Expert for final settlement and determination in accordance with clause 20.

- 7.4 The Owners shall not be obliged to pay the Fees or any part of them until DevSec (or a Group Company of DevSec) has either:

■ [REDACTED]
■ [REDACTED]

provided that following either of the above occurring, the Owners shall within 10 Business Days pay the Fees that would have been due from the date of this Agreement otherwise than for the provision of this clause 7.4.

- 7.5 On completion of any document or documents releasing or modifying or otherwise resolving an External Development Constraint affecting the First Property (and such document being in a form previously approved by LUL) LUL shall pay to the party with the benefit of the External Development Constraint the amount required to secure the release or modification or as otherwise provided for in such document.
- 7.6 On completion of any document or documents releasing or modifying an External Development Constraint affecting the Second Property (and such document being in a form previously approved by Dev Sec) DevSec shall pay to the party with the benefit of the External Development Constraint the amount required to secure the release or modification or as otherwise provided for in such document.
- 7.7 On completion of any document or documents releasing or modifying an External Development Constraint affecting both the First Property and the Second Property (and such document being in a form previously approved by both LUL and DevSec), each Party shall pay to the party with the benefit of the External Development Constraint the amount required to secure the release or modification in the proportions determined by Clause 9.3.3 of the JV Agreement.
- 7.8 Where the Development Manager has incurred costs or liabilities pursuant to the Owner's instructions, the Owner's will remain liable to the Development Manager pursuant to clause 7.1.6 to reimburse the Development Manager for that expenditure or liability, notwithstanding any subsequent revocation of instructions that led to that expenditure or liability.

8. **Scope of Authority**

- 8.1 The Development Manager shall not, without the prior approval of the Owners (in their absolute discretion) have any authority to act on behalf of the Owners, or to take any action or make a decision on or do or permit something to be done in respect of this Project, in relation to anything which is:
- 8.1.1 an Authority Matter; or
- 8.1.2 relates to any services or any other matter in respect of the Property which is outside the scope of the Services.
- 8.2 Save in respect of the Authority Matters and subject to the other provisions of this clause 8, the Development Manager shall have such authority to act on behalf of the Owners as is necessary to perform the Services or which is consistent with the Business Plan.
- 8.3 On request from the Development Manager, the Owners will confirm the Development Manager's authority under this clause 8 and ratify the instructions issued by the Development Manager to those persons given within the scope of authority set out in this Agreement.
- 8.4 The Development Manager shall neither act nor hold itself out as having authority to act on behalf of the Owners in any manner which is beyond the scope of the Development Manager's authority under this Agreement and shall not have any authority under this

Agreement to execute or sign any deed or document for and on behalf of the Owners or otherwise enter into any legally binding agreement on behalf of the Owners.

9. **Licence**

9.1 LUL grants the Development Manager and all those working for it on the Project permission to enter the First property (with others) as licensee only to perform the Services in accordance with this Agreement until the Expiry Date (or such longer period as LUL may permit) subject to prior appointment and provided that any person entering the First Property is (if required by LUL) accompanied by a representative of LUL and complies at all time with all the standards and requirements of LUL in respect of such entry (which shall be reasonable unless they relate to safety or the business operation of the station).

9.2 DevSec grants the Development Manager and all those working for it on the Project permission to enter the Second Property (with others) as licensee only to perform the Services in accordance with this Agreement until the Expiry Date (or such longer period as DevSec may permit).

10. **Copyright Licence**

Where such are vested in the Development Manager, copyright and any other intellectual property rights in any drawings, plans, specifications and calculations and/or any other data and documents produced by the Development Manager pursuant to its obligations to the Owners under this Agreement in relation to the Project, will remain vested in the Development Manager but the Owners shall have and are hereby granted by the Development Manager an irrevocable non-exclusive, royalty free licence to use, to copy and to reproduce any such data and documents for the purpose of the Development and such licence shall carry the right to grant sub-licences and shall be transferable to third parties.

11. **Alienation**

11.1 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 11.2 and 11.3

11.2 LUL may assign its interest under this Agreement to:

11.2.1 TFL;

11.2.2 a TFL Group Member;

11.2.3 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 11.2) shall be given to DevSec and the Development Manager within ten (10) Business Days of the date of the assignment provided, that where 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.

11.3 DevSec may assign or novate its interest in this Agreement to any Group Company of it subject to a guarantee of the performance by the assignee of its obligations being provided by Development Securities PLC (company number 015287841).

12. **Termination**

12.1 This Agreement will automatically determine in the event of (and on the date of) termination of the JV Agreement.

12.2 The Owners may jointly or individually terminate this Agreement by notice in writing to the Development Manager:

- 12.2.1 if the Development Manager is in material breach of any of obligations under this Agreement and the Development Manager fails to remedy or otherwise cure such breach within a reasonable period, in the circumstances of such breach having been notified in writing to the Development Manager by the Owners or either of them;
- 12.2.2 if the Development Manager suffers an Insolvency Event;
- 12.2.3 if there is a DM Change of Control;

whereupon this Agreement shall terminate on the date of service of such notice.

12.3 The Development Manager may terminate this Agreement by notice in writing to the Owners if the Owners are in material breach of any of their obligations under this Agreement and the Owners (or the one in breach) fail to remedy or otherwise cure such breach within a reasonable period in the circumstances of such breach having been notified in writing to the Owners (or the one in breach) by the Development Manager whereupon this Agreement shall terminate on the date of service of such notice).

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

12.5 Notwithstanding termination or expiry of this Agreement the Development Manager shall be entitled (to the extent not already received by the Development Manager):

12.5.1 to payment by the Owners of those Fees accrued and/or payable in accordance with Schedule 3 (or the relevant due proportionate part thereof apportioned on a daily basis) up to (and including) the date of termination or expiry, within fifteen (15) Business Days of this Agreement terminating or expiring; and

12.5.2 in the event that:

(A) [REDACTED] the sums payable pursuant to paragraphs 2.2 and 2.3 of Schedule 3 of this Agreement will be payable; and

(B) [REDACTED] the sums payable pursuant to paragraphs 1.2, 1.3 and 3 of Schedule 3 (if applicable) of this Agreement will be payable.

such sums to be paid by the Owners within fifteen (15) Business Days of [REDACTED] or, in the case only of the sums payable pursuant to paragraph 3 of Schedule 3, if later, the date fifteen (15) Business Days after the date [REDACTED]

12.6 Following termination or expiry of this Agreement the Developer Manager shall have no further obligation to provide any Services under this Agreement and the Owners will allow the Developer Manager on reasonable prior notice access to inspect or take copies of any such invoices, contracts and documents as may be necessary for the purpose of preparing its (or any Group Company's) statutory accounts, compliance with any regulatory obligation or completing its tax returns.

12.7 This clause 12 shall survive termination of this Agreement.

13. Insurance

13.1 The Development Manager shall have in force professional indemnity insurance up to an aggregate limit of not less than [REDACTED] Provided that if such insurance is not available at commercially reasonable rates in the London market from time to time, the Development Manager shall maintain such insurance in the highest amount (below

██████████) as shall be available at commercially reasonable rates taking into account the level and nature of the Services to be provided pursuant to this Agreement.

- 13.2 The insurance referred to in clause 13.1 shall be retained by the Development Manager (subject to the same proviso in clause 13.1) from the date of this Agreement for a period expiring ██████████ after the date of expiry or termination of this Agreement.

14. **Alteration to Terms**

- 14.1 All additions, amendments and variations to the terms of this Agreement shall be binding only if set out in writing and signed by the duly authorised representatives of the Parties.

- 14.2 This Agreement supersedes any other previous contracts, agreements, appointments or arrangements between the Parties in respect of the Services whether oral or written.

15. **Notices**

- 15.1 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 by the Development Manager to the contact details as set out in clause 15.2 any communication to the Owners must be made to each Owner.

- 15.2 The contact details referred to in clause 15.1 are:

- 15.2.1 if to LUL, to:

Address: Windsor House, 42-44 Victoria Street, London SW1H 0TL
marked for the attention of the Company Secretary.

- 15.2.2 if to DevSec to:

Address: Portland House, Bressenden Place, London SW1E 5DS
marked for the attention of the Company Secretary;

- 15.2.3 if to the Development Manager, to:

Address: Portland House, Bressenden Place, London SW1E 5DS
marked for the attention of the Company Secretary.

or to such other person or address as any Party may specify by notice in writing to the other Parties.

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

- 15.3.1 if delivered personally, when left at the address referred to in clause 15.2;

- 15.3.2 if sent by post:

- (A) within the UK, two (2) Business Days after posting it; and
(B) outside the UK, five (5) 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 5:00pm on a Business Day, will only be deemed to be given on the next Business Day.

16. **No Partnership**

This Agreement does not constitute a partnership or a joint venture between the Parties.

17. **Interest**

Any payment of any type under this Agreement by any Party not paid by that Party to another Party on the due date shall bear Interest from the due date until the date of payment.

18. **Value Added Tax**

18.1 **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.

18.2 **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.

19. **Third Party Rights**

Except as expressly granted in this Agreement, a person who is not a Party to this Agreement does not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

20. **Disputes**

20.1 Should a dispute arise between any of the Parties with regards the Market Value, or whether a Planning Permission is a Satisfactory Planning Permission, or whether an Owner has reasonably withheld or delayed consent to a release of an External Development Constraint or a Planning Agreement, then any Party may refer such dispute to an Expert for final settlement and determination in accordance with this clause 20.

20.2 **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 20.2 shall apply:

20.2.1 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.

20.2.2 The Expert shall be independent of the Parties.

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

20.2.4 The Parties 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 (5) Business Days after service of the notice referred to in clause 20.2.3 the Parties have not agreed upon the identity of an Expert then any Party may request that the RICS select an Expert.

20.2.5 Upon selection of the Expert, the Parties or any of them, shall forthwith notify the Expert of his selection and request him to confirm to the Parties within three (3) Business Days whether or not he is willing and able to accept the appointment.

20.2.6 The Parties 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 20.2.3, subject always to clause 20.4.

20.3 Reappointment

If:

- 20.3.1 an Expert upon whose identity the Parties have agreed refuses to accept the appointment;
- 20.3.2 an Expert whom the RICS has selected refuses to accept the appointment;
- 20.3.3 at any time the appointed Expert becomes unable or unwilling to act,
- 20.3.4 the Parties 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 20.2.

20.4 Procedure for Expert determination

- 20.4.1 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 Parties 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.
- 20.4.2 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 shall comply with the directions given by the Expert, save that no Party shall be obliged to provide any document or information to the Expert or to the other Parties 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.
- 20.4.3 The determination shall take the form of a detailed document stating the Expert's reasons for his decision.
- 20.4.4 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 any of the Parties and the Expert shall be made in writing and a copy thereof provided simultaneously to the other Parties and no meeting between the Expert and the Parties or either of them shall take place unless all 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 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 all of the Parties 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 all of the Parties he shall not make his determination until at least ten (10) Business Days after he has so provided it;

- 20.4.5 If any Party 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.
- 20.4.6 The Expert's determination (including any corrections made under clause 20.6) shall be final and binding upon the Parties save in the case of fraud, collusion or manifest error.

20.5 Legal costs and Expert's fees and expenses

- 20.5.1 The Expert may in his determination provide that one or two or all of the Parties 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.
- 20.5.2 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 Development Manager and the Owners.

20.6 Clerical or manifest error

The Expert shall have the power on the application of any Party 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.

21. Employment

- 21.1 The Parties acknowledge and agree that none of (i) the appointment of the Development Manager to provide the Services; (ii) the commencement of the Services (or any part of the Services); and (iii) any subsequent termination of any of the Services (or any part of the Services) will constitute a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Development Manager hereby warrants to each of LUL and Devsec that there is no individual employed or engaged by the Development Manager at or in connection with the provision of the Services (or any part of the Services) ("**Services Employee**") at the date of this Agreement whose contract of employment or engagement, or any liability in connection with any contract of employment or engagement or its termination, will be transferred to either LUL or DevSec by virtue of the provisions of the Transfer Regulations or otherwise
- 21.2 If (notwithstanding the provisions of clause 21.1) any Services Employee alleges that his or her employment or engagement or any liability in connection with any contract of employment or engagement or its termination has transferred to LUL or DevSec, whether on commencement of the Services (or any part of the Services), during the Services (or any part of the Services) or on the termination of the Services (or any part of the Services) the Development Manager shall indemnify each of LUL or DevSec against all loss, costs, expenses, damages, compensation, fine or other liability incurred in respect of any such allegation provided that LUL or DevSec, as the case may be, take all reasonable steps to minimise such loss, costs, expenses, damages, compensation, fine or other liability incurred in respect of any such allegation.

22. Confidentiality and Transparency

- 22.1 Each Party agrees in respect of Confidential Information disclosed to it pursuant to this Agreement or discovered further to the operation of this Agreement:
- 22.1.1 to keep the Confidential Information in strict confidence and secrecy;
- 22.1.2 not to use the Confidential Information save for complying with its obligations under this Agreement;
- 22.1.3 subject to clause 22.2 and clause 23, 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 and the

Development Manager may disclose Confidential Information to the Professional Team 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 22.

- 22.1.4 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 the Appointments and in such circumstances to ensure that such employees, agents and sub-contractors are aware of the confidential nature of the Confidential Information and agree (except where the recipient of the Confidential Information is under a professional duty of confidentiality) 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 22.
- 22.2 The obligations set out in clause 22.1 shall not apply to any Confidential Information which:
 - 22.2.1 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, DS PLC or the Development Manager otherwise than directly or indirectly from LUL or any TfL Group Member, and in the case of LUL otherwise than directly or indirectly from DevSec or any Group Company of them);
 - 22.2.2 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 takes into account the reasonable requests of the other Party in relation to the content of such disclosure;
 - 22.2.3 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 22; or
 - 22.2.4 the Parties agree in writing is not confidential or may be disclosed.
- 22.3 If a Party is required pursuant to clause 22.2.2 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.
- 22.4 Each Party acknowledges that damages would not be an adequate remedy for any breach of this clause 22 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 22 and no proof of special damages shall be necessary for the enforcement of the provisions of this clause 22.
- 22.5 The obligations of confidentiality in this clause 22 shall survive the termination of this Agreement.
- 22.6 The Parties acknowledge that Clause 23 shall take precedence over this clause 22 to the extent of any inconsistency.
- 22.7 The Parties (other than LUL) acknowledge that LUL is subject to the Transparency Commitment and accordingly and notwithstanding any other provision of this Agreement each Party (other than LUL) hereby gives its consent for 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).

22.8 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 each or any of the other Parties 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).

23. **Freedom of Information**

23.1 The Parties (other than LUL) acknowledge that LUL:

23.1.1 is subject to the FOI Legislation and agrees 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

23.1.2 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 23, may ultimately at its discretion disclose such Confidential Information.

23.2 Without prejudice to the generality of clause 23.1, each Party (other than LUL) shall:

23.2.1 transfer to LUL each Information Request relevant to this Agreement that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Request; and

23.2.2 in relation to Confidential Information held by a Party (other than LUL) requested in the Information Request and belonging to LUL or any TfL Group Member and which is in the possession or control of that Party, 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.

23.3 LUL shall take reasonable steps to notify all Parties (other than LUL) 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.

23.4 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 no Party (other than LUL) shall 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 another Party 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.

23.5 This clause 23 shall survive termination of this Agreement.

24. **Costs**

Each Party shall be responsible for its own costs and expenses (including legal fees) incurred by it in the negotiation preparation and execution of this Agreement.

25. **Jurisdiction**

This Agreement shall be governed by and construed in accordance with English Law and the

Parties submit any dispute which may arise out of, under or in connection with this Agreement to the exclusive jurisdiction of the English courts.

26. Good Faith

26.1 The Parties 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 to do such things and acts as may be required to implement their respective obligations under this Agreement (provided it is acknowledged that LUL and its Group Companies may, independently carry out a consultation role (in exercise of its statutory functions) with regards the Application and it is acknowledged that any objection in that capacity is not a breach of this provision).

26.2 The Parties shall not seek to secure a commercial advantage over the others in their dealings with one another pursuant to this Agreement.

27. 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.

AS witness the duly authorised

signatories of the Parties

.....

Name:

Duly authorised for and on behalf of

London Underground Limited

.....

Name:

Duly authorised for and on behalf of

Development Securities (Southwark) Limited

.....

Name:

Duly authorised for and on behalf of

Development Securities (Projects) Limited

Schedule 1

The Services

Part A

Planning

1. Concept Design

- 1.1 Develop the draft Concept Design for the development of the First Property and the Second Property to achieve the Commercial Objectives and form the basis of the Application and submit this to the Owners for approval such approval not to be unreasonably withheld to a draft application which achieves the Commercial Objectives and the parties will each use reasonable endeavours to develop and agree the Concept Design within [REDACTED] of the date of this agreement.
- 1.2 Until approved by the Owners make such variations or amendment to the Concept Design as are necessary to take account of comments made by the Owners and re-submit for approval.

2. Application

- 2.1 Use all reasonable endeavours (subject to the provisions of this Agreement in relation to Authority Matters) to satisfy the Planning Condition as soon as reasonably practicable and (without prejudice to the generality of foregoing) diligently and with all due expedition.
- 2.2 As soon as reasonably practicable after the approval of the Concept Design by the Owners pursuant to paragraph 1 of this Part A prepare the Application in draft in a form conforming in all respects with the requirements of the Town and County Planning Act 1990 and submit this to the Owners for their approval such approval not to be unreasonably withheld to a draft application which achieves the Commercial Objectives without any Onerous Condition.
- 2.3 Until approved by the Owners make such variations or amendments to the draft Application as are necessary to take account of comments made by the Owners and re-submit to the Owners for approval.
- 2.4 As soon as reasonably practicable after the Application has been approved by the Owners pursuant to the above provisions, submit the requisite number of copies of the Application and the requisite fees to the Local Planning Authority;
- 2.5 Pursue the Application and take such steps as are reasonably required to achieve the objective of securing a Satisfactory Planning Permission(s) including (but not limited to):
 - (A) advising the Owners of any amendments to the Application or further Applications which should be made and submitting amendments to the Application and further Applications as approved by the Owners; and
 - (B) entering into consultations and negotiations with the Local Planning Authority, all statutory and relevant consultees, and the local community, as appropriate, with a view to avoiding objections to the Application (or obtaining the removal thereof) and avoiding the imposition of any condition or obligation which would be an Onerous Condition;
- 2.6 Keep the Owners fully and regularly informed of the progress of the Application and all consultations and negotiations with the Local Planning Authority and others in connection with the Application.
- 2.7 Supply the Owners with copies of the Application and any Proceedings and all material documents (including correspondence) relevant to the Application including as appropriate any statements or reports accompanying the Application and (if available) any draft or final

version of any committee agendas or committee reports or committee resolutions relevant to the Application written opinions of counsel or of other planning or other consultants minutes of any meetings relating thereto held with the Local Planning Authority or others, statements served pursuant to any inquiries procedure rules and all proofs of evidence produced by or on behalf of the Owners or the Development Manager or any third party.

- 2.8 Negotiate any Planning Agreements required by the Local planning Authority as a condition of granting a Satisfactory Planning Permission
- 2.9 Keep the Owners fully and regularly informed of the progress of negotiations on the Planning Agreements
- 2.10 Obtain the approval of the Owners to the terms of the Planning Agreements (not to be unreasonably withheld to a Planning Agreement which does not impose any Onerous Conditions and in the event that there is a dispute between the Parties as to whether LUL have reasonably withheld approval then any Party may refer such dispute to an Expert for final settlement and determination in accordance with clause 20) and arrange execution and completion of the Planning Agreements.
- 2.11 Provide the Owners with a copy of any notification of the grant of a Planning Permission or a Refusal within three (3) Business Days of the grant or Refusal.

Part B

Development Constraints

- 1. As soon as reasonably practicable and in any event before submission of the Application identify all Development Constraints and report the same to the Owners, such report to include a proposed strategy for managing the Development Constraints (which strategy may include a proposal to do nothing in relation to any Development Constraint), [REDACTED] following agreement by the Owners shall form part of the Budget.
- 2. [REDACTED]
- 3. On approval by the Owners of the terms agreed with a Third Party for the release or modification of an External Development Constraint to procure the preparation of all necessary documentation for approval by the Owners (in the event that there is a dispute between the Parties as to whether LUL have reasonably withheld approval then any Party may refer such dispute to an Expert for final settlement and determination in accordance with clause 20) and arrange for completion provided that the Development Manager shall procure the simultaneous release of all External Development Constraints unless otherwise approved by the Owners.

Part C

Other Services

- 1. To prepare for the Owners and provide, [REDACTED] (and at all other times upon reasonable prior request), an update of all expenditure incurred (and where reasonable and upon prior request, to provide copies of all receipts, invoices and all other supporting documentation), expenditure likely to be incurred, copies of any relevant reports obtained and an update of all progress made in relation to the Project, including negotiations and discussions [REDACTED]

Schedule 2
AUTHORITY MATTERS

1.	Any action, instruction or any other thing which is inconsistent with the Business Plan.
2.	Issuing any instruction, direction, approval or doing any other thing which would involve the Owners incurring expenditure in respect of the Project in excess of that provided for in the Budget.
3.	Making an application for planning consent in respect of the First Property otherwise than as part of the Services.
4.	Making an appeal against a refusal to grant Planning Permission or response to a challenge raised under a judicial review in respect of a Planning Permission.
5.	Other than as part of the Services waiving, settling or compromising any contractual or other entitlement the Owners may have against any third party or which any third party may have against the Owners.
6.	Litigation or threatening litigation on behalf of the Owners in respect of the Project.
7.	Entering into any agreement which binds the Owners otherwise than as part of the Services or pursuant to the provisions of this agreement or the JV Agreement.

Schedule 3

FEES

1. **PLANNING SERVICES FEE and planning services Bonus**

- 1.1 The Owners will pay to the Development Manager monthly instalments of [REDACTED] in advance on the first Business Day of each month (the first instalment to be paid on the date of this agreement) (and pro rata for any period less than a month) in respect of the performance of the Planning Services until the earlier of (i) the grant of Satisfactory Planning Permission and (ii) a Refusal (subject to a maximum of [REDACTED]).
- 1.2 If both the Satisfactory Planning Date and the Development Constraints Satisfaction Date shall occur the Owners shall pay the Development Manager an amount (if any) equal to [REDACTED] less the aggregate of the monthly instalments paid pursuant to paragraph 1.1 on the date ten Business Days following the later of those two dates to occur.
- 1.3 If the Satisfactory Planning Date shall occur before the date sixteen months and 2 weeks following the date of this Agreement (as extended if at all pursuant to the provisions of clause 7.2 of the Pre-Services Development Agreement), and the Development Constraints Satisfaction Date shall occur, the Owners shall pay the Development Manager an additional amount in respect of the Planning Services of [REDACTED] on the date ten Business Days following the later of those dates to occur.
- 1.4 The amounts payable by the Owner pursuant to this paragraph 1 shall be paid in the Agreed Proportions.

2. **Development Constraints fee and Development Constraints bonus**

- 2.1 The Owners will pay to the Development Manager monthly instalments of [REDACTED] in advance on the first Business Day of each month (the first instalment to be paid on the date of this agreement) (and pro rata for any period less than a month) in respect of the performance of the Development Constraints Services until the Development Constraints Satisfaction Date (subject to a maximum of [REDACTED]).
- 2.2 [REDACTED] shall occur the Owners shall pay the Development Manager an amount (if any) equal to [REDACTED] less the aggregate of the monthly instalments paid pursuant to paragraph 2.1 on the date ten Business Days following the later of those two dates to occur.
- 2.3 If the Development Constraints Satisfaction Date shall occur before the date twelve months following the date of this Agreement (as extended if at all pursuant to the provisions of clause 7.2 of the Pre-Services Development Agreement), and the Satisfactory Planning Date shall occur, the Owners shall pay the Development Manager an additional amount in respect of the Development Constraints Services of [REDACTED] on the date ten Business Days following the later of those dates to occur.
- 2.4 The amounts payable by the Owner pursuant to this paragraph 2 shall be paid in the Agreed Proportions.

3. **Planning bonus**

3.1 If:

3.1.1 the Satisfactory Planning Date and the Development Constraints Satisfaction Date shall both occur; and

3.1.2 the Satisfactory Planning Permission permits the development of a Qualifying Building on the First Property

LUL will pay to the Development Manager a planning bonus ascertained in accordance with paragraph 3.3 on the date ten (10) Business Days following the date on which the Market Value of the Qualifying Building has been agreed or determined pursuant to this paragraph 3.

3.2 LUL and the Development Manager shall use all reasonable endeavours to agree the Market Value and the planning bonus payable pursuant this paragraph 3 within ten (10) Business Days of the Valuation Date and failing agreement the determination of the Market Value and/or the planning bonus may at any time thereafter be referred by either Party for determination by an Expert in accordance with clause 20.

3.3 The planning bonus payable pursuant to paragraph 3.1 shall be such sum as shall be ascertained in accordance with the following equation

$$PB = (A - \text{[REDACTED]}) \times C$$

Where:

PB is the amount of the planning bonus

A is the Net Sales Area within the Qualifying Building permitted by the Satisfactory Planning Permission expressed in square feet, and

C is:

either (i) the sum of [REDACTED] per such additional square foot of Net Sales Area if the Market Value is equal to or in excess of [REDACTED];

or (ii) the sum of [REDACTED] per such additional square foot of Net Sales Area if the Market Value is less than [REDACTED],

subject in each case to a maximum planning bonus of [REDACTED].

3.4 For the avoidance of doubt no planning bonus shall be payable if the Net Sales Area of the Qualifying Building is equal to or less than [REDACTED].

Schedule 4

PROFESSIONAL TEAM

	Consultant	Details of Appointment
1.	Architect - Paul Monaghan & Cormac Farrelly of AHMM	Agreement dated 23 January 2015 between Development Securities Plc and Alfred Hall Monaghan Morris Limited
2.	QS - Matthew Goodwin & Chris Hanson of Faithful & Gould	Agreement dated 23 January 2015 between Development Securities Plc and Faithful & Gould Limited
3.	Services Engineer - Michael Enstone of Aecom	Agreement dated 23 January 2015 between Development Securities Plc and Aecom Limited
4.	Structural Engineer - Andy Murray of Watermans	Agreement dated 23 January 2015 between Development Securities Plc and Watermans Structures Limited
5.	Planning Consultant - Oliver Sheppard of DP9	Agreement dated 23 January 2015 between Development Securities Plc and DP9 Limited
6.	Communications Consultant - Kevin McKeever of Portland Communications	Agreement dated 27 November 2014, signed 1 December 2014 and 26 January 2015 between Portland Communications Limited and Development Securities plc
7.	Rights of Light Consultant - Jerome Webb of Gordon Ingram Associates	Letter dated 16 July 2014 from Gordon Ingram Associates to Development Securities plc

ANNEXURE 1
Common Terms Schedule