

Dated

2014

- (1) London Underground Limited
- (2) Earls Court Partnership Limited

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Option agreement

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relating to the grant of two new 999 year leases of premises at  
Earls Court, London

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## PARTICULARS

<b>DATE</b>	2014
<b>Seller</b>	<b>LONDON UNDERGROUND LIMITED</b> (company registration number 1900907) whose registered office is at 42-50 Windsor House, Victoria Street, London, SW1H 0TL
<b>Buyer</b>	<b>EARLS COURT PARTNERSHIP LIMITED</b> (registered number 8872070) whose registered office is at 15 Grosvenor Street, London, W1K 4QZ
<b>Buyer's Solicitors</b>	Pinsent Masons LLP of 30 Crown Place, London, EC2A 4ES (Ref: GL/647254.07006) or such other solicitors as the Buyer notifies in writing to the Seller
<b>Completion Date</b>	The date ten working days after the date of service of the Option Notice or earlier by agreement between the parties to this Agreement
<b>End Date</b>	The date 5 years from and including the Start Date
<b>First Premises</b>	The premises at Earls Court, London to be demised by and described more fully in the First Lease
<b>Option Fee</b>	£1.00 (one pound)
<b>Option Period</b>	The period from and including the Start Date to and including the End Date
<b>Price</b>	The market value of the First Premises and the Second Premises ascertained in accordance with Schedule 6 of the Implementation Agreement
<b>Premises</b>	The First Premises and the Second Premises
<b>Property</b>	The freehold property known as The Earls Court Complex, London registered at the Land Registry under the Title Numbers
<b>Second Premises</b>	The premises at Earls Court, London to be demised by and described more fully in the Second Lease

**Seller's Solicitors**

Eversheds LLP of One Wood Street London EC2A  
(Ref: MORRISDO/160119.000003) or such other  
solicitors as the Seller notifies in writing to the Buyer

**Start Date**

the date of this Agreement

**Title Numbers**

BGL71588 and NGL631813 and BGL101021

**THIS AGREEMENT** is made on the date set out in the Particulars

**BETWEEN**

- (1) the Seller; and
- (2) the Buyer.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

1.1 In this Agreement, the following words and expressions have the following meanings:

<b>“Actual Completion”</b>	Actual completion of the grant of the Leases and <b>“Date of Actual Completion”</b> is to be interpreted accordingly
<b>“Arrears”</b>	Any income (as defined in paragraph 3.3 of Schedule 2) and payments for insurance which are due from any Tenant as at Actual Completion but unpaid
<b>“Commercial Conditions”</b>	The Standard Commercial Property Conditions (Second Edition)
<b>“Contract Rate”</b>	4% per annum above the base lending rate from time to time of National Westminster Bank PLC
<b>“First Lease”</b>	the lease of the First Premises in the form of the draft annexed at Annexure 1
<b>“First Lease Price”</b>	The market value of the First Premises ascertained in accordance with Schedule 6 of the Implementation Agreement
<b>“First Premises Existing Lease”</b>	a lease dated 23 February 1959 made between (1) The British Transport Commission and (2) Earls Court Limited
<b>“First Premises Occupational Leases”</b>	The existing leases and licences listed in the First Lease as varied or supplemented, where applicable, by licences and other deeds and documents which have been disclosed to the Buyer’s Solicitors before exchange of this agreement and any such further tenancy

documents as may be entered into in respect of the First Premises, consistently with the terms of this agreement, between now and Actual Completion

<b>"Implementation Agreement"</b>	The agreement dated _____ herewith made between (1) EC Properties LP Limited (2) TTL Earls Court Properties Limited (3) the Buyer (4) EC Properties Management Limited (5) Capital & Counties Ltd (6) EC Properties LP (7) the Seller and (8) Transport for London
<b>"Leases"</b>	the First Lease and the Second Lease
<b>"Occupational Leases"</b>	the First Premises Occupational Leases and the Second Premises Occupational Leases
<b>"Option"</b>	the option granted by <b>clause 2</b>
<b>"Option Notice"</b>	the notice exercising the Option served in accordance with <b>clause 4</b>
<b>"Option to Tax"</b>	an option to tax the First Premises and the Second Premises pursuant to Part 1 Schedule 10 to the VATA and "Opted to Tax" has a corresponding meaning.
<b>"Particulars"</b>	the Particulars set out at the front of this Agreement
<b>"Second Lease"</b>	the lease of the Second Premises in the form of the draft at Annexure 2
<b>"Second Lease Price"</b>	The market value of the Second Premises ascertained in accordance with Schedule 6 of the Implementation Agreement
<b>"Second Premises Existing Lease"</b>	The lease dated 28 January 1991 made between (1) London Underground Limited (2) Earls Court Limited and (3) The Peninsular and Oriental Steam Navigation Company
<b>"Second Premises Occupational Leases"</b>	The existing leases and licences listed in the Second Lease as varied or supplemented, where applicable, by licences and other deeds and documents which have been disclosed to the Buyer's Solicitors before exchange of this

agreement and any such further tenancy documents as may be entered into in respect of the Second Premises, consistently with the terms of this agreement, between now and Actual Completion

**"Tenant"** Any tenant or licensee under the Occupational Leases

**"Term Commencement Date"** The quarter day immediately preceding the Date of Actual Completion

**"Title Matters"** The agreements, covenants, declarations, easements, exceptions, provisions, reservations, stipulations and other matters set out in **paragraph 1 of Part 3 of Schedule 2** or referred to in the deeds and documents briefly described in **paragraph 2 of Part 3 of Schedule 2** in each case so far as they are subsisting, capable of taking effect and affect the First Premises and the Second Premises

**"Transparency Deed"** means a Deed made between Transport for London (1) Capital & Counties Properties PLC (2) and Earls Court Partnership Limited (3) entitled Transparency Commitment and Confidentiality Agreement

**"VAT"** Value Added Tax

**"VATA"** Value Added Tax Act 1994

1.2 In this Agreement:

1.2.1 the clause headings do not affect its interpretation;

1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and

- 1.2.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;
  - 1.2.4 references to the Property, the First Premises and the Second Premises include any part of them;
  - 1.2.5 "including" means "including, without limitation";
  - 1.2.6 "indemnify" means to indemnify on an after tax basis against all actions, claims, demands and proceedings taken or made against the Seller and all costs, damages, expenses, liabilities and losses incurred by the Seller;
  - 1.2.7 "working day" has the meaning given to it in the Commercial Conditions; and
  - 1.2.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.
- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 1.4 The Particulars form part of this Agreement and words and expressions set out in the Particulars are to be treated as defined terms in this Agreement.
- 2. OPTION TO TAKE LEASES**
- 2.1 In consideration of the Option Fee, which the Seller has received, the Seller grants the Option to the Buyer.
- 2.2 The Option confers the right on the Buyer during the Option Period to require the Seller to grant the Leases to the Buyer on the terms of this Agreement.
- 2.3 The Option is binding on the Seller and the Seller's successors in title to the Property.
- 2.4 The Option is personal to the Buyer named in this Agreement and may not be assigned to or held in trust for any other person.



### 3. **EXERCISE OF THE OPTION**

- 3.1 The obligation to complete the grant of the Leases and the provisions of Schedule 2 are subject to the Buyer exercising the Option during the Option Period in accordance with this **clause 3**.
- 3.2 The Option may only be exercised by the Buyer serving an Option Notice in writing on the Seller during the Option Period.
- 3.3 The Option may only be exercised by the Buyer in respect of both of the Leases simultaneously.
- 3.4 The Option Notice is to be substantially in the form set out in **Schedule 1**.
- 3.5 The Seller is to sign and return a copy of the Option Notice to the Buyer within two working days of its receipt but the absence of the Seller's signature to the Option Notice will not invalidate the Option Notice.
- 3.6 If the service of an Option Notice in the exercise or attempted exercise of the Option is not sufficient to create a legally binding and enforceable contract for the grant of the Leases, the Seller and the Buyer will execute all such further documents as either of them may reasonably require to create a legally binding and enforceable contract for the grant of the Leases on the terms of this Agreement.

### 4. **REGISTRATION OF THE OPTION**

- 4.1 Within ten working days of the date of this Agreement, the Buyer is to make an application to the Land Registry to register a Unilateral Notice in respect of this Agreement against the Title Numbers and is to provide a copy of that application to the Seller.
- 4.2 The Seller agrees not to object to the registration of a Unilateral Notice.
- 4.3 The Buyer is not to send this Agreement or any copy of it to the Land Registry.

### 5. **TERMINATION**

- 5.1 This Agreement will end if the Seller has not received a valid Option Notice by 4.00 pm on the End Date.
- 5.2 If this Agreement ends without the parties completing the grant of the Leases, the Buyer is at its own expense to remove any notice or restriction made against the Title Numbers in respect of this Agreement. The Buyer grants the Seller an irrevocable power of attorney on and from the date on which this Agreement ends for the sole purpose of removing any entry made in respect of this Agreement.

5.3 The obligations in **clause 5.2** will continue notwithstanding the ending of this Agreement.

5.4 The ending of this Agreement will be without prejudice to any claims, liabilities or rights of the Seller or the Buyer existing at the date on which this Agreement ends.

## 6. **ENCUMBRANCES**

6.1 Unless and until this Agreement has come to an end without the exercise of the Option, the Seller is not to create any encumbrance over the Property without the prior written consent of the Buyer.

6.2 An encumbrance includes any charge, easement, restrictive covenant, lease or other right of occupation use or enjoyment of the whole or any part of the Property.

6.3 The Seller covenants with the Buyer not to transfer the Property to anyone other than the Buyer or enter into any agreement to do so before the Option has come to an end without being exercised.

## 7. **SALE CONDITIONS**

7.1 The provisions of **Schedule 2** apply and the Seller and the Buyer are to comply with their obligations in that Schedule.

7.2 If the Option is exercised, the provisions of **Schedule 2** apply and the Seller and the Buyer are to comply with their obligations in them.

## 8. **VALUE ADDED TAX**

8.1 All sums payable under this Agreement are exclusive of VAT. If VAT arises on any supply made pursuant to or in connection with this Agreement (including the grant of the Leases), the recipient of the supply shall pay to the supplier additional sums equal to such VAT against production of a valid VAT invoice.

8.2 Commercial Condition 1.4 shall not apply.

8.3 The Seller and the Buyer intend and shall use reasonable endeavours to ensure that the grant of the Leases constitutes the transfer of a business as a going concern within article 5 of the 1995 Order, on the basis that it forms part of a partially let site within the meaning of paragraph 6.2 of HMRC Notice 700/9 "Transfer of business as a going concern".

8.4 The Seller warrants and undertakes that:

8.4.1 it or (if applicable) the representative member of the Seller's VAT Group is registered for VAT purposes;

- 8.4.2 it or (if applicable) a relevant associate for the purposes of Schedule 10 VATA has exercised an Option to Tax over the Property with effect from a date prior to the date of Actual Completion and it shall not revoke such Option to Tax prior to Actual Completion;
- 8.4.3 it does not occupy the Property itself and neither does any person who is a member of the Seller's VAT group; and
- 8.4.4 if the Property is a capital item to which Part XV of the Value Added Tax Regulations 1995 applies it has provided the Buyer with the following information before the Completion Date:
  - 8.4.4.1 the period of adjustment applicable;
  - 8.4.4.2 the date on which the first adjustment interval commenced;
  - 8.4.4.3 the number of completed intervals arising since the date given under bullet point (b) above;
  - 8.4.4.4 the date on which the completed interval ended;
  - 8.4.4.5 the total amount of input tax which is subject to adjustment; and
  - 8.4.4.6 the percentage of that input tax reclaimed in the interval and the adjustment percentage for each subsequent interval.

8.5 The Buyer warrants and undertakes that:

- 8.5.1 The Buyer is or will on Actual Completion be a taxable person.
- 8.5.2 The Buyer shall prior to Actual Completion: (a) exercise a valid Option to Tax over the Premises with effect from a date on or before the date of Actual Completion; (b) give written notification of the Option to Tax to HMRC within the time period prescribed by law; and (c) give the Seller a copy of such notification together with any acknowledgement by HMRC of receipt of such notification or sufficient evidence of delivery of that notification to HMRC;
- 8.5.3 The Buyer will not revoke its Option to Tax in respect of the Premises and neither will a relevant associate within the meaning of Schedule 10 VATA 1994 revoke an Option to Tax in respect of the Premises on or before Actual Completion;
- 8.5.4 article 5(2B) of the 1995 Order does not apply to the Buyer;

8.5.5 The Buyer intends to use the Premises after Actual Completion to carry on the same kind of business which the Seller has carried on before Actual Completion for the purposes of VAT;

8.6 In the event that HMRC determines in writing that the grant of the Leases of the Premises is not (or cannot be) a transfer of a going concern or otherwise assesses the Seller to VAT in relation to the grant of the Leases the Buyer shall pay to the Seller, within five working days of the Seller notifying the Buyer and producing to the Buyer a copy of the relevant assessment or determination and a valid VAT invoice sums equal to the VAT for which the Seller is so accountable under clause 8.1 of this agreement.

9. **DETERMINATION OF DISPUTES**

The provisions of clause 11 of the Implementation Agreement apply to any dispute under this Agreement as though references in that clause 11 to "this Agreement" are references to this Agreement and not to the Implementation Agreement and any such dispute is to be determined by an independent expert.

10. **SERVICE OF NOTICES**

The notice provisions in clause 6 of the Implementation Agreement apply to this Agreement as though references in that clause 6 to "this Agreement" are references to this Agreement and not to the Implementation Agreement.

11. **ADDITIONAL PROVISIONS**

11.1 The Buyer acknowledges that:

11.1.1 this Agreement has not been entered into wholly or partly in reliance on any statement or representation made by or on behalf of the Seller, other than any statements or representations given by the Seller's Solicitors in written replies to written enquiries raised by the Buyer's Solicitors before the date of this Agreement; and

11.1.2 any liability of the Seller and any remedy of the Buyer at law or in equity in respect of any statement or representation is excluded to the extent authorised by the Misrepresentation Act 1967 and the Unfair Contract Terms Act 1977.

11.2 This Agreement and Schedules 4, 6 and 7 of the Implementation Agreement constitute the entire contract between the parties and this Agreement may be varied or modified only in writing by the parties hereto or their authorised representatives specifically referring to this clause and stating that this Agreement is varied in the manner specified.

12. **LAW AND JURISDICTION**

12.1 This Agreement is to be governed by and interpreted in accordance with English law.

12.2 The courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

13. **EXECUTION**

The parties to this Agreement have executed it as a deed on the date set out in the Particulars.

## **SCHEDULE 1**

### **Form of option notice**

To: London Underground Limited

Dated: [DATE]

**Agreement ("the Agreement") for the grant of two leases of land at Earls Court, London dated [DATE] 2014 made between (1) London Underground Limited ("the Seller") and (2) Earls Court Partnership Limited ("the Buyer")**

We give you notice that, pursuant to **clause 3** of the Agreement, we as the Buyer exercise the Option and call on you to complete the grant of the Leases to the Buyer in accordance with the terms of the Agreement.

In accordance with the terms of the Agreement, you should sign and date the attached duplicate of this Notice and return it to the address given below where our solicitors will receive it on our behalf.

Yours faithfully

**Signed by** [NAME]

Authorised signatory for and on behalf of the Buyer

*OR*

Buyer's Solicitors duly authorised for and on behalf of the Buyer

[Address]

We as the Seller acknowledge receipt of this Option Notice and confirm the agreement to grant the Leases to the Buyer in accordance with the terms of the Agreement.

**Signed by** [NAME]

Authorised signatory for and on behalf of the Seller

*OR*

Seller's Solicitors duly authorised for and on behalf of the Seller

## **SCHEDULE 2**

### **Sale conditions**

#### **PART 1: GENERAL**

##### **1. Commercial conditions**

Part 1 of the Commercial Conditions, as varied by Part 2 of this Schedule, form part of this Schedule so far as they are applicable to the grant of the Leases and are consistent with the express terms of this Agreement. Part 2 of the Commercial Conditions do not form part of this Schedule.

##### **2. Management of the Property**

2.1 Commercial Condition 4.2 shall apply up to and including the date of Actual Completion.

2.2 Until Actual Completion the Seller is at its own cost to continue to manage the Premises in accordance with its normal management policies and is to observe the landlord's covenants in the Occupational Leases.

2.3 The Seller is to notify the Buyer in writing of any notice, application, registration or other material communication which the Seller may give to, receive from or have with any Tenant.

2.4 The Seller is not without the prior written consent of the Buyer to:

2.4.1 grant or give any licence, consent or approval under any of the Occupational Leases;

2.4.2 vary or waive compliance with the terms of the Occupational Leases;

2.4.3 serve any notice, whether contractual, common law or statutory, on any Tenant;

2.4.4 accept the surrender of any of the Occupational Leases;

2.4.5 forfeit any of the Occupational Leases by peaceable re-entry or otherwise;

2.4.6 grant any new lease or licence; or

2.4.7 enter into any agreement to do any of the above.

2.5 The Buyer is not unreasonably to withhold or delay its consent to any matter for which its consent is required under this paragraph 2.

2.6 On Actual Completion, the Seller is to hand to the Buyer rent authority letters to each of the Tenants (to the extent applicable).

2.7 After the date of Actual Completion (except as provided in Commercial Condition 4.2.1 and paragraph 2.8) the Seller shall be under no obligation to assist the Buyer with the management of the Premises.

2.8 The Seller irrevocably appoints the Buyer as agent for the Seller for (but only for) the purpose of acting as landlord in relation to the Occupational Leases for the period from Actual Completion until the date on which the Land Registry notifies the Buyer that it is the registered proprietor of the Premises. The Buyer shall indemnify the Seller against all matters arising out of the Buyer's acting as the Seller's agent under this paragraph 2.8.

### 3. **Completion and Apportionments**

3.1 Subject to the exercise of the Option, completion of the Leases will take place on the Completion Date.

3.2 Neither party will be under any obligation to complete the Leases on a day that is not a working day or before 9:30 am or after 5:30 pm on a working day, even where time is of the essence for completion.

3.3 Apportionments of income and outgoings in respect of the Premises are to be made in accordance with Standard Condition 8.3, varied as follows:

3.3.1 the income to be apportioned shall include all rents, licence fees and other monies recoverable from any Tenant apart from any payments for insurance;

3.3.2 annual rents payable by instalments shall be apportioned by allowing the Buyer an amount calculated by dividing the annual rent by 365 and multiplying the result by the number of days from and including the date of Actual Completion up to and including the last day of the instalment period in which Actual Completion occurs;

3.3.3 apportionment of income and outgoings is to be made with effect from Actual Completion and the apportionment allowances or payments shall be made at Actual Completion except for those in respect of any Arrears (which shall be calculated in accordance with this paragraph 3 but dealt with under paragraph 4);

3.3.4 Commercial Condition 8.3.5 shall apply in respect of the rent payment arrangements under the Occupational Leases as appropriate;

3.3.5 Commercial Condition 8.3.2 and 9.3.4 shall not apply and the date of Actual Completion shall be the "apportionment day";

3.3.6 Commercial Condition 8.1.3 shall not apply.

### 4. **Arrears**

4.1 Where the Arrears arise under a lease which is a "new tenancy" under section 1(3) of the 1995 Act, the Seller is to assign those Arrears to the Buyer on Actual Completion. The assignment is to be in a form to be agreed between the parties.

4.2 The Buyer shall use all reasonable endeavours to collect Arrears as soon as possible after Actual Completion but is not obliged to bring insolvency proceedings against the Tenants, exercise rights of distress or take any action to forfeit the Occupational Leases.



4.3 If the Buyer receives any Arrears which relate to the period up to and including Actual Completion then it shall account to the Seller for them within five working days of receipt of such Arrears in cleared funds, together with interest at the Contract Rate if such payment is not made by that due date.

4.4 Commercial Conditions 8.3.7 and 8.3.8 shall not apply.

**5. Title**

5.1 The Seller has deduced title to the Premises to the Buyer in accordance with Commercial Condition 6.1 and the Buyer is not entitled to raise any requisition or objection to the title except in respect of:

5.1.1 any entries registered against the Title Number after 11th March 2014 at 09:29:16 (in respect of title number BGL101021), after 11th March 2014 at 09:27:45 (in respect of title number NGL631813), and after 11th March 2014 at 09:26:10 (in respect of title number BGL71558) that relate to matters that the Seller has not previously disclosed to the Buyer; and

5.1.2 any financial charges registered against the Title Number.

5.2 The Seller shall grant the Leases with full title guarantee in the form of the Leases.

**6. Title matters**

6.1 The Leases are granted subject to and, to the extent that the Seller is able to grant them, with the benefit of the Title Matters.

6.2 The First Premises are let subject to and with the benefit of the First Premises Occupational Leases and the rights of the tenants and any other person deriving title or occupying the First Premises under the First Premises Occupational Leases.

6.3 The Second Premises are let subject to and with the benefit of the Second Premises Occupational Leases and the rights of the tenants and any other person deriving title or occupying the Second Premises under the Second Premises Occupational Leases.

6.4 The Buyer has been supplied with copies or full details of the Occupational Leases and no objection or requisition shall be raised relating to them.

6.5 The Buyer's Solicitors have been provided with copies of the Title Matters and the Buyer is to be treated as acquiring the Leases with full knowledge of them and will not raise any requisition or objection to them.

6.6 The Leases will be granted subject to:

6.6.1 the matters contained or referred to in Commercial Condition 3.1.2;

6.6.2 any registered local land charges and any matter capable of being registered as a local land charge even if not so registered at the Date of Actual Completion;

- 6.6.3 any notice, order or proposal given or made by a government department or by any public or local authority, statutory undertaker or other competent body or person;
  - 6.6.4 all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to the Premises and to any orders or regulations made under that or any other legislation;
  - 6.6.5 all rates, charges and other outgoings which affect or are charged on the Premises except for any mortgage or legal charge relating to money secured by the Seller on the Property;
  - 6.6.6 any unregistered interest that overrides the disposition effected pursuant to this Agreement under Schedules 1, 3 or 12 Land Registration Act 2002;
  - 6.6.7 all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Premises, but without any liability on the Seller to define them; and
  - 6.6.8 all liability to repair and maintain roads, paths, conduits, fences and other like matters or to contribute to the cost of their repair and maintenance, but without any liability on the Seller to provide evidence of or to apportion liability.
- 6.7 Section 6(2)(a) Law of Property (Miscellaneous Provisions) Act 1994 is to be construed as if all entries made in any public register which a prudent buyer would inspect are within the actual knowledge of the Buyer.
- 6.8 The Leases and their counterparts are to be prepared by the Seller's Solicitors and engrossments of the counterpart Leases are to be delivered to the Buyer's Solicitors at least five working days before the Completion Date.
- 6.9 The Term Commencement Date is to be inserted in the Leases and the counterparts when they are engrossed.
- 6.10 The Buyer is to use all reasonable endeavours to register the Leases at the Land Registry as soon as reasonably practicable after the Date of Actual Completion and, on completion of those registrations, is to provide the Seller with official copies of the new titles showing the Buyer registered as proprietor of the Leases together with the new title plans.
- 6.11 Any party that executes the Leases pursuant to a power of attorney is to provide a copy of that power of attorney in English, certified in accordance with section 3 Powers of Attorney Act 1971, to the other parties on the Date of Actual Completion.
7. **Agreement to Surrender any Surplus Demise**
- 7.1 To the extent that any part or parts of any land and/or buildings demised under the First Premises Existing Lease and the Second Premises Existing Lease does not form part of the Premises to be demised under the First Lease and/or Second Lease (any "**Surplus Land**"):

- 7.1.1 in consideration of the release to be given by the Seller (at paragraph 7.1.2), the Buyer agrees to surrender and yield up all its estate right title and interest in the Surplus Land with full title guarantee and vacant possession to the Seller, and to release the Seller from all its obligations contained in and liabilities under the First Premises Existing Lease and/or the Second Premises Existing Lease in respect of the Surplus Land, whether past, present or future and all actions proceedings costs claims demands damages and expenses arising from such obligations and liabilities; and
  - 7.1.2 the Seller agrees to accept a surrender of the Surplus Land from the Buyer and to give to the Buyer (and any guarantor to the extent applicable) a full release of all their liability and obligations arising under the First Premises Existing Lease and Second Premises Existing Lease in respect of the Surplus Land, whether past present or future and from all actions proceedings costs claims demands damages and expenses arising from such obligations and liabilities; and
  - 7.1.3 as soon as reasonably practicable following any merger of the First Premises Existing Lease and the Second Premises Existing Lease with the Premises, the parties shall enter into a form of deed of surrender to be agreed between the parties (each acting reasonably) to reflect the surrender of any Surplus Land in accordance with the above provisions of this paragraph 7; and
  - 7.1.4 the parties shall each use all reasonable endeavours and provide all reasonable assistance in order to register the surrender of the Surplus Land at the Land Registry and to merge the title to the Surplus Land in the Seller's title to the Property, as soon as reasonably practicable after entering into the deed of surrender pursuant to paragraph 7.1.3 above.
- 7.2 This agreement to surrender in paragraph 7.1 has been authorised in accordance with the provisions of section 38A(2) Landlord and Tenant Act 1954.
- 7.3 In respect of any Surplus Land falling within the First Premises Existing Lease, the Buyer confirms that before the date of this Agreement:
- 7.3.1 the Seller served on the Tenant a notice ("the Notice") in relation to this Agreement in a form complying with the requirements of Schedule 3 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;
  - 7.3.2 the Buyer, or a person duly authorised by the Tenant, in relation to the Notice made a statutory declaration ("the Declaration") in a form complying with the requirements of Schedule 4 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and
  - 7.3.3 where the Declaration was made by a person other than the Buyer, the declarant was duly authorised by the Buyer to make the Declaration on the Buyer's behalf.
- 7.4 In respect of any Surplus Land falling within the Second Premises Existing Lease, the Buyer confirms that before the date of this Agreement:

- 7.4.1 the Seller served on the Tenant a notice ("the Second Notice") in relation to this Agreement in a form complying with the requirements of Schedule 3 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;
- 7.4.2 the Buyer, or a person duly authorised by the Tenant, in relation to the Second Notice made a statutory declaration ("the Second Declaration") in a form complying with the requirements of Schedule 4 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and
- 7.4.3 where the Second Declaration was made by a person other than the Buyer, the declarant was duly authorised by the Buyer to make the Second Declaration on the Buyer's behalf.

## **8. Insurance**

- 8.1 The Premises is now at the risk of the Buyer and no damage to or destruction or deterioration of the Premises or the means of access to it, however caused, occurring on or after now is to entitle the Buyer either to any reduction of the Price or to refuse to complete or to delay completion or to affect the obligations of the parties under this Agreement in any way
- 8.2 Commercial Conditions 7.1.1, 7.1.2, 7.1.3 and 7.1.4 shall not apply.
- 8.3 The Seller shall continue to insure the Premises until Actual Completion in accordance with the existing insurance policy, details of which have been given to the Buyer before now; and if the renewal date occurs before Actual Completion and the insurer refuses to renew that policy, the Seller shall use all reasonable endeavours to put in place replacement insurance (in conformity with the provisions of the Occupational Leases if applicable).
- 8.4 The Seller is not responsible to the Buyer for any deficiency in the amount insured or any inadequacy of the insured risks.
- 8.5 The Seller cannot be required by the Buyer to change any of the terms of the insurance policy but the Seller will if requested by the Buyer in writing give the Buyer sufficient details of the insurance policy.
- 8.6 If any damage or destruction insured under that policy occurs between now and Actual Completion, the Seller will use all reasonable endeavours, but at the Buyer's cost, to make and pursue a claim under the policy in respect of it and:
  - 8.6.1 if the Seller receives any insurance monies under any such claim (other than for loss of rent in respect of the period up to Actual Completion) it will apply those monies in accordance with the terms of the Occupational Leases (if applicable)(or to the extent that such monies have not been expended for that purpose before Actual Completion will at Actual Completion make them available to the Buyer for such purpose), the Seller deducting any proper costs it may have incurred in relation to such claim;
  - 8.6.2 where any insurance monies have been so claimed but not received at Actual Completion, on Actual Completion the Seller shall assign to the Buyer all rights to any such claim (other than those in respect of loss of

rent up to the date of Actual Completion) subject to the Buyer paying any proper costs incurred by the Seller in relation to the claim; and the assignment shall be in a form reasonably required by the Buyer and which the Seller is reasonably able to give.

8.7 The Seller shall cancel the insurance policy on Actual Completion and use reasonable endeavours to obtain a proportionate refund of premiums from the insurer, on receipt of which the Seller will as soon as reasonably possible repay to each Tenant who shall have contributed to the premiums its due proportion of that refund.

9. **Rent Reviews**

9.1 This paragraph 9 applies only to those Occupational Leases to which Commercial Condition 5 applies (if any).

9.2 Commercial Condition 5 shall apply as varied by this paragraph.

9.3 Neither the Buyer nor its successors in title shall waive any rent due from any Tenant in respect of any period prior to Actual Completion pursuant to any rent review nor shall the Buyer or its successors in title agree to settle any such rent review on any basis other than that currently provided for in the Occupational Leases.

9.4 The Buyer shall notify the Seller of the amount of each reviewed rent within ten working days after the agreement or determination of the rent review.

9.5 The Buyer shall use all reasonable endeavours to obtain payment from the Tenant at the earliest proper time of any increased rent (and any interest on it) payable under the Occupational Lease as a result of the review relating to any period before Actual Completion and within ten working days of the Buyer receiving payment of any such amount in cleared funds the Buyer shall pay it to the Seller and if not so paid the Buyer shall pay interest at the Contract Rate on such sum from the date it becomes due to the date of payment.

10. **Confidential Information and Freedom of Information**

Each of the parties acknowledges that the provisions of the Transparency Deed apply to the provisions of this Agreement.

**PART 2: VARIATIONS TO THE COMMERCIAL CONDITIONS**

1. **Exclusion of Commercial Conditions**

Commercial Conditions 1.4, 2.2, 3.1.2, 5, 6.3.1, 6.4.2, 7, 8.3.7, 8.3.8, 10.2 and 11 are excluded.

2. **Variation of Commercial Conditions**

2.1 In Commercial Condition 1.3, all references to service by e-mail are deleted.

2.2 In Commercial Condition 8.3.1, the words "Subject to Condition 8.3.6" are deleted.

2.3 Commercial Condition 8.3.2 reads "Apportionment is to be made with effect from the date of actual completion."

- 2.4 In Commercial Condition 9.3.2, the words "between completion date and actual completion" are replaced by "from and including the completion date to and including actual completion".

### **PART 3: TITLE MATTERS**

1. **Register entries**

The matters contained or referred to in the registers of the Title Number as at 11th March 2014 at 09:29:16 (in respect of title number BGL101021), as at 11th March 2014 at 09:27:45 (in respect of title number NGL631813), and as at 11th March 2014 at 09:26:10 (in respect of title number BGL71558), and any other matters subject to which the Leases are expressed to be granted.

2. **Other deeds and documents**

The Occupational Leases.

**THE COMMON SEAL OF** )  
LONDON UNDERGROUND LIMITED )  
was affixed to this deed )  
in the presence of: )

**Authorised Signatory**

**EXECUTED** as a deed by )  
EARLS COURT PARTNERSHIP LIMITED )  
acting by )  
a director and its company secretary )  
or two directors )

**Director**

**Director/Secretary**

**Annexure 1**  
**Draft Lease of Earls Court 1 Site**



**Annexure 2**  
**Draft Lease of Earls Court 2 Site**