



..... **2015**

This is the Common Terms Schedule referred to in the following agreements of even date:

- (1) Agreement relating to Southwark Station and land at the Cut, London between London Underground Limited (1) Development Securities (Southwark) Limited (2) and Development Securities Plc (3)**
 - (2) Pre-Development Services Agreement in connection with a proposed development above and adjoining Southwark Underground Station between London Underground Limited (1) Development Securities Plc (2) and Development Securities (Projects) Limited (3)**
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For and on behalf of London Underground Limited

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For and on behalf of Development Securities (Southwark) Limited

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For and on behalf of Development Securities (Projects) Limited

For and on behalf of Development Securities Plc

Herbert Smith Freehills LLP

Common Terms Schedule

PART A

DEFINITIONS:

In this Schedule the following terms have the meaning ascribed to them:

"Agreed Form" means in relation to any document, the form of that document or the draft of it which is agreed between the Parties (in their absolute discretion) and signed by them (or by their respective solicitors on their behalf);

"Agreed Proportions" means:

- (a) [REDACTED] for LUL; and
- (b) [REDACTED] for DevSec;

"Agreements" means the JV Agreement and the Pre-Development Services Agreement;

"Algarve House" means the land and buildings known as 1 Joan Street shown for identification purposes coloured yellow on the Plan and registered at the Land Registry under title numbers TGL141966 and TGL178769;

"Appeal" means all or any of the following as the case may be namely:

- (a) an appeal in accordance with section 78 of the Town and County Planning Act 1990 against:
 - (i) a Refusal of an Application; or
 - (ii) the grant of a Planning Permission which is not a Satisfactory Planning Permission; or
- (b) a calling in of the Application by the Secretary of State for Communities and Local Government under section 77 of the Town and County Planning Act 1990;

"Application" means the application(s) (including without limitation all requisite plans, drawings, supporting documents, reports, statements and any other information referred to in the application) for full planning permission(s) for the development of the First Property and the Second Property in the form agreed pursuant to Part A of Schedule 1 of the Pre-Development Services Agreement;

"Application Longstop Date" means the date [REDACTED] following the date of the Agreements (as extended if at all pursuant to the provisions of clause 7.2 of the Pre-Development Services Agreement) ;

"Appointments" means the consultancy agreements entered into (either prior to or following the date of the Agreements) with each of the members of the Professional Team by the Development Manager in Agreed Form and any consultancy agreement entered into with an additional or substituted member of the Professional Team pursuant to Clause 5.3 of the Pre-Development Services Agreement;

"Authority Matters" means the matters set out in Schedule 2 to the Pre-Development Services Agreement;

"Budget" means the financial projections and forecasts for the carrying out of the Project forming part of the Business Plan as amended from time to time in accordance with the Agreements;

"Business Day" means a day other than a Saturday, Sunday or public holiday on which the banks are open for business in the City of London;

"Business Plan" means the Business Plan annexed to the JV Agreement and including (i) the Budget (ii) the anticipated programme, the current version of which is annexed at Appendix 2 to the JV Agreement as the same may be updated from time to time in accordance with the provisions of the JV Agreement;

"CIL" means the community infrastructure levy introduced by Part 11 of the Planning Act 2008, the CIL Regulations and any other regulations made in relation to the community

infrastructure levy, and includes any tariff, levy or other payment introduced in its place intended as a mechanism for the funding of infrastructure community benefits or other local or regional improvements triggered on the grant or implementation of any planning permission;

"CIL Regulations" means the Community Infrastructure Levy Regulations 2010 (SI 2010 No 948), 2011 (SI 2011 No. 987), 2012 (SI 2012 No. 2975) and 2013 (2013/982) any other regulations made in relation to the community infrastructure levy under Part 11 of the Planning Act 2008;

"Commercial Objectives" means securing a planning permission(s) for both the First Property and the Second Property which:

- (a)
 - (i) maximises the potential residual land value of the First Property and the Second Property [REDACTED];
 - (ii) allows each Property to be developed, or sold, independently of the other without requiring Planning Conditions or obligations to be satisfied that relate to the other Property's development;
 - (iii) allows each Property to be developed without the risk of a third party commencing legal action to prevent the development from proceeding [REDACTED];
 - (iv) results in a commercially viable property development project on each of the First Property and the Second Property; and
- (b) specifically in relation to the development over the First Property (as assessed at the sole discretion of LUL) provides for a building which:
 - (i) can be constructed without requiring the closure of Southwark Station or any major interruption to the continued operation of Southwark Station save as may be envisaged by the Business Plan (and provided that it is accepted that the existing ticket hall at Southwark Station can temporarily close subject to acceptable alternative arrangements being made available);
 - (ii) can be constructed economically using the supporting structures as existing or added as part of the Development works such that the operation of Southwark Station is not unacceptably impaired following their completion;
 - (iii) can be constructed without any adverse impact on the safety or efficient operation of the railway;
 - (iv) can be constructed in a timely manner and without disruption to the operation of Southwark Station for longer than 36 months;

"Concept Design" means the design for the development of the First Property and the Second Property developed and approved in accordance with Paragraph 1 of Part A of Schedule 1 of the Pre-Development Services Agreement;

"Confidential Information" means:

- (a) the Contract Information;
- (b) any information received or obtained by the relevant Party as a result of entering into or performing the JV Agreement and the Pre-Development Services Agreement which by its nature is intended to be confidential and which if disclosed is liable to cause harm to the Party who provided the information;

"Contract Information" means the JV Agreement and the Pre-Development Services Agreement in their entirety (including from time to time any agreed changes to them);

"Development" means development of the First Property and the Second Property (as the case may be in) in accordance with the Satisfactory Planning Permission(s) (or where the context shall require (where no satisfactory Planning Permission has by then been obtained) in accordance with the concept design formulated by the Development Manager pursuant to paragraph 1, Part A of Schedule 1 to the Pre- Development Services Agreement);

"Development Constraint" means a right, easement, covenant or other interest over the Property or any part of the Property or to which the Property or any part of the Property is subject (including but not limited to):

- (a) a right to light or air
- (b) a right of way
- (c) a right to retain services
- (d) a restrictive covenant

and which is reasonably likely to:

- (i) prevent or hinder the construction of the Development or any part of it;
- (ii) give rise to an action for damages against the owner of the Property or any part of the Property were the Development to be constructed;
- (iii) adversely affect or limit the use and enjoyment of the Development or any part of it, if constructed;

(but excludes any lack of title by LUL or defect in LUL's title to the First Property or any part of it)

"Development Constraints Longstop Date" means the date [REDACTED] following the date of the Agreements (as extended if at all pursuant to the provisions of clause 7.2 of the Pre-Development Services Agreement);

"Development Constraints Satisfaction Date" means the date on which:

- (a) all External Development Constraints which affect the First Property (whether or not they also affect the Second Property) have been released or removed or otherwise resolved pursuant to the Pre-Development Services Agreement; and
- (b) all Internal Development Constraints have been released or removed or otherwise resolved pursuant to the Pre-Development Services Agreement;

"Development Constraints Services" means those of the Services relating to the modification or release or other resolution of External Development Constraints as set out in Part B of Schedule 1 to the Pre-Development Services Agreement;

"Development Manager" means Development Securities (Projects) Limited (company number 02850465) whose registered office is at Portland House, Bressenden Place, London SW1E 5DS;

"DM Change of Control" means the Development Manager ceasing to be a Group Company of DevSec;

"EDC Savings" means the sums by which the costs of releasing, varying or otherwise resolving any External Development Constraint are less than the sums set out in the Budget in relation to the relevant External Development Constraint;

"Expert" means a suitably qualified surveyor from Jones Lang LaSalle Limited (company registration number 1188567) as agreed between the parties or in default of agreement to be appointed by the UK Chief Executive of Jones Lang LaSalle Limited on the application of either party;

"Expiry Date" means the first to occur of the following:

- (a) the later of (i) the Satisfactory Planning Date and (ii) the Development Constraints Satisfaction Date; and
- (b) the date which falls [REDACTED] after the date of the Agreements (or such longer date as the Parties may agree and record in writing in their absolute discretion);

"External Development Constraint" means a Development Constraint which benefits land or the owner of land other than the Property;

"Fees" means the fees calculated and payable as provided in Schedule 3 to the Pre-Development Services Agreement;

"First Property" means the land and buildings known as Southwark Station as shown for identification purposes coloured blue on the Plan and including land within the titles registered

at the Land Registry under title numbers TGL61353, TGL164377, SGL372128 and TGL287971;

"FOI Legislation" means Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004, and any guidance issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

"Group Company" means in relation to a Party, its holding company, or its subsidiary or its holding company's subsidiary as those expressions are defined in section 1159, Companies Act 2006 and in relation to LUL including any successor transport operator;

"HMRC" means HM Revenue and Customs;

"Information Request" means a valid request for information received pursuant to the FOI Legislation which would involve the disclosure of Confidential Information;

"Insolvency Event" means, in relation to a specified person, any of the following:

- (a) an encumbrancer takes possession of, or a trustee is appointed in respect of, all or any material part of the business or assets of the person, or any mortgage or charge, howsoever created or arising, over all or substantially all of its assets is enforced;
- (b) the person has a receiver, administrative receiver, administrator, compulsory manager, trustee, liquidator or other similar officer over the whole or any material part of its assets or undertaking appointed;
- (c) the person is unable or admits inability to pay its debts as they fall due or has any voluntary arrangement proposed in relation to it or enters into any scheme of arrangement (other than for the purpose of a solvent reconstruction, amalgamation or merger);
- (d) a petition is presented or any corporate action, legal proceedings or other step is taken for the purpose of winding up the person which is not withdrawn within 20 Business Days (or in the case of a winding up petition prior to its advertisement) or which cannot reasonably be shown to be frivolous, vexatious or an abuse of the process of the court;
- (e) an order is made or resolution passed for the winding up of the person or a notice is issued convening a meeting for the purpose of passing any such resolution (other than a solvent reorganisation, amalgamation or merger);
- (f) any petition is presented, or notice given for the purpose of the appointment of an administrator of the person which is not withdrawn within 20 Business Days; or
- (g) any act, event or circumstance analogous to any of the aforesaid occurs in any jurisdiction in which the person is incorporated or established,

provided that in each case set out above, "person" shall refer to the specified person;

"Interest" means interest at three (3) per cent a year over the base rate of Barclays Bank PLC from time to time, as well after as before judgment or, if that base rate ceases to be published, at such other comparable rate as the Party receiving the interest may reasonably and properly designate, calculated on a daily basis;

"Internal Development Constraint" means a Development Constraint which benefits a part and burdens another part of the Property [REDACTED];

"Internal Rights to Light Constraint" means rights to light enjoyed by [REDACTED]

"JV Agreement" means the agreement dated the same date as this Common Terms Schedule between LUL (1) DevSec (2) and DS PLC (3) and entitled Agreement relating to Southwark Station, London and land at the Cut, London and including all deeds and documents supplemental thereto;

"Local Planning Authority" means Southwark Borough Council;

"LUL Standards" means any documents as produced or varied from time to time and accessible to users authorised by LUL via the LUL's Standards e-library website (which

authorisation LUL will ensure is available to DevSec and the Development Manager (and as appropriate any Group Company of them)) and which apply to the Railway Undertaking or the Railway Assets and Premises generally and contain requirements or guidance on:

- (a) matters of safety in respect of the Railway Undertaking or the Railway Assets and Premises;
- (b) the design, construction or operation of the Railway Assets and Premises and/or the operation of any part of the Railway Undertaking;

works carried on over or in the vicinity of the Railway Assets and Premises;

"Market Value" means the market value of the First Property with the benefit of the Satisfactory Planning Permission as at the Valuation Date determined in accordance with the Valuation Standards as agreed or failing agreement determined in accordance with paragraph 3.2 of the Schedule 3 of the Pre-Development Services Agreement;

"Net Sales Area" means the net sales area of all habitable space including external garages, conservatories and floor area with uninterrupted space between ceiling and floor of more than 1.0 metre but otherwise measured in accordance with the Code of Measuring Practice published by the Royal Institution of Chartered Surveyors (sixth edition) (or such later edition as may be in force at the relevant time);

"Onerous Conditions" means (unless waived by LUL) any condition of the Planning Permission (or any term of any related Planning Agreement) insofar as it relates to the development of the First Property which:

- (a) requires the provision of affordable housing relating to the development of the First Property otherwise than on the First Property (except where the Local Planning Authority agrees that such affordable housing provision may be provided by way of a financial payment to the Local Planning Authority);
- (b) requires the provision of affordable housing as part of the permitted development of the First Property in excess of that envisaged by the Local Planning Authority's planning policy prevailing at the date of grant of Planning Permission;
- (c) limits the available residential floor area of the development on the First Property to a Net Sales Area of [REDACTED] square feet or less;
- (d) has the effect of making the Planning Permission personal to the applicant (or anyone else);
- (e) limits the hours of use of non-residential components of the First Property to an extent which is not consistent with the Local Planning Authority's practice in the vicinity of the First Property;
- (f) makes the Planning Permission temporary (i.e., the development must cease or be removed by a given date);
- (g) requires any works to be carried out on land outside the First Property not owned by LUL or a Group Company or where no binding agreement exists with the owner of such property permitting the carrying out of such works (save in respect of an obligation to enter into a statutory agreement provided that the statutory authority or undertaker is obliged by law to enter into that agreement and/or an agreement pursuant to section 278 of the Highways Act 1980 provided that the relevant highway authority is obliged to enter into such agreement);
- (h) requires the payment under a Planning Agreement to the Local Planning Authority of contributions in excess of:
 - (i) in relation to a financial payment as referred to at (a) above, an amount that is within the normal expectation for the Development taking into account what is typical for the Local Planning Authority;
 - (ii) in relation to all other matters an amount in aggregate that is within the normal expectation for the Development taking into account what is typical for the Local Planning Authority;
- (i) prevents the satisfaction of any of the Commercial Objectives listed under sub-clause (a) of that definition;

provided that to the extent any condition of a Planning Permission (or related Planning Agreement) reflects a matter has been expressly approved (in writing) by LUL, (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 of the Pre-Development Services Agreement or clause 13 of the JV Agreement, it will not be deemed an Onerous Condition.

"Operator" means the operator of the whole or any part of the Railway Undertaking and/or any of the whole or any part of the Railway Assets and Premises and/or any railway services operated from or running through the Railway Assets and Premises from time to time;

"Oversail Agreement" means a legally binding agreement supplemental to the JV Agreement containing the terms for the grant of the Oversailing Lease and the release of the Internal Rights to Light Constraint, agreed between the parties pursuant to clause 8 of the JV Agreement;

"Oversail Agreement Long Stop Date" means the date which is [REDACTED] after the date of the JV Agreement (or such later date as the Owners may agree in their absolute discretion);

"Oversail Heads of Terms" means any heads of terms relating to the grant of the Oversailing Lease and the Internal Rights to Light Constraint agreed between the parties pursuant to clause 8 of the JV Agreement;

"Oversailing Lease" means a lease of the areas identified in the Oversailing Lease Plan in the form agreed by the parties pursuant to clause 8 of the JV Agreement (an indicative form of which is annexed as Annexure 3 to the JV Agreement), provided that the Oversailing Lease:

- (a) will be for a term of [REDACTED] from the date of grant; and
- (b) will not take any structural support from land in the ownership of LUL or any TFL Group Member;

"Oversailing Lease Plan" means the plan and section annexed to the indicative form of the Oversailing Lease;

"Owners" means LUL and DevSec (and each of them) (and their permitted successors in title and assigns) and the expression "Owner" means any one of them as the context requires;

"Parties" means the Development Manager, LUL DevSec and DS PLC (and each of them) (and their permitted successors in title and assigns) and the expression **"Party"** means any one of them (as the context requires);

"Planning Agreement" means any agreement in respect of the Property or any part of the Property to be entered into by the Owners (or either of them) pursuant to s106 Town and Country Planning Act 1990 as a condition of the grant of Planning Permission;

"Planning Condition" means the obtaining by the Development Manager of a Satisfactory Planning Permission which is free of any Proceedings and which will be satisfied on the first of the following to occur:

- (a) if a Satisfactory Planning Permission is granted the date which is 7 weeks from the date of the Satisfactory Planning Permission provided that no Proceedings shall have been instituted before this date;
- (b) if Proceedings are instituted after the grant of a Satisfactory Planning Permission the date on which a Satisfactory Planning Permission is finally granted or upheld when Proceedings have been concluded; or
- (c) if a Refusal is given and Proceedings are instituted the date on which a Satisfactory Planning Permission is finally granted when Proceedings have been concluded;

"Planning Condition Longstop Date" means [REDACTED] following the submission of the Application to the Local Planning Authority (as extended if at all pursuant to the provisions of clause 7.2 of the Pre-Development Services Agreement);

"Planning Permission" means full planning permission(s) issued by the Local Planning Authority pursuant to the Application;

"Planning Services" means those of the Services relating to securing the grant of Planning Permission as set out in Part A of Schedule 1 of the Pre-Development Services Agreement;

"Plan" means the Plan annexed to this Common Terms Schedule;

"Pre-Development Services Agreement" means the development management agreement relating to the Project dated the same date as this Common Terms Schedule and made between (1) LUL (2) DevSec and (3) the Development Manager and includes any deeds or documents supplemental thereto;

"Proceedings" means all or any of the following as the case maybe:

- (a) a claim to the court for judicial review or permission to apply for judicial review under Part 54 of the Civil Procedure Rules; or
- (b) a claim to the court pursuant to section 288 of the Town and Country Planning Act 1990;

"Professional Team" means consultants appointed by Development Manager in relation to the Project or part of the Project as listed in Schedule 4 to the Pre-Development Services Agreement and any additional or substituted consultant appointed pursuant to clause 5.3 of the Pre-Development Services Agreement;

"Project" means the release, modification or other resolution of the External Development Constraints and the Internal Development Constraints and obtaining Satisfactory Planning Permission;

"Project Board" means a board of two appointed members from each of LUL and DevSec which shall comprise, from the date of the Agreements:

- (a) Graeme Craig and John Peacock for LUL; and
- (b) Julian Barwick and Simon Hesketh for DevSec,

and such substitute person for each Party as the relevant Party shall notify to the others in writing from time to time;

"Property" means the First Property and the Second Property;

"Qualifying Building" means a development on the First Property permitted by a Satisfactory Planning Permission with a Net Sales Area in excess of [REDACTED] square feet;

"Railway Assets and Premises" means the whole or any part or parts of the railway infrastructure, track, buildings, works, conducting media, lifts, escalators, tunnels, structures, plant, apparatus and equipment and all other things serving or used, controlled or enjoyed in connection with the Railway Undertaking from time to time including all those over, under, adjoining or near to the First Property at any time;

"Railway Undertaking" means the railway undertaking or network operated by LUL or any statutory successor to LUL's function;

"Regulations" means the Public Contracts Regulations 2006;

"Refusal" means:

- (a) a written notification of refusal of Planning Permission by the authority having power to determine the Application; or
- (b) a written notification of refusal of an Appeal by the Secretary of State for Communities and Local Government or such other minister or authority for the time being having the right to exercise the planning powers now conferred on the Secretary of State for Communities and Local Government under the Town and Country Planning Act 1990; or
- (c) the grant of any Planning Permission which is not a Satisfactory Planning Permission,

as the case may be;

"RICS" means the Royal Institution of Chartered Surveyors;

"Safety Change" means a change in any LUL Standards or an LUL director level decision which applies to the Railway Assets and Premises or the Railway Undertaking as a whole, in

either case brought about for reasons of safety which has been implemented in accordance with the principles contained in Standards S1521 (Safety Decision Making) as to LUL's duty to ensure that safety risks are reduced to a level which is as low as reasonably practicable;

"Satisfactory Planning Date" means the date of satisfaction of the Planning Condition in respect of the First Property;

"Satisfactory Planning Permission" means a Planning Permission(s) (including any related Planning Agreement) which is not subject to any Onerous Conditions;

"SBC Property" means the property known as land on the north side of The Cut, London shown for identification purposes coloured green on the Plan and forming part of the land registered at the Land Registry under title number TGL172614;

"SBC Property Acquisition" means either the purchase by DevSec (or a Group Company of it) of the SBC Property or the entering into by DevSec (or a Group Company of it) of a binding agreement for the acquisition of the SBC Property [REDACTED]

"SBC Property Cap" means [REDACTED]

"SBC Property Release" means the release or modification or other resolution of any right of light enjoyed by the SBC Property over the First Property which would have the effect of preventing the Development of the First Property (or any other development which falls within the proposed envelope of the Development);

"Second Property" means Algarve House and, following the completion of the purchase of the SBC Property by DevSec (or a Group Company of it) where the SBC Property is actually so acquired, the SBC Property;

"Senior Executives" means in the case of LUL, Graeme Craig and in the case of DevSec Julian Barwick or such other member of senior management within each of LUL or DevSec as notified by that party to the other in writing;

"Services" means the services set out in Schedule 1 to the Pre-Development Services Agreement;

"Southwark Station" means the underground station situate at the First Property;

"Termination Notice" means a notice served in writing by one Party on the other Party for the purpose of terminating the JV Agreement in accordance with the provisions of the JV Agreement;

"TFL" means Transport for London Limited (a statutory body created by the Greater London Authority Act 1999) of Windsor House, 42-50 Victoria Street, London SW1H 0TL;

"TFL Group" means TFL and any Group Company of TFL;

"TFL Group Member" means any member of the TFL Group;

"Third Party" means person, partnership, company or any other undertaking not being DevSec, DS PLC, the Development Manager, LUL or a TFL Group Member;

"Transparency Commitment" means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which LUL is committed to publishing its contracts, tender documents and data from invoices received;

"Valuation Date" means the later of the Satisfactory Planning Date and the Development Constraints Satisfaction Date;

"Valuation Standards" means the valuation professional standards (incorporating the international valuation standards) published by the RICS current at the Valuation Date;

"VAT" means value added tax as referred to in the Value Added Tax Act 1994, or any tax of a similar nature which may be substituted for or levied in addition to it, and VAT Invoice shall be construed accordingly.

**Annexure
Plan**