

Dated _____ **20[]**

**THE CITY OF LONDON LAW SOCIETY
LAND LAW COMMITTEE
CERTIFICATE OF TITLE
(Seventh Edition 2016 update)**

Property:

Transaction:

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**THE CITY OF LONDON LAW SOCIETY
LAND LAW COMMITTEE
CERTIFICATE OF TITLE
(Seventh Edition 2016 update)**

To: *[Insert name and address of each addressee e.g. the Chargee, Banks/Finance Parties/other party]* ("Addressees" and in this Certificate "you" and Addressees have the same meaning).

[Insert short address or description of the Property]

1. RELIANCE ON THIS CERTIFICATE

1.1 This Certificate is addressed to and is intended solely for the benefit of the Addressees for the purpose of the Transaction. It may not be relied on by any other person or used for any other purpose.

1.2 The giving of this Certificate does not create any retainer with the Addressees.

1.3 This Certificate may be disclosed to a third party but it cannot be relied on by that party.

1.4 Only an Addressee may bring a claim under this Certificate (whether as principal or agent).

1.5 If a claim would properly lie against any other party involved in the Transaction or this Certificate's preparation or approval, and that party has limited or excluded its liability in respect of such claim, then our liability will not be increased by that limitation or exclusion. Our liability will be calculated as if there were no such limitation or exclusion.

1.6 Where the Addressees constitute more than one person, the Addressees acknowledge that our aggregate liability to all the Addressees is no greater than the liability we would have had if the Addressees were a single person.

1.7 We acknowledge that you are entitled to rely on the statements contained in this Certificate even if any document or matter contained or referred to in a statement:

1.7.1 is in the public domain; or

1.7.2 has been disclosed by or on behalf of the Company to the Valuers; or

1.7.3 is contained in any specialist report made available by or on behalf of the Company to you or your professional team; or

1.7.4 is contained or referred to in any data room to which you or your professional team have access.

1.8 You agree that no individual member, partner, shareholder, consultant or employee of this firm owes you any personal duty of care and that you will not bring any claim whether in contract, tort, under statute or otherwise against any such individual.

2. CERTIFICATION

On the basis of and insofar as the same is discoverable from our investigations mentioned in this Certificate, we certify that:

2.1 Title

2.1.1 We have investigated the title of the Company to the Property in the knowledge that you are relying on this Certificate for the purpose of the Transaction.

2.1.2 We have:

- (a) examined and considered the documents of title and other documents and papers relating to the Property produced to or obtained by us; and
- (b) undertaken those of the searches and enquiries referred to in Schedule 6 which we consider appropriate or necessary in the circumstances of the Transaction and having regard to the location and nature of the Property and considered the results of the searches and replies to the enquiries

and this Certificate is given solely on the basis of:

- (i) that examination and consideration and the results of those searches and enquiries; and
- (ii) material provided to us by the Company;

which, so far as we are aware, is the documentation and information which we need in order to give this Certificate.

2.1.3 Subject to any Disclosures:

- (a) in our opinion, [subject to due registration at Land Registry of the transfer of the Property from the Seller to the Company,] the Company has a good and marketable title to the Property and is solely legally and beneficially entitled to the Property and [[neither we nor the Company know of any reason why the Company should not be registered as proprietor of the Property with absolute title] [or the Chargee as registered proprietor of the Charge]] [neither we nor the Company know of any reason why the Chargee should not be registered as registered proprietor of the Charge];
- (b) the details of the Property set out in Schedule 2 Part 1 are complete and accurate in all respects;
- (c) if the Company holds the Property under the terms of a lease, the terms of the lease are fairly summarised in Schedule 4 Part 1 and the statements set out in Schedule 4 Part 2 are complete and accurate in all respects;

- (d) no consents are required from any third parties before the Property can be [transferred to the Company and] effectively charged to the Chargee by way of legal mortgage or fixed charge and any consents referred to in a Disclosure have been obtained and are not subject to onerous or unusual conditions;
- (e) if the Property is freehold, the Property is not registered as a freehold estate in commonhold under Part I of the Commonhold and Leasehold Reform Act 2002;
- (f) if the title to the Property is registered at Land Registry, the quality of the title is title absolute; and
- (g) if the title to the Property is not registered at Land Registry, then:
 - (i) where the Property is freehold, it commences with a good root of title at least 15 years old; or
 - (ii) where the Property is leasehold, it commences with the Lease and has a good root of title at least 15 years old.

2.2 **Matters affecting the Property**

Subject to any Disclosures:

- 2.2.1 the statements set out in Schedule 3 are complete and accurate in all respects; and
- 2.2.2 there are no other matters disclosed by our investigations referred to in this Certificate which, in our opinion, should be brought to your attention.

2.3 **Letting Documents**

The Letting Documents are fairly summarised in Schedule 5 Part 1 and, save as stated in any Disclosures, the statements set out in Schedule 5 Part 2 are complete and accurate in all respects.

2.4 **Searches and enquiries**

Except as stated in any Disclosures and subject to any general and usual caveats or disclaimers on results of searches or replies to enquiries undertaken, the results of such searches and enquiries do not disclose matters which, in our opinion, should be brought to your attention.

3. **THE VALUERS**

A copy of the final draft of this Certificate has been sent to the Valuers. They have been requested to confirm to you in writing that the Property is the property valued in their valuation report and that either they have taken the final draft of this Certificate into

account in making their valuation or there is nothing in this Certificate which causes them to alter their valuation report.

4. **CONFIRMATION OF STATEMENTS**

4.1 Where this Certificate states that the Company has “told us” or “confirmed” something (or uses words with similar meaning) (“provided information”), the Company provided information to us in writing.

4.2 A copy of the final draft of this Certificate has been sent to the Company. The Company has confirmed to us within the five working days before the date of this Certificate that to the best of its knowledge, information and belief the information contained in this Certificate is complete and accurate in all respects.

4.3 [The Company has purchased the Property from the Seller immediately prior to or as part of completion of the Transaction. That being the case:

4.3.1 The Company’s knowledge of the Property and related documents and information have been acquired through:

- (a) its own investigations of the Property as part of that purchase including the searches and enquiries referred to in Schedule 6;
- (b) the replies given by the Seller’s solicitors to Commercial Property Standard Enquires – CPSE1 and such other documents in the CPSE suite and/or such other enquiries as are appropriate for the particular purchase;
- (c) the replies given by the Seller’s solicitors to any additional enquiries raised by us to enable us to provide this Certificate;
- (d) other material provided by the Seller or the Seller’s solicitors and other advisers or agents of the Seller;
- (e) the Company’s own knowledge of the Property;
- (f) information provided by any other parties as mentioned in the Disclosures; and
- (g) an inspection of the Property by the Company not more than 20 working days before the date of this Certificate.

4.3.2 Whenever this Certificate refers to the Company’s knowledge, information and belief or this Certificate states that the Company has provided information (as defined in clause 4.1), it is the case that the Seller or the Seller’s solicitors and its other advisers or agents are the primary source.

4.3.3 References in this Certificate to notices given or received by the Company, or to any actions taken by the Company or expected by the Company, are references to the Company’s knowledge of notices given or received by the Seller, actions taken by the Seller or expected by the Seller, as the case may be.

- 4.3.4 The Seller has confirmed to us in writing that it has provided us with copies of all documents relating to the Property of which it has knowledge, together with such other information in its possession as is material.
- 4.3.5 Where information has been provided to us by the Seller, our investigations have given us no reason to doubt the accuracy of that information, but we do not accept responsibility for it.
- 4.3.6 Where the replies given by the Seller's solicitors to our enquiries or other information provided by the Seller or the Seller's solicitors are, in our opinion, inadequate, we have disclosed such inadequacy in the relevant part of the Certificate.]

5. FORM OF CERTIFICATE

This Certificate is in the form of the City of London Law Society Land Law Committee Certificate of Title (Seventh Edition 2016 update) and in particular there has been no amendment to the main text of this Certificate or to the statements in paragraphs 2 to 4 of Schedule 1 and the statements in Schedule 3 and Part 2 of Schedules 4 and 5 respectively to this Certificate.

6. STATUS OF SCHEDULES

The Schedules form part of this Certificate.

Disclosures

All Disclosures made to the Schedules to this Certificate

[Here make any Disclosures in respect of the main body of and Schedule 1 to this Certificate e.g. any consents referred to in clause 2.1.3(d) or clauses 3 or 4]

[Note: it is recommended that all Disclosures are made in italic script and are contained in boxes as indicated in this Certificate]

Lease means the lease by virtue of which the Company holds the Property or part of it (as amended or supplemented);

Letting Document means any lease, underlease, tenancy, licence or other agreement or arrangement giving rise to rights of occupation and enjoyment to which the Property is subject (in each case as amended or supplemented) including any tenancy which is being continued after the contractual expiry date under the Landlord and Tenant Act 1954 or otherwise;

[**Loan Document** means the loan/facility agreement [dated _____] [to be made] between [_____] and [_____] providing for the loan referred to in it, which loan is [to be] secured by [among other things] the Charge;]

Premises means the premises demised by any Lease or Letting Document as the case may be;

Property means the property described in Schedule 2 Part 1, the [address] [a brief description] of which is given at the start of this Certificate;

[**Seller** means [_____];]

Town and Country Planning Legislation means any statute relating to town and country planning, which is in force at the date of this Certificate;

Transaction means [_____];

[**Valuers** means [_____]; and]

1995 Act means the Landlord and Tenant (Covenants) Act 1995.

- 1.2 Unless the context otherwise requires, any reference to the Property or the Premises includes each and every part of it or them and all buildings and structures on it or them.
- 1.3 Any reference, express or implied, to a statute includes references to:
 - 1.3.1 that statute as amended, extended or applied by or under any other statute or subordinate legislation at the date of this Certificate;
 - 1.3.2 any statute at the date of this Certificate which re-enacts that statute (with or without modification); and
 - 1.3.3 any subordinate legislation made at the date of this Certificate under that statute, as amended, extended or applied as described in paragraph 1.3.1 or under any statute referred to in paragraph 1.3.2.
- 1.4 The expressions “authorised guarantee agreement”, “excluded assignment”, “fixed charge”, “new tenancy”, “overriding lease”, “tenant covenant”, “former tenant”, “guarantor” and “landlord covenant” shall have the meanings given to them in the 1995 Act.

- 1.5 In Schedule 5 “rent” includes licence fee, “tenancy” includes licence and “tenant” includes licensee.
- 1.6 The headings in this Certificate do not affect its interpretation.
- 1.7 Unless the context otherwise requires, the singular includes the plural and vice versa.
- 1.8 Any Disclosure in this Certificate in relation to any particular clause or paragraph is to be treated as being disclosed in relation to any other relevant clause or paragraph.

2. **ASSUMPTIONS**

- 2.1 We have assumed that all documents relating to the Property have been validly executed and delivered by the parties to them and that such documents are within the capacity and powers of, and have been validly authorised by, each party. There is nothing on the face of those documents which we have seen which indicates otherwise.
- 2.2 We have assumed, and the Company has confirmed to us in writing, that:
 - 2.2.1 the Company has provided us with all documents of title relating to the Property of which it has knowledge together with any other information in its possession as is material for the purpose of giving this Certificate; and
 - 2.2.2 each copy document produced to us is a true copy of the original.

3. **QUALIFICATIONS**

- 3.1 We have not inspected the Property nor have we made any enquiries of the occupiers of the Property (other than [the Seller and] the Company) nor, where the Property is leasehold, have we made any enquiries of any landlord or superior landlord.
- 3.2 We give no opinion as to the capital or rental value of the Property.
- 3.3 Except as disclosed by the results of the searches listed in Schedule 6, this Certificate does not consider:
 - 3.3.1 any environmental or flood assessments, audits, surveys or other reports on the environmental condition of the Property; or
 - 3.3.2 other technical reports or surveys relating to the Property's condition;and the recipient of this Certificate should consider what investigations it wishes to make in relation to those matters.
- 3.4 Where information has been provided to us by the Company, our investigations have given us no reason to doubt the accuracy of that information but we do not accept responsibility for it.
- 3.5 Whilst we express no opinion on whether any transaction affecting the Company's title to the Property may have been at an undervalue or otherwise liable to be set aside under the

provisions of the Insolvency Act 1986, the Company has told us that it is not aware of any circumstances which could render any such transaction liable to be set aside under the provisions of that Act.

- 3.6 We have not investigated whether there is an intention that the terms of any relevant document should be enforceable by third parties. Save as stated in any Disclosures, none of the documents relating to the Property expressly provides that a third party can enforce any of its terms in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 3.7 We have not investigated whether any consents which may have been required under any mortgages or other documents which are no longer subsisting were obtained.
- 3.8 Except to the extent of any Disclosure against paragraph 9 of Schedule 3 we have not investigated what insurance may be in force (or the particular details of any policy) in respect of the Property.
- 3.9 We have not considered:
 - 3.9.1 whether any right including a right to light or a right to air is in the process of being acquired through prescription; nor
 - 3.9.2 whether any right including a right to light or a right to air has been acquired through prescription, except where a right is set out in Schedule 2 Part 2 as having been acquired through prescription.

4. **APPLICABLE LAW**

This Certificate is limited to English law as applied by the English courts as at the date of this Certificate and is given on the basis that it will be governed by and construed in accordance with English law.

SCHEDULE 2

Property Details

Part 1

The Property

Brief description: Land [and buildings] known as [] shown edged red on the attached plan.

Tenure: freehold/leasehold

If registered:

Registered title number:

Name of registered proprietor:

If the registered proprietor is an overseas entity as defined in section 2 of the Economic Crime (Transparency and Enforcement) Act 2022 (“ECTEA”), is the entity registered in the register of overseas entities established under section 3 of ECTEA? [Yes/No]

If so, include the overseas entity ID for the entity and the date of registration in the register:
Overseas entity ID []; Date of registration []

If the Company (if different from the registered proprietor) is an overseas entity as defined in section 2 of ECTEA, is the entity registered in the register of overseas entities established under section 3 of ECTEA? [Yes/No]

If so, include the overseas entity ID for the entity and the date of registration in the register:
Overseas entity ID []; Date of registration []

If unregistered:

Root of title:

Name of legal owner of the unregistered property:

If the legal owner is an overseas entity as defined in section 2 of the Economic Crime (Transparency and Enforcement) Act 2022 (“ECTEA”), is the entity registered in the register of overseas entities established under section 3 of ECTEA? [Yes/No]

If so, include the overseas entity ID for the entity and the date of registration in the register:
Overseas entity ID []; Date of registration []

If the Company (if different from the legal owner) is an overseas entity as defined in section 2 of ECTEA, is the entity registered in the register of overseas entities established under section 3 of ECTEA? [Yes/No]

If so, include the overseas entity ID for the entity and the date of registration in the register:
Overseas entity ID []; Date of registration []

Part 2

Benefits

[The rights granted to the tenant specified in Part 1A of Schedule 4.]

Part 3

Incumbrances

[The rights reserved to the landlord specified in Part 1A of Schedule 4.]

Part 4

Existing Use

SCHEDULE 3

Matters affecting the Property

TITLE

1. Title documents, stamp taxes and value added tax

1.1 The documents of title consist of original documents or properly examined abstracts and are held by us, or will be held by us, on completion of the Transaction to the order of the Company.

1.2

1.2.1 Where necessary, all such title documents are fully stamped with ad valorem stamp duty and a particulars delivered stamp.

1.2.2 Where such title documents have not been registered at Land Registry at the date of this Certificate, we have seen a related certificate from HM Revenue & Customs evidencing submission of a land transaction return for the purposes of stamp duty land tax in relation to all circumstances in respect of which a land transaction return is required to be made.

1.3 The Company has told us that no further land transaction return or payment in relation to stamp duty land tax is required in respect of any transaction involving the Property which has an effective date prior to the date of this Certificate and there is nothing on the face of the documents to suggest otherwise.

1.4 For the purposes of paragraph 1.5, "option to tax" has the meaning given in Schedule 10 the Value Added Tax Act 1994 and includes an option to tax which has been deemed, or treated as having been, exercised.

1.5 The Company has told us that a valid option to tax has been exercised by the Company or a body corporate in relation to which the Company is either a relevant associate or a relevant group member over the whole Property and that such option has not been, or been deemed to be, disapplied or revoked so that value added tax is due in respect of any supply of the Property by it.

Disclosures

2. Unregistered land

Where title to the Property is not registered at Land Registry:

- 2.1 there is no caution registered against first registration and no event has occurred in consequence of which registration of title should have been effected.
- 2.2 clear Land Charges Act searches against every estate owner who was a party to any transaction, or concerned in any event, comprised in the relevant title are held with the title deeds.

Disclosures

3. **Access**

- 3.1 The Company has told us the location of each point where access is gained to the Property.
- 3.2 We have reviewed the title plan for the Property and a plan from the relevant Highways Authority showing the boundaries of publicly maintainable highways and we have where appropriate consulted the Company and on that basis we confirm that the Property appears to abut a roadway maintainable at public expense at each point where access is gained or have the benefit of all necessary rights of way to and from such a roadway.

Disclosures

4. **Benefits**

- 4.1 There are appurtenant to the Property the Benefits of a material nature set out in Schedule 2 Part 2. The Company has told us that, so far as it is aware, those Benefits are the only Benefits necessary for the use and enjoyment of the Property for the Existing Use or (if no Benefits are so set out) that none are required.
- 4.2 Such Benefits are enjoyed freely without interruption and without payment or restriction as to hours of use or otherwise and are held for the same estate or interest as the Company's estate or interest in the Property. None of those Benefits is enjoyed on terms entitling any person to terminate or curtail it.
- 4.3 Where any such Benefit requires protection (in order to bind all other persons) by:
 - 4.3.1 registration or notice on the title to any registered land; or

4.3.2 a caution against first registration or land charge in respect of any unregistered land

such protection has been properly effected.

Disclosures

5. **Incumbrances**

5.1 The only Incumbrances of a material nature to which the Property is subject are disclosed in Schedule 2 Part 3. The Company has told us that it has not received notice of any breach of and is not aware of any breach of those Incumbrances and that those Incumbrances do not materially adversely affect the Existing Use.

5.2 Where any such Incumbrance requires protection (in order to bind all other persons) by:

5.2.1 registration or notice on the title to the Property (where registered); or

5.2.2 a caution against first registration or land charge in respect of the Property (where unregistered)

such protection has been properly effected.

5.3 The Company has told us that it is not aware that any person is in the process of acquiring an Incumbrance over the Property through prescription other than rights to light or rights to air.

Disclosures

6. **Charges**

There are no mortgages, charges or liens (whether legal or equitable, specific or floating) affecting the Property.

Disclosures

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7. **Agreements**

7.1 There are no agreements for sale, estate contracts, options, rights of pre-emption or similar matters affecting the Property the provisions of which remain to be observed or performed.

7.2 There are no obligations binding on the Property to make future payments in respect of overage, clawback, deferred consideration or other payments of a similar nature.

<u><i>Disclosures</i></u>

8. **Adverse rights**

8.1 The Company has told us that it is or is entitled to be in actual occupation on an exclusive basis of those parts of the Property as are not the subject of the Letting Documents and that, except by virtue of the Letting Documents, no person, other than the Company, has any right (actual or contingent) to possession, occupation or use of, or interest in, the Property.

8.2 The Company has told us that it has inspected the Property not more than 20 working days before the date of this Certificate and that, so far as it is aware, no one is in adverse possession of the Property or has acquired or is acquiring any rights adversely affecting the Property other than rights to light or rights to air.

<u><i>Disclosures</i></u>

9. **Title policies**

The Company has told us that there are no insurance policies relating to planning, title or covenants affecting the Property.

<u><i>Disclosures</i></u>

10. **Complaints and disputes**

The Company has told us that:

- 10.1 it has not made and not had occasion to make any claim or complaint in relation to any neighbouring property or its use or occupation; and
- 10.2 there are no disputes, claims, actions, demands or complaints in respect of the Property which are outstanding or which are expected by it.

Disclosures

11. **Notices**

The Company has told us that no notices materially affecting the Property or any of the Benefits detailed in Schedule 2 Part 2 have been given or received by the Company.

Disclosures

PLANNING

12. **Existing Use**

- 12.1 The Company has told us that the Property is presently used for the Existing Use.
- 12.2 The Existing Use is a use permitted under a subsisting planning permission (which the Company has told us has been implemented) or otherwise permitted under the Town and Country Planning Legislation.

Disclosures

13. **Development**

13.1 The Company has told us that it is not aware that:

13.1.1 any development which has been carried out in relation to the Property is unlawful or has been carried out without any necessary consents or permissions being obtained;

13.1.2 any enforcement proceedings under the Town and Country Planning Legislation have been commenced or notices served; or

13.1.3 any such proceedings or notices have been proposed.

13.2 The Company has told us that it is not aware of any acts, omissions or other circumstances by reason of which a planning enforcement order may be applied for or made in relation to the Property.

Disclosures

14. **Validity of permissions**

The Company has told us that no planning permission affecting the Property is the subject of an existing challenge as to its validity. Our local authority search did not reveal that any planning permission has been issued within the six weeks immediately before the date of that search.

Disclosures

15. **Conditions**

15.1 The planning permissions affecting the Property are subject only to conditions which the Company has told us have either been satisfied so that nothing further remains to be done under them or, in the case of continuing conditions, are being complied with and the Company knows of no reason why those conditions should not continue to be so complied with.

- 15.2 There are no unusual or onerous conditions attaching to any planning permission affecting the Property, and no planning permission is subject to any condition or limitation making it temporary (other than the conditions referred to in Sections 91 and 92 of the Town and Country Planning Act 1990) or personal to anyone.

Disclosures

16. **Pending applications**

The Company has told us that there is no application for planning permission in respect of the Property awaiting determination and no planning decision or deemed refusal which is subject to appeal.

Disclosures

17. **Planning agreements or obligations**

- 17.1 There is no agreement or planning obligation or planning contribution (together a “Planning Agreement”) affecting the Property under Section 52 of the Town and Country Planning Act 1971, Section 38 and Section 278 of the Highways Act 1980, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 106 of the Town and Country Planning Act 1990, Section 104 of the Water Industry Act 1991, Part 11 of the Planning Act 2008 or any provision in legislation of a similar nature and the Company has told us that it is not required to enter into any such Planning Agreement.

- 17.2 Where there is any Planning Agreement, the Company has told us that, so far as it is aware:

17.2.1 all of the obligations which have fallen due as at the date of this Certificate have been observed or performed and no notice of breach has been received; and

17.2.2 there are no material obligations which remain to be observed or performed.

Disclosures

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18. **Listed buildings etc.**

None of the buildings or other structures or erections on the Property has been listed under Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 nor has the relevant local authority served or authorised the service of any building preservation notice under Section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 or any repairs notice under Section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of the Property, nor is the Property located within a conservation area.

<u><i>Disclosures</i></u>

19. **Ancient Monuments and Assets of Community Value**

19.1 The Property is not within an area of archaeological importance nor is any building or erection on the Property a scheduled monument within the meaning set out in the Ancient Monuments and Archaeological Areas Act 1979.

19.2 The Property is neither nominated nor listed as an asset of community value.

<u><i>Disclosures</i></u>

20. **Compulsory acquisition**

The Company has told us that it is not aware of any resolution, proposal, order or act made or contemplated for the compulsory acquisition of the Property or any private access to it.

<u><i>Disclosures</i></u>

STATUTORY MATTERS

21. Statutory requirements

The Company has told us that it is not aware of any outstanding order, notice or other requirement of any local or other authority that affects the Existing Use or involves expenditure in compliance with it nor of any other circumstances which may result in any such order or notice being made or served.

Disclosures

22. Statutory compliance

The Company has told us that it has not received notice of any breach of and is not aware of any material breach of the requirements of any statute affecting the Property that are capable of enforcement at the date of this Certificate.

Disclosures

ENVIRONMENT

23. Environmental notices and permits

23.1 The Company has told us that:

23.1.1 it holds all necessary permits, licences, consents, authorisations, registrations or any other approvals (together an “environmental permit”) under any legislation relating to pollution or protection of health and the environment (together “environmental laws”) in respect of the Existing Use of the Property; and

23.1.2 it has not received any written notices, notifications or orders under any environmental laws in respect of the Property or the Existing Use and it is not aware of any circumstances which may result in any such notices, notifications or orders being made or served.

23.2 Where required by the Transaction, the Company has obtained an energy performance certificate for the Property.

23.3 The Company has told us that it holds the energy performance certificates for the Property.

Disclosures

GENERAL

24. Construction work and warranties

The Company has told us that:

24.1 no buildings or other structures on the Property have been erected or been subject to extension or major alteration within the six years prior to the date of this Certificate; and

24.2 there are no subsisting agreements, certificates, guarantees, warranties or insurance policies relating to the construction, repair, replacement, treatment or improvement of any building or structure on the Property.

Disclosures

25. Outgoings

The Company has told us that the Property is not subject to the payment of any outgoings other than the uniform business rate and water rates (and where the Property is leasehold sums due under the Lease) and the Company has told us that all such payments have been made to date.

Disclosures

26. Fixtures and fittings

The Company has told us that all fixtures and fixed plant at the Property, other than (where the Property is leasehold) landlord's fixtures or (where the Property is subject to a

Letting Document) tenant's fixtures, are, or will on completion of the Transaction be, the Company's property free from incumbrances.

Disclosures

SCHEDULE 4

The Lease

Part 1

Details of the Lease under which the Property is held

Note: Please include a heading for each part of the Property held under a separate lease

Part 1A

Details of Lease

Premises the subject of the Lease:	
Date:	
Original parties:	
Length of term:	
Contractual term commencement date:	
Contractual term expiry date:	
Does the description of the term expressly include any statutory continuation?	Yes/No
Is the Lease contracted out of the Landlord and Tenant Act 1954:	Yes/No
Summary of the rights granted to the tenant	
Summary of the rights reserved to the landlord	
Name and address of the present landlord, provided by the Company:	
Name and address of any present guarantor of the tenant:	
Original annual rent including details of any premium paid:	
Current annual rent:	
Rent review frequency:	
Remaining rent review dates:	

Present permitted use (and whether personal):	
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Part 1B

Licences and other supplemental documents

Date	Document description	Parties	Other information

Part 2

Statements

1. Details of the Lease

Details of the Lease are fairly summarised in Part 1A of this Schedule and any licences granted and other supplemental documents entered into are listed in Part 1B of this Schedule.

<u><i>Disclosures</i></u>

2. Head lease

The Lease is a head lease.

<u><i>Disclosures</i></u>

3. Payment of rent

3.1 The annual rent is payable quarterly in advance on the usual English quarter days.

3.2 The Company has told us that the last instalment of rent (and service charge if any) was paid to and was accepted by the landlord or its agents without qualification.

Disclosures

4. **Rent review**

- 4.1 There are no provisions for rent review or other increases in the rent.
- 4.2 If there are any provisions for rent review, they apply on the dates set out in Part 1A of this Schedule and are summarised in the Disclosures.
- 4.3 Where there are any provisions for rent review:
- 4.3.1 the Company has told us that no rent reviews are currently outstanding or under negotiation or the subject of a reference to an expert or arbitrator or the courts; and
- 4.3.2 where the current annual rent is not the same as the annual rent originally reserved by the Lease, evidence of its agreement or determination has been placed with the documents of title.

Disclosures

5. **Repair**

- 5.1 The tenant is responsible for keeping the whole of the Premises and (to the extent they form part of the Premises) fittings and plant and equipment in good and substantial repair and condition (except in respect of damage by insured risks, unless and to the extent that insurance is vitiated by the act or default of the tenant).
- 5.2 The tenant is responsible for the decoration of the interior and exterior of the Premises.

Disclosures

6. **Restrictions on use**

6.1 There are no restrictions in the Lease or the superior title which prevent the Premises being used now or in the future for the Existing Use.

6.2 The tenant is only permitted to change the use of the Premises from the present permitted use specified in Schedule 4 Part 1A with the prior written consent of the landlord, such consent not to be unreasonably withheld.

Disclosures

7. **Alterations**

7.1 The tenant is prohibited from making structural alterations or additions to, or alterations affecting the appearance of, the Premises without the prior written consent of the landlord, such consent not to be unreasonably withheld.

7.2 The tenant may carry out non-structural alterations to the Premises without the prior consent of the landlord.

7.3 The tenant is required to remove all alterations and additions made during the term on yielding up the Premises at the expiration or sooner determination of the term unless the landlord requires otherwise.

Disclosures

8. **Alienation**

8.1 There are no restrictions on the tenant dealing with, charging or sharing occupation of the Premises or conditions that the landlord might impose (including any agreement under Section 19(1A) of the Landlord and Tenant Act 1927) other than any which are fairly summarised in the Disclosures.

8.2 There is no restriction on any change of control of the tenant.

Disclosures



9. **Insurance**

9.1 The landlord is required to insure:

9.1.1 the Premises against damage caused by the risks of fire (including subterranean fire), lightning, explosion, storm, flood, subsidence, landslip, heave, earthquake, burst or overflowing water pipes, tanks or apparatus, impact by aircraft or other aerial devices and any articles dropped from them, impact by vehicles, terrorism, riot, civil commotion and malicious damage and any other risks against which the landlord reasonably insures from time to time, to the extent that insurance is available in the United Kingdom market with a reputable insurer, and subject to standard exclusions limitations and excesses;

9.1.2 for the full reinstatement cost of the Premises (including professional fees and value added tax); and

9.1.3 (unless the annual rent is a nominal amount) for the loss of at least three years' annual rent.

9.2 The tenant is required to pay to the landlord a sum equal to the premiums paid for insuring the Premises in accordance with its obligations in the Lease briefly described in paragraph 9.1 and this sum is reserved as rent.

9.3 There is provision for suspension of rent in the event that the Premises are damaged or destroyed or access is prevented by an insured risk for a period not less than the loss of rent period for which the landlord covenants to insure.

9.4 If the Premises are damaged or destroyed by an insured risk, the landlord is obliged to reinstate the Premises once all necessary consents have been obtained and subject to the insurance not being vitiated by the act or default of the tenant. The landlord is to use reasonable endeavours to obtain such consents.

9.5 If the Premises are damaged or destroyed by an insured risk and reinstatement is frustrated insurance monies are to be shared between the parties in proportion to the value of their respective interests in the Premises immediately prior to the damage or destruction.

9.6 There are no specific provisions in the Lease dealing with the effect of damage or destruction of the Premises by an uninsured risk.

9.7 The Lease requires that the tenant is a composite insured or, if it does not, provides that the landlord will use reasonable endeavours to procure a waiver of subrogation rights subject to any conditions imposed by the insurer.

Disclosures

10. **Service charge**

There is no provision for the payment by the tenant of a service or other similar charge.

Disclosures

11. **Rights of re-entry**

11.1 The landlord is entitled to re-enter the Premises in the cases of non-payment of rent or breach of covenant by the tenant, but not on any other ground.

11.2 The Lease contains protection provisions in favour of any mortgagee and which have effect before the landlord can forfeit the Lease, the material terms of which are summarised in the Disclosures.

Disclosures

12. **Options and rights of first refusal**

There are no options to determine (including in respect of damage or destruction of the Premises by an insured risk) or to renew the term, nor any options to purchase or right of first refusal in favour of either the landlord or the tenant.

Disclosures

13. **1995 Act**

13.1 The Lease is a new tenancy.

13.2 The Company has confirmed that it is not aware of any former landlord having been released under Section 8 of the 1995 Act or otherwise.

Disclosures

14. **Collateral assurances and undertakings**

The Company has told us that, so far as it is aware, no collateral assurances, undertakings or concessions have been made by any party to the Lease.

Disclosures

15. **Consents**

15.1 Any consents required for the grant of the Lease, or the vesting of the Lease in each subsequent tenant, or for the grant of any sub-lease, have been obtained and placed with the documents of title along with evidence that any necessary notice has been given to any third party of any such grant or vesting.

15.2 Any consents required for any works carried out by or change of use effected by any tenant, revealed by the documents reviewed by us or by our enquiries of the Company, have been obtained and placed with the documents of title. The Company has confirmed that, so far as it is aware, there are no other works carried out or change of use effected.

Disclosures

16. **Superior title**

16.1 If title to the Lease is not registered at Land Registry with leasehold title absolute, the titles of the landlord and any superior landlord have been investigated and no adverse matters have been revealed. Examined abstracts of title or certified copies of relevant documents have been placed with the documents of title.

16.2 If any superior title is leasehold:

16.2.1 the landlord is entitled to re-enter in the cases of non-payment of rent or breach of covenant by the tenant, but not on any other ground.

16.2.2 it is not subject to any contractual right of termination.

16.3 No superior lease lets property other than the Property.

Disclosures

17. **Registration of title**

If title to the Lease is not registered at Land Registry, neither the Lease (when it was granted) nor any subsequent disposition of it was subject to compulsory registration at the relevant time.

Disclosures

18. **Breaches of covenant**

The Company has told us that:

18.1 it is not aware of any subsisting material breach of the covenants or conditions contained in the Lease, whether on the part of the landlord or the tenant, or of any other event which could give rise to forfeiture of the Lease;

18.2 no notice alleging any breach of the covenants or conditions contained in the Lease, whether on the part of the landlord or the tenant, remains outstanding; and

18.3 so far as the Company is aware, no breach of covenant has been waived or acquiesced in.

Disclosures

19. **VAT**

- 19.1 For the purposes of this paragraph “option to tax” has the meaning given in Schedule 10 to the Value Added Tax Act 1994 and includes an option to tax which has been deemed, or treated as having been, exercised.
- 19.2 The Company has told us that a valid option to tax has been exercised by the landlord or a body corporate in relation to which the landlord is either a relevant associate or a relevant group member over the whole Property and that such option has not been, or been deemed to be, disappplied or revoked so that value added tax is due in respect of any supply of the Property by the landlord.
- 19.3 Whether or not an option to tax over the Property is in place, there are no provisions in the Lease or the superior title which prevent either the landlord or a body corporate in relation to which the landlord is either a relevant associate or a relevant group member from exercising a valid option to tax in respect of the Premises or from increasing the rent or other payments under the Lease by, or requiring a payment in addition of, an amount in respect of value added tax chargeable by reason of that option to tax.
- 19.4 The Company has told us that it is not aware of any reason why the landlord should be prevented from charging value added tax in relation to supplies made to the tenant (in particular as a result of the operation of any of the disapplication provisions in Schedule 10 to the Value Added Tax Act 1994).
- 19.5 The Lease reserves value added tax as rent.

Disclosures

20. **Stamp duty land tax**

The Company has told us that:

- 20.1 neither the grant of the Lease nor any agreement for the grant of the Lease was exempt from charge to stamp duty land tax by virtue of any of the provisions specified in paragraph 11(2) of Schedule 17A (‘cases where assignment of lease treated as grant of lease’) to the Finance Act 2003 (“FA 2003”); and

- 20.2 nothing is, or may be, required or authorised to be done by the tenant or any successor in title in respect of the grant of the Lease or any agreement for the grant of the Lease under or by virtue of any of the provisions mentioned in paragraph 12 (“Assignment of lease: responsibility of assignee for returns etc”) of Schedule 17A to the FA 2003.

Disclosures

21. **No other material matters**

There are no other material matters that we consider ought to be brought to your attention in relation to the Lease.

Disclosures

SCHEDULE 5

The Letting Documents

[First Standard Letting Document [Unit []]]

[Note: Please include a heading for each Letting Document. Alternatively if it is desired to certify other Letting Documents by reference to one or more standard forms of Letting Document the extent of the details to be included and the extent of recording of variations and licences etc is to be agreed between the giver and the recipient of the Certificate and included in a Supplement. The drafting on pages 50 and 51 is an example of information which might be included in a supplement.]

Part 1A

Details of Letting Document

Premises let by the Letting Document:	
Date:	
Original parties:	
Length of term:	
Contractual term commencement date:	
Contractual term expiry date:	
Does the description of the term expressly include any statutory continuation?	Yes/No
Is the Letting Document contracted out of the Landlord and Tenant Act 1954:	Yes/No
Name and address of present tenant and any present guarantor:	
Original annual rent including details of any premium paid:	
Current annual rent and (if applicable) date from which last reviewed:	
Remaining rent review dates:	
Present permitted use (and whether personal):	

Name of every former tenant who has entered into an authorised guarantee agreement and of every former guarantor who has guaranteed the relevant former tenant's obligations in that authorised guarantee agreement:	
Name of every former tenant and former tenant's guarantor unreleased because (1) the assignment by that tenant was an excluded assignment; or (2) the letting is not a new tenancy:	
Proportion of service charge expenditure payable by the tenant and how assessed:	
Proportion of insurance payable by the tenant and how assessed:	
Summary of the rights granted to the tenant:	
Summary of the rights reserved to the landlord:	
Summary of any options to determine (other than on damage or destruction), or renew, or purchase, or rights of first refusal:	

Part 1B

Licences and other supplemental documents

Date	Document description	Parties	Other information – for example, for rent deposit deed, include amount of initial and current rent deposit

Part 2

Statements

1. Details of the Letting Document

Details of the Letting Document are fairly summarised in Part 1A of this Schedule and any licences granted and other supplemental documents entered into are listed in Part 1B of this Schedule.

Disclosures

2. Occupation

The Company has told us that the Premises the subject of the Letting Document are occupied by the tenant or the person authorised pursuant to the Letting Document to be in occupation.

Disclosures

3. Payment of rent

3.1 The annual rent is payable quarterly in advance on the usual English quarter days, without deduction or set-off.

3.2 The Company has told us that all rent and additional rent, service charges or other payments have been paid to date and no rent or other payment has been commuted, waived or paid in advance of the due date for payment.

3.3 The Company has told us that where any fixed charge was not paid on the due date and is still in arrears for more than three months, an effective notice has been served under section 17 of the 1995 Act on every relevant former tenant and on every relevant guarantor of a former tenant and the Disclosures contain full particulars of all such notices.

3.4 Interest is payable on all rent not paid on the due date at a rate of at least 3% above the prevailing base rate of a recognised clearing bank subject to a grace period of not more

than 14 days for rents other than the annual rent. There is no grace period for the annual rent.

Disclosures

4. Rent review

4.1 Where there are any provisions for rent review:

4.1.1 time is not of the essence;

4.1.2 they are upwards only;

4.1.3 the rent is to be reviewed to the open market rent at the date of review;

4.1.4 they contain a procedure for resolving disputes (either by expert determination or arbitration) and which may be initiated by either the landlord or the tenant;

4.1.5 the reviewed rent is backdated to the relevant review date and interest is payable on the back rent;

4.1.6 assumptions substantially in the following form are to be made in determining the open market rent:

(a) the hypothetical lease is to be on the same terms as the Letting Document except for the amount of the principal rent;

(b) the hypothetical lease is to be between a willing landlord and a willing tenant with vacant possession and without a premium;

(c) the hypothetical term is to begin on the review date and be equal to the residue of the contractual term at the review date (or ten years if longer);

(d) if the Premises or their means of access have been damaged or destroyed they have been reinstated;

(e) the Premises are fit for immediate occupation and use;

(f) the tenant's and the landlord's obligations in the Letting Document have been complied with; and

(g) the open market rent is the rent that would become payable after the willing tenant has received the benefit of a rent free period, rent

concession or any other inducement of such length or amount as would be negotiated in the open market for the purpose of fitting out;

4.1.7 disregards substantially in the following form are to be made in determining the open market rent:

- (a) the effect of the tenant's occupation or that of any undertenant and goodwill arising from such occupation;
- (b) any reduction in rental value attributable to works carried out to the Premises by the tenant or any undertenant whether before or during the term; and
- (c) any increase in rental value attributable to any improvements to the Premises carried out at the cost of the tenant or any undertenant in each case with the consent of the landlord where required whether before or during the term otherwise than pursuant to an obligation to the landlord;

4.1.8 there are no other material assumptions or disregards.

4.2 Where there are any provisions for rent review:

4.2.1 the Company has told us that all steps in current rent reviews have been duly taken and no rent reviews are currently under negotiation or the subject of a reference to an expert or arbitrator or the courts;

4.2.2 where the current annual rent is not the same as the annual rent originally reserved, evidence of its agreement or determination has been placed with the documents of title;

4.2.3 the Company has told us that no building, alteration or improvement has been carried out pursuant to an obligation to the landlord.

Disclosures

5. Repair and yielding up

5.1 Where the whole of the Property is comprised in a single Letting Document, the tenant is responsible for keeping the whole of the Premises and (to the extent they form part of the Premises) fittings and plant and equipment in good and substantial repair and condition (damage by insured risks excepted unless and to the extent that insurance is vitiated by the act or default of the tenant), and is responsible for the decoration of the interior and exterior of the Premises not less frequently than every five and three years respectively.

- 5.2 Where the Premises comprised in any Letting Document form part or parts only of the Property, the tenant is responsible for keeping the whole of the interior of its Premises and fittings and plant and equipment demised to it in good and substantial repair and condition (damage by insured risks excepted unless and to the extent that insurance is vitiated by the act or default of the tenant) and is responsible for the decoration of the interior of its Premises not less frequently than every five years.
- 5.3 On expiry or earlier determination of the term granted by the Letting Document the tenant is to yield up the Premises in a condition consistent with the performance of its repairing obligations and with vacant possession.

Disclosures

6. **Restrictions on use**

- 6.1 The uses permitted by the Letting Document are consistent with the Existing Use.
- 6.2 The tenant is not permitted to change the use of the Premises from the present permitted use set out in Part 1A of this Schedule, unless the landlord in its absolute discretion agrees.

Disclosures

7. **Alterations**

- 7.1 The tenant is prohibited from making structural alterations or additions to, or alterations affecting the external appearance of, the Premises.
- 7.2 The tenant may carry out:
- 7.2.1 non-structural alterations to the Premises with the prior written consent of the landlord, such consent not to be unreasonably withheld; and
 - 7.2.2 the erection or dismantling of demountable partitioning without the prior consent of the landlord.
- 7.3 The tenant is required to remove all alterations and additions made during the term on yielding up the Premises at the expiration or sooner determination of the term unless the landlord requires otherwise.

Disclosures

8. Alienation

8.1 Except as mentioned subsequently in this paragraph 8, the tenant may not:

8.1.1 share or part with possession of the Premises or any part;

8.1.2 permit another to occupy the Premises or any part;

8.1.3 share occupation of the Premises or any part; or

8.1.4 hold the Premises or any part on trust.

8.2 The tenant may not assign underlet or charge part only of the Premises.

8.3 The tenant may assign or charge the whole of the Premises with the prior written consent of the landlord, such consent not to be unreasonably withheld, and any restrictions on the tenant assigning the Premises or conditions that the landlord might impose on such assignment (including any agreement under Section 19(1A) of the Landlord and Tenant Act 1927) are fairly summarised in the Disclosures.

8.4 Where the Letting Document is a new tenancy:

8.4.1 the landlord has an express contractual right (whether or not reasonable in the circumstances) to require an authorised guarantee agreement from the tenant and to require any guarantor of the tenant to guarantee the tenant's obligations in the authorised guarantee agreement;

8.4.2 no guarantor of the current tenant has acted as a guarantor of any previous tenant; and

8.4.3 the Letting Document is not now and has not been previously vested in any guarantor of a previous tenant.

8.5 The tenant under the Letting Document may underlet the whole of the Premises with the prior consent of the landlord, such consent not to be unreasonably withheld, but subject to conditions including those substantially in the following form:

8.5.1 the underlease is to be granted:

(a) without a fine, premium, reverse premium or other inducement;

(b) at a rent which is no less than the open market rent and is not calculated by reference to the passing rent under the Letting Document; and

- (c) on the same terms as the Letting Document with rent reviews on the same dates;
 - 8.5.2 the undertenant is to covenant directly with the landlord to comply with its covenants in the underlease;
 - 8.5.3 the tenant agrees with the landlord to enforce the covenants by the undertenant;
 - 8.5.4 the tenant is not to vary or waive its rights under the underlease or accept a surrender of the underlease without the prior written consent of the landlord, such consent not to be unreasonably withheld; and
 - 8.5.5 the underlease is to be validly contracted out of the Landlord and Tenant Act 1954.
- 8.6 The tenant may share occupation of the Premises with another member of the same group of companies subject to such sharing of occupation not granting the group company security of tenure within the provisions of the Landlord and Tenant Act 1954, nor entitling it to occupy the Premises after it ceases to be a member of the same group of companies as the tenant.

Disclosures

9. Insurance

- 9.1 The landlord is required to insure:
- 9.1.1 the Property against damage caused by the risks of fire (including subterranean fire), lightning, explosion, storm, flood, subsidence, landslip, heave, earthquake, burst or overflowing water pipes, tanks or apparatus, impact by aircraft or other aerial devices and any articles dropped from them, impact by vehicles, terrorism, riot, civil commotion and malicious damage and any other risks against which the landlord reasonably insures from time to time, to the extent that insurance is available in the United Kingdom market with a reputable insurer, and subject to standard exclusions limitations and excesses;
 - 9.1.2 for the full reinstatement cost of the Property (including professional fees and value added tax); and
 - 9.1.3 for loss of at least three years' annual rent and (if applicable) service charge.
- 9.2 The tenant is required to pay to the landlord as rent a sum equal to the premiums (or the proportion appropriate to the Premises) paid by the landlord for insuring the Property in accordance with its obligations briefly described in paragraph 9.1.

- 9.3 There is provision for suspension of rent if the Premises or any part of the Property are damaged or destroyed by an insured risk so as to make the Premises incapable of use and occupation or inaccessible, such suspension being limited to a period no longer than the loss of rent period for which the landlord covenants to insure. Such suspension will not apply to the extent that the insurance has been vitiated by the act or default of the tenant.
- 9.4 If the Premises or any part of the Property are damaged or destroyed by an insured risk so as to make the Premises incapable of use and occupation or inaccessible:
- 9.4.1 the landlord is obliged to reinstate the Premises or such part of the Property once all necessary consents have been obtained and subject to the insurance not being vitiated by the act or default of the tenant. The landlord is to use at least reasonable endeavours to obtain such consents; and
- 9.4.2 both the landlord and the tenant are entitled to determine the Letting Document if it is not possible to reinstate the Premises or such part of the Property by the end of the period of loss of rent insurance for which the landlord covenants to insure.
- 9.5 If the Premises or any part of the Property are damaged or destroyed by an insured risk so as to make the Premises incapable of use and occupation or inaccessible and reinstatement is frustrated insurance monies are payable to the landlord.
- 9.6 There are no specific provisions in any Letting Document dealing with the effect of damage or destruction of the Premises by an uninsured risk.

Disclosures

10. Service charge

- 10.1 If the whole of the Property is comprised in a single Letting Document, there is no provision in the Letting Document for the payment by the tenant of a service or other similar charge.
- 10.2 Where the premises comprised in the Letting Document form part of the Property:
- 10.2.1 there are provisions for payment of a service or other similar charge which entitle the landlord to recover from the tenant the appropriate part of the cost of:
- (a) keeping the Property and all landlord's plant, machinery and equipment in good and substantial repair and condition;
- (b) paying outgoings;

- (c) providing a range of services which the Company has told us are reasonable and appropriate for the type of buildings in the Property; and
- (d) an amount for the management of the Property which either does not exceed 10% of the total service charge or is required to be reasonable;

10.2.2 the Company has told us that there are no material irrecoverable items, caps or other limitations on recovery of the costs referred to in paragraph 10.2.1 of this Part of this Schedule;

10.2.3 the Company has told us that there are no lettable areas of the Property that are currently unlet.

Disclosures

11. Rights of re-entry

The landlord is entitled to re-enter the Premises in the cases of bankruptcy, liquidation, whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction of a solvent company), administrative receivership or the administration of the tenant, or appointment of a receiver of the tenant's property, as well as for non-payment of rent (whether or not formally demanded) for a period not exceeding 21 days or for any breach of the tenant's obligations.

Disclosures

12. Options and rights of first refusal

Except where specified in Part 1A of this Schedule, there are no:

- 12.1 options to determine (other than any in respect of damage or destruction of the Premises by an insured risk); or
- 12.2 options to renew the term; or
- 12.3 options to purchase or rights of first refusal in favour of either the landlord or the tenant.

Disclosures

13. **Landlord and Tenant Act 1954**

13.1 The Company has told us that no notice has been served in respect of any Letting Document pursuant to Sections 25 or 26 of the Landlord and Tenant Act 1954.

13.2 Where a Letting Document is contracted out of the Landlord and Tenant Act 1954 notices have been served and declarations made such that any lease to be granted to a former tenant pursuant to its obligations under an authorised guarantee agreement or to a guarantor pursuant to its guarantee of a Letting Document or of an authorised guarantee agreement will be excluded from the security of tenure provisions of the Landlord and Tenant Act 1954.

Disclosures

14. **New tenancy**

The Letting Document is a new tenancy.

Disclosures

15. **Direct covenants**

If the Letting Document is not a new tenancy for the purposes of the 1995 Act, the present tenant and each of its predecessors in title and any guarantor for any of them has given a covenant to the landlord to observe and perform the obligations of the tenant throughout the term and our investigations do not disclose that any such persons have been released or are or may be entitled to be released.

Disclosures

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16. **Overriding lease**

The Company has told us that no person has made a claim for an overriding lease under Section 19 of the 1995 Act against the Company nor, so far as it is aware, against any of its predecessors and that, so far as it is aware, no person is entitled to make such a claim and that, so far as it is aware, no notice has been served under Section 17 of the 1995 Act (other than those referred to in paragraph 3.3 of this Part of this Schedule) which would give rise to any such entitlement.

<u><i>Disclosures</i></u>

17. **Collateral assurances and undertakings**

The Company has told us that, so far as it is aware, no collateral assurances, undertakings or concessions have been made by any party to any Letting Document.

<u><i>Disclosures</i></u>

18. **Consents**

Any consents required for the grant of the Letting Document and any dealings with it have been obtained and placed with the documents of title along with evidence of the registration of the grant or dealing where requisite.

<u><i>Disclosures</i></u>

19. **Use of remainder of Property**

No Letting Document contains any restriction on the use of the remainder of the Property by the landlord other than by virtue of the covenant for quiet enjoyment.

Disclosures

20. **Breaches of covenant**

The Company has told us that:

- 20.1 it is not aware of any subsisting material breach of the covenants or conditions contained in the Letting Document, whether on the part of the landlord or the tenant, or of any other event which could give rise to forfeiture of the Letting Document;
- 20.2 no notice alleging any breach of the covenants or conditions contained in the Letting Document, whether on the part of the landlord or the tenant, remains outstanding; and
- 20.3 so far as the Company is aware, no breach of covenant has been waived or acquiesced in.

Disclosures

21. **Costs**

The tenant is obliged to pay the reasonable and proper costs of the landlord in connection with:

- 21.1 any notice under sections 146 or 147 of the Law of Property Act 1925;
- 21.2 the preparation and service of any schedule of dilapidations;
- 21.3 any breach of obligation of the tenant; and
- 21.4 any application for consent (unless unreasonably withheld).

Disclosures



22. **VAT**

22.1 For the purposes of this paragraph, “option to tax” has the meaning given in Schedule 10 the Value Added Tax Act 1994 and includes an option to tax which has been deemed, or treated as having been, exercised.

22.2 The Company has told us that a valid option to tax has been exercised by the Company or a body corporate in relation to which the Company is either a relevant associate or a relevant group member over the whole Property and that such option has not been, or been deemed to be, disapplied or revoked so that value added tax is due in respect of any supply of the Property by it.

22.3 Whether or not an option to tax over the Property is in place, there are no provisions in any of the Letting Documents (or absence of any provisions) which prevent either the Company or a body corporate in relation to which it is either a relevant associate or a relevant group member from exercising a valid option to tax in respect of the Property or from increasing the rent or other payments under the Letting Documents by, or requiring a payment in addition of, an amount in respect of value added tax chargeable by reason of that option to tax or which oblige the Company or other person to indemnify the tenant in respect of all or any part of that amount.

22.4 The Company has told us that it is not aware of any reason why it should be prevented from charging value added tax in relation to supplies made by it under any Letting Document (nor, therefore, why its recovery of input value added tax attributable to those supplies should be restricted), in particular as a result of the operation of any of the disapplication provisions in Schedule 10 to the Value Added Tax Act 1994.

22.5 Where there are provisions in any Letting Document entitling the landlord to be paid, indemnified or reimbursed by the tenant for any amount expended or to be expended by or on behalf of the landlord, that entitlement includes an amount in respect of the value added tax to the extent that the value added tax cannot be recovered from HM Revenue & Customs by the landlord.

22.6 The Letting Document reserves value added tax as rent.

Disclosures

23. **Compensation**

There are provisions in each Letting Document where applicable excluding the right of the tenant to compensation on quitting the Premises to the extent permitted at law.

Disclosures

24. **Notices in respect of improvements**

The Company has told us that so far as the Company is aware, no notice of intention to make improvements has been served under Section 3(1) of the Landlord and Tenant Act 1927.

Disclosures

25. **Statutory compliance**

The Letting Document contains an obligation on the part of the tenant to comply with the requirements of any statute which affects the Premises.

Disclosures

26. **Possession**

The Company has told us that it is not aware of any sub-letting, parting with possession or sharing of occupation by any tenant.

Disclosures

27. **Rent deposits**

27.1 The amount of any rent deposit is set out in Part 1B of this Schedule.

27.2 Where any sums are charged to the landlord by any corporate tenant by way of security for compliance with the tenant's obligations under any Letting Document, the charge has if necessary been properly registered at the Companies Registry within the prescribed time limit.

Disclosures

28. **Variations**

The Company has told us that, so far as it is aware, the Letting Document has not been varied in such a way as to give rise to a surrender and regrant or as to render any former tenant or the guarantor of any former tenant no longer or not fully liable to comply with any tenant covenant, whether under the 1995 Act or at common law.

Disclosures

29. **Guarantee provisions**

29.1 The guarantee provisions in the Letting Document or in an authorised guarantee agreement or in any other guarantee supplemental to the Letting Document include the following:

29.1.1 the guarantee is of the tenant's obligation to pay the rents and other sums reserved by the Letting Document and to perform the tenant's covenants in the Letting Document;

29.1.2 the guarantee is expressed to be a primary obligation on the part of the guarantor;

29.1.3 the guarantee contains an indemnity with regard to any loss suffered by the landlord as a result of the default of the tenant or as a result of the obligation, the subject of the guarantee, becoming unenforceable;

- 29.1.4 there is no financial limit on the guarantee;
 - 29.1.5 the guarantor covenants that, in the event that the Letting Document is disclaimed, the guarantor will, if required by the landlord within a period of six months after the relevant event, enter into a new Letting Document (as tenant) on essentially the same terms as the previous Letting Document; and
 - 29.1.6 the guarantee contains standard protective provisions, including an acknowledgement that the guarantee is not affected by any concession or indulgence granted to the tenant, any change to the terms of the underlying Letting Document, any incapacity on the part of the tenant, or the invalidity of any of the underlying obligations.
- 29.2 Either the guarantee provisions provide that any consent given by the landlord and any variation to the terms of the underlying Letting Document will not release the guarantor or to the extent required to ensure that the guarantee continues to be effective, the guarantor has consented to any licences granted relating to the Letting Document and any change to the terms of the Letting Document.

Disclosures

30. **No other material matters**

There are no other material matters that we consider ought to be brought to your attention in relation to the Letting Document.

Disclosures

SCHEDULE 5 - SUPPLEMENT

Details of further Letting Documents

Note: Disclosures of material variations between each further Letting Document and the relevant standard Letting Document are set out below the details of each further Letting Document

Brief description of Premises let by the Letting Document and date of Letting Document	Name and address of present tenant and any present guarantor and name of any guarantor pursuant to an AGA and any sub-guarantor of an AGA	Term and expiry date	Current annual rent (including start date, if not yet payable) and future rent review dates	Amount of initial and current rent deposit	Present Permitted Use (and whether personal)	Summary of any options to determine (other than on damage or destruction), or renew, or purchase, or rights of first refusal	Is the Letting Document contracted out of the Landlord and Tenant Act 1954	Type of Standard Letting Document
(eg Unit 1) []		years commencing on and expiring on	£ pa to be reviewed on and				Yes/No	[First] [Second]

Disclosures

(eg Unit 2) []		years commencing on and expiring on	£ to reviewed on	pa be			Yes/No	[First] [Second]

Disclosures

SCHEDULE 6

Searches and enquiries

Search	Date of result (or state “not made”)	Disclosures
Official search in the Index Map (SIM)		
Local search certificate and replies to Law Society CON 29 Enquiries of the local authority (2016) and any other relevant enquiries in Law Society CON 29O Optional enquiries of local authority (2016) including enquiry 22 (common land and town or village green)		
Commercial drainage and water enquiries		
Enquiries of The Coal Authority as to past, present and future mining operations in proximity to the Property		
Where title to the Property is not registered at Land Registry, Land Charges Act searches against the [Seller and the] Company and date of expiry of priority		
Land Registry search (whether of whole or part), date of expiry of priority, confirmation that the search from date used is the search from date stated on the official copies used to complete this Certificate, name of party having benefit of priority period and basis of search (e.g. transfer)		

Where title to the Property is not registered, date of search at the Companies Registry of the file of all companies disclosed by the documents of title as estate owners of the Property since the root of title		
Search at the Companies Registry against the [Seller and the] Company		
Enquiries of the Highways Authority to ascertain the boundaries of publicly maintainable highways abutting, and any footpaths or rights of way affecting, the Property		[Please refer to the Disclosures to paragraph 3.2 of Schedule 3.]
Chancel Repairs Search		
Details of other searches or enquiries we considered to be appropriate		

Date

20[]

Signed:

Name of firm:

Address:

Reference:

**THE CITY OF LONDON LAW SOCIETY
LAND LAW COMMITTEE
CERTIFICATE OF TITLE
(Seventh Edition 2016 update)**

August 2022 Update: There has been an update to Part 1 of Schedule 2 to the Certificate of title for the Economic Crime (Transparency and Enforcement) Act 2022. The following has been added:

“If registered:

Registered title number:

Name of registered proprietor:

If the registered proprietor is an overseas entity as defined in section 2 of the Economic Crime (Transparency and Enforcement) Act 2022 (“ECTEA”), is the entity registered in the register of overseas entities established under section 3 of ECTEA? [Yes/No]

If so, include the overseas entity ID for the entity and the date of registration in the register:
Overseas entity ID []; Date of registration []

If the Company (if different from the registered proprietor) is an overseas entity as defined in section 2 of ECTEA, is the entity registered in the register of overseas entities established under section 3 of ECTEA? [Yes/No]

If so, include the overseas entity ID for the entity and the date of registration in the register:
Overseas entity ID []; Date of registration []

If unregistered:

Root of title:

Name of legal owner of the unregistered property:

If the legal owner is an overseas entity as defined in section 2 of the Economic Crime (Transparency and Enforcement) Act 2022 (“ECTEA”), is the entity registered in the register of overseas entities established under section 3 of ECTEA? [Yes/No]

If so, include the overseas entity ID for the entity and the date of registration in the register:
Overseas entity ID []; Date of registration []

If the Company (if different from the legal owner) is an overseas entity as defined in section 2 of ECTEA, is the entity registered in the register of overseas entities established under section 3 of ECTEA? [Yes/No]

If so, include the overseas entity ID for the entity and the date of registration in the register:
Overseas entity ID []; Date of registration []”

It is hoped that this additional wording provides a useful signpost to the Economic Crime (Transparency and Enforcement) Act 2022 for both providers and recipients of the Certificate.

NOTE TO USERS

This note is issued with the Seventh Edition 2016 Update of The City of London Law Society ("CLLS") Land Law Committee Certificate of Title ("the Certificate"), but is not part of it.

The Seventh Edition is four years old and the Committee's view is that it has been well received and does not require major change. However, there are certain aspects that need updating or cause concern to users and the Committee considered that, rather than creating a new Eighth Edition, it would be more appropriate to produce a 2016 Update of the Seventh Edition.

We set out below the main changes in the 2016 Update. There then follows general comments on the Certificate that are similar to the Note to Users in the original Seventh Edition. The solicitors who give the Certificate are described in this Note as the "certifier".

Main changes in the 2016 Update

Clause 1 Reliance on this Certificate

The most extensive changes have been made to clause 1. Some of the changes more clearly express provisions from the original Seventh Edition.

There is a new clause 1.6 which confirms that where the recipients of the Certificate ("Addressees") are more than one person, the certifier's aggregate liability to all the Addressees is no greater than the liability they would have had if the Addressees were a single person. Recipients of the Certificate may want to consider whether the definition of "Addressees" should be wide enough to include not only known benefiting parties at the date of the Certificate, but also any party who it is envisaged will need to benefit from the Certificate after its date.

Clause 1.7 contains an acknowledgment that the Addressees are entitled to rely on the Certificate's statements even if any document or matter referred to in a statement is in the public domain or has been disclosed or made available in a number of specified ways such as via a data room. This is to prevent any argument that the Addressees cannot rely on the Certificate, because they or their professional team received Certificate information separately in the identified ways.

New clause 1.8 is an exclusion of personal liability for individual members, partners, shareholders, consultants or employees of the certifying firm.

The Certificate can be disclosed to a third party, but it cannot be relied on (clause 1.3).

Some Addressees will wish to use their own forms of reliance wording.

Clause 2.4 (Searches and enquiries) – The statement that no matters are disclosed is also subject to general and usual caveats or disclaimers on the search results or replies to enquiries.

Clause 4.3 Confirmation of statements where there is a Seller – The Certificate assumes that the Company has purchased the Property from the Seller immediately prior to or as part of completion of the Transaction. This is a change from the original Seventh Edition, which stated that the Company "will purchase" the Property. This change resolves some inconsistencies in the Certificate and reflects the Committee's view that the Certificate is usually given when the Company is entitled to the Property (subject to registration at Land Registry). Other provisions have been adjusted to reflect this change including clause 2.1.3(c), definition of "Lease" in Schedule 1 and paragraph 8.1 in Schedule 3. Disclosure should be made if the actual position differs.

Clause 4.3.1(b) – The reference to enquiries has been widened to include enquiries other than the CPSEs.

Schedule 1

Paragraph 1 Definitions and Interpretation

"Benefit" - this no longer includes rights or easements being acquired through prescription, since no right has crystallised at that stage.

"Disclosures" – this has been widened to more explicitly include disclosures that are not made against Certificate statements, for example, the information provided in Schedule 2 and the disclosures in Schedule 6.

"Letting Document" – this now includes continuation of tenancies under the Landlord and Tenant Act 1954 or otherwise.

"Town and Country Planning Legislation" – the new definition avoids reference to specific legislation which can become out of date.

Paragraph 3.3 – the Qualification is widened to confirm that the certifier has not considered other technical reports or surveys relating to the Property's condition, but the Qualification is subject to any disclosure in Schedule 6.

Paragraph 3.9 – This is a new Qualification that the certifier has not considered whether a right is in the process of being acquired through prescription (see **"Benefit"** above), nor whether it has been acquired through prescription (unless it is set out in Schedule 2).

Schedule 2 Property Details

The Benefits now specifically include rights granted to the tenant under the Lease and the Incumbrances specifically include the rights reserved to the landlord under the Lease. This has been done to ensure they are included in paragraphs 4.1 and 5.1 respectively of Schedule 3.

Schedule 3 Matters affecting the Property

Paragraph 1.2.2 – The statement does not cover title documents registered at Land Registry since the registration will not have taken place without Land Registry having been provided with the

SDLT certificate (where relevant).

Paragraphs 1.4 and 1.5 – There is a new statement that a valid option to tax (for VAT purposes) has been exercised and has not been disapplied or revoked. The Certificate did not previously cover VAT elections for unlet freehold properties.

Paragraph 3 Access – The changes made, including the addition of the words "**appears to**", reflect widely held concerns about the difficulties of the certifier (for example, because of deficiencies sometimes encountered with local authority plans) in confirming that the Property abuts a roadway maintainable at public expense. The new wording sets out the process commonly adopted by certifiers. The changes were also motivated by the very frequent disclosure against the equivalent statement in the original Seventh Edition.

Paragraph 5.3 – The confirmation that no person is in the process of acquiring an Incumbrance through prescription is now stated to exclude rights to light and rights to air. The same change is made in paragraph 8.2. Rights to light or air are not ordinarily within the scope of the Certificate.

Paragraph 12.2 – This statement has been slightly amended, since the previous use of the word "lawful" could imply that the certifier had checked that a planning permission has been lawfully implemented. The revised wording states that the present actual use is permitted under a subsisting planning permission (or otherwise under planning legislation) and the Company has confirmed that the permission has been implemented.

Paragraph 14 – the period in the original Seventh Edition of three months has been replaced with six weeks to reflect the change in the period for judicial review.

Paragraph 18 – The statement now confirms that the Property is not in a conservation area.

Paragraph 19 – The statement now confirms that the Property is neither nominated nor listed as an asset of community value. Community infrastructure levy is already referred to in paragraph 17.1 of Schedule 3 (the reference to Part 11 of the Planning Act 2008).

Paragraph 23.1 – The wording has been shortened to state that the Company holds all necessary statutory permits etc in respect of the Existing Use of the Property. There is a new statement that the Company is not aware of any circumstances which may result in notices being served etc.

Paragraph 23.3 – There is a new Company confirmation that it holds the energy performance certificates (EPCs) for the Property. The Certificate does not specify EPC ratings, since the Property may have a number of different EPCs and different ratings. Details of the ratings can be obtained separately.

Schedule 4 The Lease

Part 1B- this now includes supplemental documents which makes it clear that landlord and tenant documentation other than leases and licences should also be included.

The reference to "Specified insured risks" in Part 1B of both Schedule 4 and Schedule 5 has been removed, because a statement of typical insured risks has been included in paragraph 9 of Part 2 of Schedules 4 and 5. This statement is taken from a "Model Commercial Lease"

<http://modelcommerciallease.co.uk> and the Committee thanks the authors for their permission to use the wording in the Certificate.

Part 2

Paragraph 4.3 – The wording relating to the disregard of tenant's improvements from the original Seventh Edition has been removed, since the Lease (usually being a long lease without a rack rent) is unlikely to have a rent review clause with such a disregard.

Paragraph 7.3 – The statement is changed from the tenant being obliged to reinstate alterations "if required by the landlord" to "unless the landlord requires otherwise". The Committee considered that this was more reflective of leases generally. Those words have also been inserted in paragraph 7.3 of Part 2 of Schedule 5.

Paragraph 8.1 – "Charging" has been included.

Paragraph 9.1 – In addition to the new statement of typical insured risks, there is the commonly encountered wording "to the extent that insurance is available in the United Kingdom market with a reputable insurer". Those words have also been inserted in paragraph 9.1.1 of Part 2 of Schedule 5.

Paragraph 15 – Consent to works or change of use is now dealt with in a new paragraph 15.2. The new wording reflects the fact that the certifier can only give the confirmation in relation to consents that have been revealed to them, but there is also a Company confirmation that there have been no other works or change of use.

Paragraph 16- There is a new paragraph 16.3 confirming that no superior lease lets property other than the Property. This provides an assurance that the lease cannot be forfeited, because of a breach in relation to other property let under the superior lease over which the Company has no control.

Paragraph 18.1- In relation to the reference to events giving rise to forfeiture, the words of "a material nature" have been deleted, since "materiality" is already dealt with more appropriately in relation to breach of covenants. The same change has been made to paragraph 20.1 of Part 2 of Schedule 5.

Paragraph 20.3 of the original Seventh Edition has been removed since the abnormal rent increase provision in paragraph 14 of Schedule 17A to the Finance Act 2003 has been repealed.

Schedule 5 The Letting Documents

Part 1A

The amount of initial and current rent deposit is now dealt with in Part 1B.

Options to determine on damage or destruction are dealt with in paragraph 9.4.2 of Part 2, so they are omitted from Part 1A.

Part 2

Paragraph 12 – This now cross-refers to options and rights of first refusal specified in Part 1A.

Paragraph 13 – Paragraph 13.1 of the original Seventh Edition has been removed and this is now covered by the new extended definition of "Letting Document". So any continuation of the tenancy under the Landlord and Tenant Act 1954 or otherwise should be treated as a Letting Document.

Paragraph 15 of the original Seventh Edition has been removed since this duplicates Part 1A.

Paragraph 27.2 – The words "if necessary" have been added to recognise that charges in rent deposit deeds no longer normally require registration at Companies House.

Paragraph 29 – Paragraph 29.1 has been amended to include the situation where there is not necessarily a guarantor, but there are guarantee provisions. In paragraph 29.1.5, the reference to forfeiture has been removed, since the Committee's view was that more often the requirement for the guarantor to take a new lease would be limited to disclaimer of the Letting Document.

Schedule 6 Searches and enquiries

The Law Society CON29 enquiries and CON29O enquiries of local authority (2016) are referred to. In relation to Land Registry's priority search, there is an added confirmation that the search from date used is the search from date stated on the official copies used to complete the Certificate. The Disclosures in relation to the Enquiries of the Highways Authority include the option to cross refer to the Disclosures to paragraph 3.2 of Schedule 3 on Access.

Use of Certificate

Certificates of title are used in many different transactions. However, the Certificate is most frequently used in a lending context (for example, solicitors for the borrower providing the Certificate to the lender); corporate transactions (such as the sale of the shares in a property holding corporate vehicle); the disposal of fractions of a property holding vehicle (for example, in a limited partnership context); in large transactions such as the disposal of portfolios; or for tenders where there are a number of bidders.

The Certificate is intended to be comprehensive and strike a reasonable balance between the interests of those to whom it is addressed and the solicitors who give it.

The Certificate is not designed to be a management tool or a report on title, although it can be of use to valuers for its key letting information. Consideration should be given to using the CLLS Report on Title, where it is intended that the document should be used for management purposes.

The Committee has produced a "Certificate Wrapper" (available from the CLLS website) that can be used in connection with reports on title. The production of the Certificate Wrapper was a response to the increasing use on transactions of "wrapper" documents. A common context for the wrapper is that a property has been purchased and the solicitors acting for the purchaser produced a report on title in relation to the acquisition for the purchaser's benefit. Within a short

period after the production of the report, the new owner of the property wishes to re-finance the property and the party providing the finance requires a certificate of title for its benefit in the form of the Committee's Certificate of Title (Seventh Edition 2016 Update).

Since the report was produced recently, there is considerable sense from an efficiency perspective for the solicitors, who provided the report, to re-issue it for the funder's benefit. However, since the funder requires the CLLS certificate of title, its front end must wrap around the report and certain additional confirmations have to be given by the certifying solicitors so that the funder ends up with the benefit of a document equivalent to what it would have received if the Certificate itself had been provided.

As users will know, a primary purpose behind the Certificate is to reduce as much as possible the negotiation that takes place over the form of certificates of title. This objective seems to have been achieved, with the Certificate being accepted as the standard by most firms in England and Wales. Many lenders insist on the Certificate being used.

Users are reminded that the Certificate will not be suitable on every occasion and may require significant adaptation. For example, the Certificate is, usually, inappropriate for a rack rent lease, for which the CLLS Report on Title should be used. Also the "Lease" described in Schedule 4 is a typical long lease granted at a premium and reserving a ground rent with limited rent review provisions and more flexible alteration and alienation provisions than for a shorter rack rent lease. If, for example, the Certificate is to be used for a rent sharing lease, many of the standard statements in Schedule 4 will be inappropriate.

On occasions, the certifier and recipient of the Certificate may agree that a particular transaction requires a different approach to the Certificate. It is crucial that any changes to the form of the Certificate are transparent (clause 5 highlights that point). In particular, it is recognised that the Letting Documents Schedule can be difficult to complete where there are a large number of Letting Documents and the Certificate offers some flexibility in their treatment.

The 2011 Solicitors Code of Conduct does not require the Solicitors Regulation Authority to recognise the Certificate for use in secured lending transactions, on the basis that it does not relate to a "standard" mortgage of a private residence; the Certificate, in any event, is not appropriate for those circumstances. The status of the Certificate as a well-respected standard, generally accepted by the legal and lending marketplace, reinforces the acceptability of its use by a borrower's solicitor for the benefit of the borrower's lender.

A number of Scottish firms have collaborated in producing a certificate equivalent to the Certificate for use in Scotland, which can be accessed at- **www.psglegal.co.uk**

The Certificate will be published in the Encyclopaedia of Forms and Precedents and is also available on the Land Law Committee page of the City of London Law Society Website at: **www.citysolicitors.org.uk**

Comments on the 2016 Update of the Certificate can be made either to LexisNexis, once the Certificate has been published, or to the administrator at the City of London Law Society.

Format

The 2016 Update to the Seventh Edition does not make changes to the basic structure of the Certificate. The Certificate comprises:

- Main part containing provisions on Reliance, Certification, Valuers, Confirmation of statements, Form of Certificate and Schedules.
- Schedule 1 containing Definitions and Interpretation, Assumptions, Qualifications and Applicable Law.
- Schedule 2 containing specific Property details.
- Schedule 3 relating to Matters affecting the Property (Title, planning, statutory matters, environment and general).
- Schedule 4 relating to the Lease. Parts 1A and 1B include specific details of the Lease, Licences and other supplemental documents and Part 2 includes the statements.
- Schedule 5 relating to the Letting Documents. Parts 1A and 1B include specific details of the Letting Document, Licences and other supplemental documents and Part 2 includes the statements.
- Schedule 5 – Supplement, for multiple Letting Documents situations (see **Treatment of Letting Documents** below).
- Schedule 6 relating to Searches and enquiries.

Disclosures

There has been no change in approach in the 2016 Update to Disclosures.

There is a Disclosures box at the end of the main body of the Certificate before the Schedules and every statement in Schedule 4 and Schedule 5 is followed by a "Disclosures" box, where any Disclosure in respect of the statement can be inserted.

It is not necessary to insert "none" on each occasion if there are no Disclosures. Disclosures should be inserted in such a manner or style (e.g. italics) so as to distinguish them clearly from the statements and other provisions of the Certificate. "Disclosures" is used, rather than "qualifications", to avoid any confusion with the qualifications referred to in paragraph 3 of Schedule 1.

A concern with allowing the insertion of Disclosures so close to the statements in the Certificate is the increased risk that the certifier unwittingly changes the substantive provisions of the Certificate. Consequently, as a matter of courtesy and good practice, when the Certificate is provided to the recipient, it should be accompanied by a blackline comparison document showing changes from the form of Certificate on the CLLS Website.

Treatment of Letting Documents

Schedule 5 requires Parts 1A and 1B (Details of Letting Document and Licences and other supplemental documents) and Part 2 (Statements with Disclosures) to be completed for each standard Letting Document for the Property. This recognises that there will be usually be at least one and possibly more standard types of occupational lease for a Property and Schedule 5 requires all of Parts 1 and 2 to be completed for each standard.

For all the other Letting Documents at the Property, the Supplement to Schedule 5 envisages that they may be certified by reference to one or more of the standard Letting Documents. The extent of the details to be included and the recording of material variations and licences etc are to be agreed between the certifier and recipient of the Certificate and included in the Supplement. To assist users, the Certificate provides in the Supplement a tabular example of information that could be required for each Letting Document, with a box below the details of each Letting Document for Disclosures of material variations from the relevant standard. It is not mandatory to use this table.

As an alternative, Parts 1 and 2 of Schedule 5 may be completed for every Letting Document at the Property without using the Supplement.

Company's confirmation where there is a Seller

Clause 4.3 deals with the situation where the Company purchased the Property immediately before the time the Certificate is provided and the Seller is the primary source of knowledge and information about the Property. Clause 4.3 provides information on how the Company acquired its knowledge, which will enable the recipient of the Certificate to understand more clearly the basis for the Company's confirmations, whether it is the Company's own investigations and searches, the Seller's solicitors' replies to CPSEs or other enquiries, other material provided by the Seller or its advisers, or the Company's own inspection of the Property. There is also opportunity to disclose the identity of other parties who have provided information.

The Company's confirmations make it clear that the Seller and its advisers are the primary source of the Company's knowledge and that while the investigations of the certifier give no reason to doubt the accuracy of information provided by the Seller, the certifier does not accept responsibility for the information. There is also a provision that references in the Certificate to notices given or received by or actions taken or expected by the Company refer to the Company's knowledge of notices given or received by or actions taken or expected by the Seller. The recipient of the Certificate is also likely to want to know when replies or other information provided by the Seller are inadequate and clause 4.3 confirms that this is disclosed in the relevant part of the Certificate. Normal caveats relating to the Seller's awareness given by the Seller's solicitors in providing replies to enquiries (such as "not so far as the Seller is aware") should, usually, not be treated as an "inadequate" reply. An inadequate reply will, usually, be a lack of reply by the Seller's solicitors.

Information to produce the Certificate

A considerable amount of the information contained in the Certificate will be based on

information provided by the owner of the Property. To that extent, the Certificate replaces the normal enquiries before contract. This means that the certifier will have to liaise closely with the owner of the Property (or solicitors on the owner's behalf) to obtain that information.

The terms of the Certificate state that the Company has confirmed in writing to the certifier, within the five working days before the date of the Certificate, that to the best of the knowledge, information and belief of the Company the information contained in the final draft of the Certificate is complete and accurate in all respects. The certifier must ensure that such a confirmation is obtained. A Disclosure may have to be made where the Company cannot provide the confirmation, for example, there may be issues of confidentiality limiting enquiries that the Company may have made, or, if there is an insolvency related sale, the Certificate may need to reflect the limited information that the Seller may provide.

The certifier will need to draw the Company's attention to the fact that the Certificate states that the Company has inspected the Property not more than 20 working days before the date of the Certificate (paragraph 8.2 of Schedule 3). If this is not the case, a Disclosure will have to be made.

It is for the certifier to decide how best to elicit the information to produce the Certificate. To assist solicitors, examples of letters or questionnaires seeking information and confirmations from the owner of the Property appear on the Land Law Committee page of the City of London Law Society's website, but the use of such letters and questionnaires is not obligatory.

Often, the Certificate will be given to a lender providing finance for the Company to purchase the Property. In that case, the Company's knowledge of the Property will be slight and it will be relying on the information provided by the Seller's solicitors. This is covered more fully in **Company's confirmation where there is a Seller** above.

An issue commonly encountered is the mismatch between the information received from the Seller through replies to the Commercial Property Standard Enquiries (CPSEs) and the information needed by the buyer's solicitors to produce the Certificate for the benefit, for example, of the buyer (Company)'s lender. An example is clause 4.3.4 which states that the Seller has confirmed that it has provided all documents relating to the Property of which it has knowledge- this is not covered by the CPSEs. Some buyer's solicitors ask the Seller further enquiries to enable them to produce the Certificate, but resistance is sometimes encountered. As mentioned, clause 4.3 confirms that the certifier will disclose in the Certificate where inadequate replies have been given.

The information required to produce the Certificate may come from a party other than the Company or the Seller, such as a managing agent. In that situation, it is very likely that the certifier will want to disclose that fact in the Certificate and the recipient will want to know the information source. Clause 4.3 (in a Seller context) provides an opportunity to disclose this.

In reporting on the sources of the information, the certifier is identifying the sources as a matter of fact and it is not expected that the certifier will evaluate or highlight any inadequacies in the information sources.

It is important for the certifier to have a clear audit trail as to the information relied on to produce the Certificate. Ultimately, it is a matter of judgement for the certifier to decide whether

inadequate information from the Company, Seller or any other party requires a Disclosure against part of the Certificate.

It should not be forgotten that the recipient of the Certificate should obtain a warranty directly from the Company that the information provided by or on behalf of the Company to the solicitor so that he could produce the Certificate, is accurate. Where the Certificate relates to the acquisition of shares in the Company that owns the properties, the warranty must be provided by the seller of the shares in the Company, rather than the Company itself.

Opinions on enforceability

There remains considerable debate about the extent to which the certifier should advise on the enforceability of provisions, for example, in leases. Should the certifier, for example, highlight that an outgoing tenant's guarantor's guarantee of the tenant's assignee is unenforceable (see Court of Appeal decision in *K/S Victoria Street v House of Fraser (Stores Management) Limited* and others [27 July 2011]), or that a lease provision may fall foul of competition law? Alternatively, should the certifier give the information in the knowledge that the recipient of the Certificate will take its own professional advice on the Certificate's contents? The vast majority of the Committee considers that the latter approach should be adopted. Of course, the certifier should not deliberately mislead, but should give sufficient information about the relevant provision to enable the recipient's solicitors then to provide the recipient with the legal analysis including on questions of enforceability.

If the recipient of the Certificate, or those advising him, consider that more information needs to be provided by the certifier to enable a proper assessment to be made of any risks disclosed by the Certificate, the recipient or those advising him should be entitled to ask for this information.

Provision of documentation in addition to the Certificate

Another point which sometimes arises in relation to the Certificate is whether it should annex copies of documents, or extracts from documents, or should instead summarise the effect of those documents without attaching copies of them. The Committee's view is that, normally, the Certificate should summarise any relevant documents and that it should not be necessary to annex copies of them to it. The Certificate is intended to replace an investigation of title by the recipient's solicitors. If they have to read, not only the Certificate, but also a bundle of documents attached to it, the point of the Certificate is, to some extent, lost.

Having said that, the Committee appreciates that there are circumstances when a document, or a part of a document, is so important and so complex that it cannot be summarised accurately. The Committee believes that such circumstances are rare (an example may be a complex rent sharing arrangement), but where they do exist, it would be appropriate for the document, or an extract from it, to be annexed to the Certificate.

Where documents, such as leases, are required to be provided in advance of completion, for example, as a condition precedent for lending purposes, the recipient of the Certificate (for

example, a lender) is under no obligation to examine the documents and may rely solely on the contents of the Certificate including any annexures to the Certificate. Reference should also be made to the new clause 1.7 mentioned in **Main changes in the 2016 Update** above.

Limiting liability of certifying solicitors

Some certifiers will wish to use their own forms of limitation wording, for example, in relation to time limits for making a claim.

The Committee recognises that the certifier may seek a limitation or "cap" on liability where the same Certificate is addressed to more than one person, in order to prevent a double claim against the solicitors and to ensure that the solicitors' liability to all ultimate addressees does not exceed the liability to the original addressee of the Certificate. As mentioned above, a new clause 1.6 has been introduced in that regard.

The Committee also recognises that the certifier, sometimes, seeks to cap its liability more generally. For example, where the Certificate is part of a corporate transaction, liability will sometimes be limited to the same level as other liability limits on the transaction. Some certifiers argue that if they limit their liability to their own clients under terms of engagement letters, why should they not do so for third parties in respect of the Certificate?

The Committee's view is that any such limitation or cap (or any other type of limitation or cap) must be a matter to be agreed by the solicitors and the addressees on a case by case basis. The following wording is an example:

"1.1 Any legal proceedings arising from or in connection with this Certificate [or any other certificate of title issued by this firm in connection with the Transaction] must be formally commenced within [] years from the date when the party bringing the proceedings becomes aware, or ought reasonably to have become aware, of the fact, matter, event or circumstance giving rise to the liability alleged and, in any event, not later than [] years after the date of this Certificate [or other certificate].

1.2 The total aggregate liability of this firm, its partners and/or employees for any damage, loss, cost, claim or expense arising out of, or in connection with this Certificate [and all other certificates of title issued by this firm in connection with the Transaction] [and any connected legal advice and services provided to any of the Addressees including the preparation of any reports or documents provided to any of the Addressees], whether such liability arises in contract, tort, negligence or as a result of a claim for misrepresentation or breach of statutory duty or otherwise, shall not exceed the total sum of £[].

1.3 The provisions of this Clause shall not exclude or limit any liability for fraud or dishonesty to the extent they cannot by law be so excluded or limited."

Special purpose vehicles

Property is frequently bought in the name of a company specially formed for that purpose, namely, a special purpose vehicle or SPV. Those giving a Certificate may wish to consider whether, in those circumstances, it is appropriate for the Certificate to be addressed to the SPV. If subsequently the shares in the SPV are sold, rather than the Property itself, the liability of the certifier will continue for the benefit of a second purchaser. Had the Property been sold, liability would effectively have ceased on sale.

Statement of Lease and Letting Document provisions

The Certificate contains a series of statements describing material provisions of a "typical" headlease (in the "Lease" Schedule) and institutional occupational lease (in the "Letting Documents" Schedule). Such an approach is intended to reduce the amount of information in relation to the Lease and Letting Documents, which needs to be incorporated in the Certificate. The certifier will highlight any departures from the Certificate's statements in the Disclosures box immediately below each statement.

This approach begs the question of how much of a departure from the wording of a statement must there be for a Disclosure to be made. The precise wording of the Certificate's statements is unlikely to be reflected in the wording of the particular Lease or Letting Document and confirmation that statements are "complete and accurate" is not intended to mean that the wording is the same. The Committee's view is that a Disclosure should be made when the certifier considers that there is a material difference in the wording or its legal effect. While this introduces an element of subjectivity, the certifier elsewhere in the Certificate certifies as to whether or not there are any other material matters. The Committee also considers that the Certificate's approach makes it more useful, in that it focuses on those aspects that are different from the "norm".

There is a separate definition of Premises for use in the context of the Lease and Letting Documents. This distinction is particularly relevant where the extent of the let premises differs from the Property.

Construction documents

The Certificate should reveal, through Disclosures to the statements in paragraph 24 of Schedule 3, whether there have been any construction works and provide basic details. Full reports on construction documentation should be dealt with separately. One simple reason for this is that neither the certifier nor the person reading the Certificate, are likely to be the individuals responsible for reviewing the construction documentation.

Insurance, licensing and environmental reports

The Certificate does not deal with insurance details, licensing or environmental reports in relation to the Property since those matters are, usually, dealt with separately. The recipient of the Certificate should consider what investigations it wishes to make in relation to those matters.

In relation to the statement in paragraph 9 of Schedule 3 on title policies, the certifier should check for any disclosure restrictions in the relevant insurance policies.

Notice of charge

The Certificate does not include a statement by the certifier that they undertake to serve notice of charge. This is something which, if needed, can be dealt with in the transaction documentation.

Sublettings

A question that arises in relation to reporting on letting documents is whether the Certificate should cover leases derived from Letting Documents, such as a subletting. If there are such leases, they will need to be mentioned, for example, as a Disclosure to paragraph 26 of Part 2 of Schedule 5, which relates to who is in possession of the Property. It is suggested that, generally, basic details should be provided of the "subletting" such as date of lease, parties, current tenant, premises, current rent, and whether the subletting is contracted out or not. The recipient of the Certificate can request more information, if considered necessary. Treating such sublettings as Letting Documents is likely to create confusion in the presentation of the Certificate.

One possible exception where the subletting may need a more thorough treatment is if there is some underlying commercial necessity to look at the subletting, such as where the tenant under the Letting Document is surrendering its interest.