

## PART 2 – CONFIDENTIAL FACTS AND ADVICE

**MD2049**

**Title:** Royal Docks Enterprise Zone Delivery

*Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.*

**This information is not for publication until the stated date, because:**

Information is given on previous commercial negotiations and the associated agreement between the London Borough of Newham (LBN) and the Greater London Authority (GLA).

**Date** at which Part 2 will cease to be confidential or when confidentiality should be reviewed: to be reviewed once the relevant appointments and commercial agreements have been negotiated and signed/entered into. Expected to be 1 April 2017.

**Legal recommendation on the grounds of keeping the information confidential:**

In the event of any request for access to the information contained in this document under section 1 of the Freedom of Information Act 2000 ("the Act"), it is considered that access can be denied on the basis that the disclosure of such information would prejudice the GLA's commercial interests and is therefore covered by the exemption under section 43 of the Act and/or on the basis that information contains personal information affecting an individual's privacy and is therefore covered by section 40 of the Act.

Section 1 of the Act creates the general right of access, which provides that any person making a request for information to a public authority is entitled:

- to be informed in writing by the public authority whether it holds information of the description specified in the request; and
- if that is the case, to have that information communicated to him/her.

Part II of the Act contains a number of exemptions from disclosure for certain classes of information.

Section 40 of the Act provides that information is exempt information if it constitutes personal data under data protection legislation. The paragraph above states that detail is provided on future recruitment and on anticipated salaries in respect of such future GLA recruitment. This information may be considered information constituting personal data under data protection legislation because it could potentially be used to identify an individual's salary once these positions have been filled.

Section 43 of the Act provides that information is exempt information if its disclosure under the Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it). The paragraph above states that the information may be considered commercially sensitive as its release could detrimentally affect the GLA's ability to secure the optimum arrangements for:

- recruiting new posts to the EZ Delivery Team; and
- entering into a Deed of Agreement with LBN.

The section 43 exemption is a qualified exemption and its use is therefore subject to a public interest assessment.

### **Public Interest Assessment**

On balance it is considered that the public interest is best served if the information is not disclosed at this point. Disclosure may have a detrimental effect on the GLA's commercial interests, in particular its ability to negotiate optimum terms for future recruitment in respect of the EZ.

The public interest is therefore served in ensuring that the GLA can secure the optimum arrangements for the recruitment of EZ Delivery Team members in respect of potential projects in the EZ. These arrangements form part of a wider project to regenerate the EZ, a significant project which will promote economic and social development and wealth creation in London. It is considered that this outweighs the general public interest in disclosure for reasons of transparency of decision making.

The eligibility of these exemptions should be reassessed in the event of an FOI request for this information as the level of sensitivity will change over time and different circumstances may alter the arguments in favour of non-disclosure.

**Legal Adviser** - I make the above recommendations that this information should be considered confidential at this time

**Name:** Emma Brookes

**Date:** 16 February 2017

*Once this form is fully authorised, it should be circulated with Part 1.*

**Confidential decision and/or advice:**

## **1. Appendix 1 – EZ Deed of Agreement (latest draft)**

..... 2017

**THE GREATER LONDON AUTHORITY**

and

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF NEWHAM**

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**DEED OF AGREEMENT**

in relation to the collection and use of the  
enterprise zone income from the Royal  
Docks Enterprise Zone

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**THIS DEED OF AGREEMENT** is made the                      day of                      2017

**BETWEEN**

- (1) **THE GREATER LONDON AUTHORITY**, a statutory body constituted under the Greater London Authority Act 1999 of City Hall, The Queen's Walk, London SE1 2AA ("**the GLA**") as accountable body for the **LONDON LOCAL ENTERPRISE PARTNERSHIP** ("**London LEP**"),<sup>1</sup> a Mayoral appointed body with no separate independent or corporate legal status also of City Hall, The Queen's Walk, London SE1 2AA; and
  
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF NEWHAM** of London Borough of Newham, Newham Dockside, 1000 Dockside Road, London, E16 2QU (the "**Borough**");

each a "**Party**" and together referred to as the "**Parties**".

**RECITALS:**

- (A) The Royal Docks Enterprise Zone located in the London Borough of Newham was designated in 2012 and became operational on 1 April 2013. It allows the Borough to retain business rate uplift income (incremental to the initial baseline) received locally for the lifetime of the EZ.
- (B) The London LEP is responsible for the setting and delivery of the EZ economic priorities and for the allocation of the retained business rate uplift income. The Borough is responsible for collecting local business rates and the London LEP and the Borough must reach an agreement on how to manage the collection of said business rates.
- (C) An initial set of documentation was produced in respect of the proposed regeneration works in the EZ at the request of the Department for Communities and Local Government. These documents included the "Royal Docks: Unlocked 2037 Economic Vision", "Royal Docks Investment Priority Projects" and "Royal Docks: Strategic Outline Business Case".
- (D) The Parties anticipate and agree that updated documentation in respect of the proposed regeneration works (being the EZ Detailed Delivery Plan) will be produced every five years in accordance with the processes set out in this Agreement.
- (E) The initial documents described at Recital C identified an envelope of part funded and unfunded infrastructure projects required to accelerate growth in the Royal Docks EZ and maximise potential EZ Income.
- (F) A Business Rates Growth Income report prepared in 2015 and updated in February 2016 has measured and estimated business rates growth in the EZ.

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<sup>1</sup> The London LEP is one of 39 local enterprise partnerships in England established by HM Government to bring the public and private sector together to determine local economic priorities.

The report estimates that the cost of early infrastructure requirements will exceed the business rate income generated from the EZ in its early stages and that forward funding will therefore be required.

- (G) An initial call shall be made in respect of funding collected to date by the Borough in order to enable the development of a detailed business case, including assembling an adequately resourced team which is able to manage and co-ordinate the successful implementation of the EZ Delivery Plan and to administer the governance and finances of the EZ.
- (H) The London LEP is an unincorporated advisory Mayoral Appointed Body established by the Mayor of London under section 30 of the Greater London Authority Act 1999. The London LEP's purpose is to advise the Mayor of London on action to support and promote London's economic development and wealth creation.
- (I) The GLA acts as the London LEP's accountable body and is responsible for implementing its processes to ensure proper use and administration of funding and timely decision making by the London LEP.
- (J) Acting in accordance with its Constitution and Terms of Reference, the London LEP has confirmed that up to £380 million (three hundred and eighty million pounds) of EZ Income as passed by the Borough to the GLA (as the London LEP's accountable body) shall be used to fund the Regeneration Works including early infrastructure.
- (K) It is anticipated that the forward funding described in Recital F will be borrowed by the GLA (but only if financing costs can be funded by assuming prudent projections of business rate income) against future business rate growth from the EZ which income the GLA is entitled to receive from the Borough in accordance with the terms of this Agreement.
- (L) This Agreement sets out the basis on which the EZ Income will be collected by the Borough and subsequently allocated and distributed/invested by the GLA (as the London LEP's accountable body), including funding and staffing resources for the development and implementation of a detailed business case and administration of the governance and finances of the EZ.
- (M) For the avoidance of doubt, any surplus EZ Income over and above that required for the Regeneration Works (including the Regeneration Works Financing Costs and Regeneration Works General Costs) shall be distributed by the London LEP in such manner as shall be determined by the London LEP in accordance with London LEP priorities.
- (N) This Agreement sets out the governance procedures for the EZ Programme Board in respect of the Regeneration Works.

The Parties agree that:

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (including the Recitals) unless the context indicates otherwise the following expressions shall have the following meanings:

**"2013 Regulations"** means The Non-Domestic Rating (Designated Areas) Regulations 2013 (SI 2013/107);

**“ADR Notice”** has the meaning given to it in clause 9.1.3 below;

**“Agreement Representative”** means an officer nominated by each Party and notified to the other Party as determined from time to time by that Party;

**“Base Rate”** means the base rate of the Bank of England from time to time provided that where such base rate is negative it shall be deemed to be zero for the purpose of this Agreement;

**“Business Day”** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**“Dispute”** has the meaning given to it in clause 9.1 below;

**“Dispute Notice”** has the meaning given to it in clause 9.1.1 below;

**“Dispute Resolution Procedure”** means the dispute resolution procedure described in clause 9;

**“Enactment”** means all Parliamentary and subordinate legislation (including all regulations, directives, schemes and rules) and bye-laws in force from time to time;

**“Enterprise Zone” or “EZ”** means the area in the Royal Docks designated as an Enterprise Zone by the EZ Designation shown on the plan attached at Schedule 1 to this Agreement;

**“EZ Delivery Plan”** means the delivery plan adopted by the London LEP in relation to the OA from time to time, which as at the date of this Agreement comprises the following initial documentation:

(i) “Royal Docks: Unlocked 2037 Economic Vision” document dated 25 February 2016;

(ii) “Royal Docks Infrastructure Investment Plan: Strategic Outline Business Case” document prepared by Arup and dated 26 February 2016;

(iii) “Royal Docks Investment Priority Projects” document dated 26 February 2016; and

(iv) the EZ Financial Model;

and, once prepared in accordance with the provisions of clause 7.3, will include any current EZ Detailed Delivery Plan.

**“EZ Detailed Delivery Plan”** means the detailed delivery plan recording how the London LEP intends to implement the EZ Delivery Plan, such detailed delivery plan to apply for a duration of five years (or such longer or shorter period as agreed by the Parties in writing) as prepared and agreed by the EZ Programme Board, in accordance with the provisions of clause 7.3 and Schedule 3 below, and approved by the London LEP;

**“EZ Designation”** means the designation of the Royal Docks as a designated area pursuant to regulation 3 and Schedule 1 of the 2013 Regulations in exercise of the powers conferred on the Secretary of State by paragraph 39 of Schedule 7B to the Local Government Finance Act 1988;

**“EZ Expiry Date”** means the expiry of the EZ Designation being 31 March 2038 or such other date as determined by legislation;

**“EZ Financial Model”** means the financial model found at Schedule 2 to this Agreement, as amended in accordance with the provisions of clause 7.4 below from time to time;

**“EZ Income”** means the EZ income:

- (i) which is to be disregarded for the purposes of the calculations under the provisions of Schedule 7B to the Local Government Finance Act 1988 which are referred to in regulation 5(2) of the 2013 Regulations (as such provisions apply to the Borough for the year), including 100% of any growth (by reference to the base line referred to in the 2013 Regulations) in the non-domestic rating income received by the Borough in respect of the EZ until the EZ Expiry Date;
- (ii) which is to be disregarded in any relevant calculations or which the Borough is otherwise entitled or required to retain pursuant to any similar, replacement, updated or substituted Enactment in force in place of or in addition to the Enactments referred to in paragraph (i) of this definition from time to time;
- (iii) which is to be disregarded in any relevant calculations or which the Borough is otherwise entitled or required to retain pursuant to any other Enactment which provides for the retention of any non-domestic rates income (or any similar additional or replacement tax); and
- (iv) all sums received or credits to which the Borough is entitled from central government as a result of the EZ income referred to above, including without limitation reliefs afforded currently by the Department for Communities and Local Government;

**“EZ Programme Board”** has the meaning given to it in paragraph 1 of Schedule 3 below;

**"Financial Year"** means the period from and including 1 April to and including 31 March;

**"the GLA"** means, other than in Schedule 3, the GLA solely in its capacity as accountable body for the London LEP and not further or otherwise;

**"the Greater London Authority"** means the GLA in its capacity as a statutory body constituted under the Greater London Authority Act 1999 and not in its capacity as accountable body for the London LEP;

**“Longstop Date”** means:(i) in relation to the agreement of the initial EZ Detailed Delivery Plan the date 24 months after the date of this Agreement or such later date as may be agreed by the Parties in writing (each in its absolute discretion); and

(ii) in relation to the agreement of each subsequent EZ Detailed Delivery Plan the date of the expiry of the antecedent EZ Detailed Delivery Plan;

**"OA"** means the wider Royal Docks and Beckton Riverside Opportunity Area;

**“Regeneration Works”** means the infrastructure and other development activities undertaken in accordance with the EZ Delivery Plan;

**"Regeneration Works Borrowing"** means any borrowing undertaken by the GLA in connection with the Regeneration Works from time to time;

**"Regeneration Works Financing Costs"** means all proper costs associated with Regeneration Works Borrowing including without limitation interest costs, repayment of principal, borrowing costs and fees, save for any penalties for late payments due to an act or omission of the GLA which constitutes a breach of the relevant lending obligations by the GLA;

**"Regeneration Works General Costs"** means the costs referred to in clause 3.2; and

**"Third Party Act"** means the Contracts (Rights of Third Parties) Act 1999.

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, updated, replaced or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of the Agreement;
- 1.4 a reference to any document save as expressed otherwise shall be construed as a reference to the document as at the date of execution of the Agreement;
- 1.5 headings are included in this Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:
  - 1.7.1 the conflicting part of the Schedule is explicitly expressed to take precedence; or
  - 1.7.2 the Schedules form part of the Agreement and will have the same force and effect as if expressly set out in the body of the Agreement;
  - 1.7.3 the expression **"person"** means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
  - 1.7.4 the words **"including"**, **"includes"** and **"included"** will be construed without limitation unless inconsistent with the context.

## 2. **BOROUGH EZ INCOME**

- 2.1 Subject to receipt of the same by the Borough, the Borough shall pay all EZ Income (less the deductions specifically permitted by clause 2.2) to the GLA in accordance with this clause 2 until the EZ Expiry Date.
- 2.2 The Borough will pay the EZ Income due to the GLA pursuant to this clause 2 in instalments during each Financial Year on the same dates on which (and in the same proportions) as payments are due to the GLA for its share of retained business rates in accordance with paragraph 15,



Part 5 of the Non-Domestic Rating (Rates Retention) Regulations 2013  
Provided That:

- 2.2.1 The instalments due during the year will be the sum reported as the disregarded amount for the designated area on the NNDR1 (estimated Business Rates receipts) return form or its equivalent for the relevant Financial Year. A copy of this return shall be provided to the GLA promptly following finalisation of the same in line with any deadlines which may be set by the Secretary of State if applicable;
- 2.2.2 a reconciliation payment based on the difference between the instalments paid by the Borough to the GLA (based on the GLA's share of the forecast based on the NNDR1 return as stated in clause 2.2.1) and the actual EZ Income (calculated by reference to the outturn business rates receipts based on the statutory NNDR3 return form or their equivalent) will be made by the Borough or the GLA (as appropriate) within one calendar month after the statutory date for submitting the audited NNDR3 return or 31 October whichever is the earlier in line with the methodology used for the NNDR1 and NNDR3 return or their future equivalents Provided That in calculating any reconciliation payment pursuant to this clause 2.2.2 the parties will also take into account and credit to the GLA any EZ Income collected during the relevant Financial Year (being the Financial Year in respect of which the reconciliation payment is being calculated) but attributable to or originally payable in relation to any previous Financial Year;
- 2.2.3 in calculating the EZ Income payable to the GLA pursuant to this Agreement the Borough shall be permitted to make a fair and reasonable deduction for losses on appeals and bad debt provisions as may be permitted under the guidance for the NNDR3 return (or its equivalent) and reasonable administration and collection costs; and
- 2.2.4 within one calendar month of the execution of this Agreement the Borough shall pay to the GLA an amount equivalent to all instalment payments of the EZ Income which would have fallen due under this clause 2 in respect of the current Financial Year up to the execution of this Agreement had this Agreement been entered into prior to the commencement of the current Financial Year (to ensure that all EZ Income is paid to the GLA (whether collected by the Borough before or after the date of this Agreement) and any payments which would have been due in respect of prior financial years commencing on or after 1 April 2013 pursuant to this clause 2.2 and clause 2.7, such payment to be made to the account referred to in clause 2.9.
- 2.3 The Borough shall not be entitled to make any deductions from the payments described in clause 2.2 above save for the deductions referred to in clause 2.2.3 and the Borough hereby waives any associated rights it might otherwise have had pursuant to any relevant legislation and government guidance and as amended from time to time.

- 2.4 The Borough shall not assign, transfer or deal in any way with its rights, interests or entitlement in respect of the EZ Income or this Agreement (save in accordance with clause 8.14) without the prior written consent of the GLA which GLA may withhold in its absolute discretion.
- 2.5 The Borough shall not grant any security or quasi-security over its rights, interests or entitlement in respect of the EZ Income or this Agreement without the prior written consent of the GLA which GLA may withhold in its absolute discretion.
- 2.6 Both Parties agree that the payment mechanisms established in this Agreement shall be subject to an annual review at such time as to be agreed between the Parties and that, following such review, the Parties may (each in its absolute discretion) agree changes to the manner and timing of payments to be made pursuant to this clause 2 which shall be recorded by formal written memorandum to be annexed to this Agreement Provided That pending the entry into any such memorandum all payments due pursuant to this clause 2 shall continue to be made in accordance with the provisions set out above (as the same may have been adjusted by means of any memorandum previously entered into pursuant to this clause).
- 2.7 The Parties acknowledge that the obligation in clause 2.1 includes a requirement for the Borough to pay to the GLA all EZ Income collected by the Borough prior to the date of this Agreement in respect of all Financial Years between 1 April 2013 and 31 March 2016 and, accordingly, the Borough shall transfer all such EZ Income collected by the Borough prior to the date of this Agreement (which the Borough estimated as at 31 March 2016 was £1,029,000) within one calendar month of the execution of this Agreement to the account referred to in clause 2.9.
- 2.8 The Parties note that the forecast rate of EZ Income for the current Financial Year and the two Financial Years following entry into the Agreement is anticipated to be:
- 2.8.1 Financial Year 1 April 2016 – 31 March 2017: £458,507
- 2.8.2 Financial Year 1 April 2017 – 31 March 2018: £843,112
- 2.8.3 Financial Year 1 April 2018 – 31 March 2019: £843,112
- 2.9 All sums due to the GLA pursuant to this Agreement shall be made to the following account or such other account written details of which the GLA provides to the Borough from time to time on reasonable written notice to the Borough:

The Royal Bank of Scotland plc  
Drummonds  
49 Charing Cross  
London SW1A 2DX

Sort Code: 16-00-38

Account No.: 00780445

### 3. APPLICATION OF EZ INCOME

3.1 The Parties agree that the EZ Income transferred to the GLA under this Agreement shall be applied as follows:

3.1.1 the first £380 million (three hundred and eighty million) of the EZ Income shall be used:

(A) first to discharge Regeneration Works Financing Costs; and

(B) secondly to discharge all Regeneration Works General Costs;

Provided That where the GLA can reasonably forecast that it will have repaid all Regeneration Works Borrowing prior to the EZ Expiry Date, any surplus EZ Income that accrues to the GLA under this Agreement will not be required to be used to discharge Regeneration Works Financing Costs and may instead be used to discharge Regeneration Works General Costs or, where applicable, the costs referred to in clause 3.1.2; and

3.1.2 all other EZ Income (being all EZ Income in excess of £380 million and all EZ Income forming part of the first £380 million referred to in clause 3.1.1 which is not in practice required to defray the Regeneration Works Costs) shall be distributed by the London LEP in such manner as shall be determined by the London LEP in accordance with the London LEP's priorities from time to time.

3.2 The Regeneration Works General Costs which are referred to in clause 3.1.1 shall comprise all reasonably and properly incurred costs and expenses incurred or to be incurred by or on behalf of the GLA and/or the London LEP in connection with the planning, design, procurement, implementation and construction of the Regeneration Works including without limitation:

3.2.1 funding and staffing resources for the development and implementation of a detailed business case and administration of the governance and finances of the EZ;

3.2.2 all costs incurred in co-ordinating the Regeneration Works and related administration costs including the assembly of an adequately resourced team which is able to manage and co-ordinate the successful implementation of the EZ Delivery Plan;

3.2.3 all consultants' fees and disbursements;

3.2.4 all legal costs;

3.2.5 any tax attributable to the receipt of the EZ Income and/or any

expenditure of the EZ Income including without limitation any irrecoverable VAT on items of expenditure;

and where such costs and expenses relate as to part to the Regeneration Works and as to part other works or projects, a fair and reasonable costs allocation of the relevant costs and expenses shall constitute Regeneration Works General Costs.

#### **4. BOROUGH RESPONSIBILITIES**

4.1 FOR THE AVOIDANCE OF DOUBT, the Borough shall retain its responsibility for ensuring that all business rate liabilities are collected in its capacity as the local billing authority in respect of EZ Income, subject to any changes in legislation or binding Government policy.

4.2 The Borough acknowledges and agrees that:

4.2.1 it has a duty to act properly in the collection of all EZ Income in accordance with statute and principles of democratic and financial accountability and, accordingly, the Borough shall use all reasonable endeavours to recover all EZ Income owed to it from time to time; and

4.2.2 the Department for Communities and Local Government will look to it as the billing authority to retain a degree of oversight as to how the EZ Income is spent. In order to assist in satisfying these duties, the Borough acknowledges and agrees that its representatives shall sit on both the London LEP and the EZ Programme Board (in accordance with the provisions of Schedule 3 below).

#### **5. PRUDENTIAL BORROWING**

5.1 Both Parties agree that, subject to the GLA performing appropriate levels of due diligence (including financial appraisal) in relation to the Regeneration Works, the GLA (acting as accountable body for the London LEP) shall authorise any borrowing which the GLA concludes should be undertaken by the GLA to fund the Regeneration Works Costs (pending receipt of the EZ Income due from the Borough under this Agreement), including without limitation to fund early infrastructure works comprised in the Regeneration Works Provided That the Parties acknowledge and agree that it may not be possible for the GLA to obtain forward funding for the Regeneration Works until the initial EZ Detailed Delivery Plan has been prepared and finalised as part of the EZ Delivery Plan.

5.2 Where applicable, as detailed in clause 5.1, the GLA shall act reasonably and manage the treasury operations and any relevant borrowing in accordance with its Treasury Management Strategy which is prepared in accordance with the CIPFA Code of Practice and relevant legislation from time to time.

5.3 The Parties acknowledge that the GLA is only able to borrow for expenditure which can be capitalised in accordance with International Accounting Standard 16. Both Parties therefore agree to co-operate and work together to the extent that this constraint or any other practice

guidance or law limits the available options for Regeneration Works Borrowing from time to time, in order to identify and secure an alternative source of forward funding in respect of any relevant sums where the GLA has determined that borrowing is appropriate.

## 6. LONDON LEP GOVERNANCE

- 6.1 The Parties acknowledge and agree that the London LEP shall provide overall governance in respect of EZ programme delivery in accordance with the provisions of Schedule 3 to this Agreement.

## 7. GOVERNANCE AND REPORTING

- 7.1 The Parties acknowledge and agree that the Greater London Authority will be required to follow all its relevant internal approval processes in the delivery of the Regeneration Works and in discharging its obligations under this Agreement.

- 7.2 Both Parties acknowledge and agree that the EZ Programme Board shall be established and operate in accordance with the provisions of Schedule 3 to this Agreement.

- 7.3 The Parties acknowledge and agree that the EZ Programme Board shall (inter alia):

- 7.3.1 produce the initial EZ Detailed Delivery Plan in sufficient time for the Parties to agree it by the Long Stop Date referred to in paragraph (i) of the definition of Long Stop Date; and

- 7.3.2 thereafter update, review, amend and/or replace or restate the EZ Detailed Delivery Plan on a five yearly basis in order to adequately inform the implementation of the Regeneration Works and in any event by the relevant Long Stop Date for each subsequent five year period in order to promote the continuing successful implementation of the Regeneration Works;

Provided That in the event of any failure of the Parties to agree the relevant EZ Detailed Delivery Plan by the relevant Longstop Date the provisions of clause 9 shall apply save that any EZ Detailed Delivery Plan (or any part thereof) determined by a mediator as described in clause 9.1.3 shall be subject to approval by the London LEP and, where applicable, the Mayor of London and where such approvals are not forthcoming and the Parties are still unable to agree any aspect of the EZ Detailed Delivery Plan clause 9 shall apply once again.

- 7.4 The Parties acknowledge and agree that the EZ Financial Model will require updating, reviewing, amending and/or replacing on an annual basis in order to adequately inform the implementation of the Regeneration Works. The Parties agree that the EZ Financial Model shall be updated, reviewed, amended and/or replaced as deemed necessary by the EZ Programme Board in order to promote the continuing successful implementation of the Regeneration Works.

- 7.5 Each Party shall appoint an Agreement Representative who is authorised to act as its representative for all purposes of this Agreement and notify the other Party of such Agreement Representative. All contact between the Parties in respect of all matters arising under this Agreement shall be between the Agreement Representatives (or their nominated representatives) unless otherwise agreed.
- 7.6 Twice a year in April and October or at such times as may be otherwise agreed by the Parties and more frequently if reasonably requested by any Party, the Parties will meet to review the implementation of this Agreement and discuss any issues arising. These meetings will be set up and chaired by the GLA, who will commission the necessary papers from each Party no later than two weeks before each meeting, such papers to include the following:
- 7.6.1 the GLA will provide the Borough with a forecast of the estimated final cost to completion of the Regeneration Works, to include forecast expenditure per quarter up to the end of the next Financial Year, forecast expenditure by Financial Year thereafter and a high level breakdown of the estimated final cost.
- 7.6.2 the GLA will also provide the Borough with a report on Regeneration Works debt and funding, to include forecast drawdown and repayment of Regeneration Works Borrowing and key financing assumptions.
- 7.6.3 the Borough will provide reports to the GLA in relation to its actual EZ Income collected, and its forecast of future EZ Income. The format of these reports will be as agreed between the Parties from time to time.
- 7.7 The GLA agrees to maintain such records as may be reasonably required by the Borough to evidence application of all payments received by it in accordance with the provisions of this Agreement and upon written request to provide copies of such records to the Borough.
- 7.8 The Borough agrees to maintain such records as may be reasonably required by the GLA to evidence all EZ Income collected and forecast, across the OA and upon written request to provide copies of such records (including without limitation the Borough's NNDR1 and NNDR3 returns or any equivalent or similar returns or forms) to the GLA.
- 7.9 Where the Parties are unable to agree on the interpretation of any provision of this Agreement, the issue shall be referred to the Dispute Resolution Procedure.
- 7.10 The GLA shall ensure that any procurement of goods and/or services using EZ Income shall be undertaken in accordance with the following, as applicable:
- 7.10.1 the GLA's Contracts and Funding Code;
- 7.10.2 the Public Contracts Regulations 2015; and
- 7.10.3 state aid rules.

## 8. GENERAL

- 8.1 The Parties acknowledge that ancillary agreements may be entered into between the Parties in respect of the implementation of the Regeneration Works. Any such ancillary agreements shall be without prejudice to the obligations and contributions set out in this Agreement.
- 8.2 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). It is the Parties' understanding that all payments due under this agreement are outside the scope of VAT and unless stated otherwise all amounts referred to in this Agreement shall be deemed to be exclusive of VAT. In the event that HMRC determines that VAT is payable on any such payments, GLA reserves the right to issue a VAT only invoice to the Borough in respect of any VAT that may become payable on such amount. The Borough shall be liable to make such payment to GLA within 28 days of receipt of the relevant invoice.
- 8.3 If any sum payable under this Agreement is not paid by the relevant final date for payment then interest shall accrue at the interest rate of two per cent (2%) above the Base Rate from time to time until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The Parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.4 Subject to clauses 8.5 and 8.6 below, and as may be required otherwise by law, each Party will keep confidential all information relating to this Agreement and any aspect of the Regeneration Works (whether it be commercial, financial or technical information) save to the extent that such information is in or comes into the public domain other than due to wrongful use or disclosure by a Party. Subject to clauses 8.5 and 8.6 below, neither Party will make any announcement about this Agreement or publish any information contained in this Agreement in any manner without the prior written consent of the other Party.
- 8.5 The Parties acknowledge that they are each subject to the Freedom of Information Act 2000 and all subordinate legislation made under it, together with the Environmental Information Regulations 2004 (and any other provisions that replace these) and the Transparency Commitment stipulated by the UK Government in May 2010. Accordingly, the Parties agree to co-operate with each other in order to ensure that both Parties comply with the requirements contained in the above Enactments and commitments, but recognise that each may be required to respond to information requests in such manner as they see fit in order to comply with their statutory obligations.
- 8.6 Notwithstanding clause 8.4 above, the Parties are committed to transparency and will agree between them a scheme of publication in relation to the funding obligations described in this Agreement. Additionally, the Parties are committed to the EZ Programme Board, as

a London LEP Subordinate Body, adhering to the transparency provisions set out in the London LEP Constitution and the common provisions of the Terms of Reference.

- 8.7 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty that is not set out in this Agreement.
- 8.8 The Agreement, including its Schedules, contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement.
- 8.9 Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement.
- 8.10 All obligations on a Party to maintain and provide copies of relevant records to the other Party on request shall continue for six years following the EZ Expiry Date.
- 8.11 This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.
- 8.12 This Agreement shall be governed by and construed in accordance with the laws of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.
- 8.13 A Party to this Agreement may transfer or novate any of its rights and obligations under this Agreement to any successor organisation to itself that takes over all of its functions relevant to this Agreement and if requested by such a Party, the other Party shall enter into a deed of novation in such form as the requesting party may propose and the other party may approve (such approval not to be unreasonably withheld or delayed).

## 9. **DISPUTE RESOLUTION PROCEDURE**

- 9.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in this Agreement, the Parties shall follow the procedure set out in this clause:



- 9.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with relevant supporting documents. On service of the Dispute Notice, the Agreement Representatives shall attempt in good faith to resolve the Dispute;
- 9.1.2 if the Agreement Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Director of Planning & Regeneration of the Borough or equivalent senior officer representative and GLA Executive Director of Housing and Land or equivalent senior officer representative who shall attempt in good faith to resolve it; and
- 9.1.3 if the Director of Regeneration & Planning of the Borough or equivalent senior officer representative and GLA Executive Director of Housing and Land or equivalent senior officer representative are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties within 30 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (“**ADR notice**”) to the other Party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the Parties, the mediation will start not later than 21 days after the date of the ADR notice.

## 10. **GENERAL OBLIGATION**

Each Party shall at times in the performance of its obligations under this Agreement comply with all applicable legislation.

## 11. **THE PARTIES' DUTIES AS PUBLIC AUTHORITIES**

- 11.1 For the avoidance of doubt nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations for the time being vested in the Borough as a Local Authority and the rights, powers, duties and obligations of the Borough under all Enactments (including without limitation any such functions as planning authority for the Regeneration Works, where relevant) may be as fully and effectually exercised in relation to the matters contained in this Agreement as if this Agreement had not been executed by it.
- 11.2 For the avoidance of doubt nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations for the time being vested in the GLA as a public authority and the rights, powers, duties and obligations of the GLA under all Enactments (including without limitation any such functions as planning authority for the Regeneration Works, where relevant) may be as fully and effectually exercised in relation to the matters contained in this Agreement as if this Agreement had not been executed by it.

**12. NOTICES**

- 12.1 All notices or decisions which are required to be given under this Agreement shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Any such notice may be delivered personally or by first class prepaid letter shall be deemed to have been served if by personal delivery when delivered if by first class post 48 hours after posting.

**13. CHANGE IN LAW**

- 13.1 If, due to any change in applicable law, regulations or binding Government policy or the interpretation thereof by any court of law or other governing body having jurisdiction subsequent to the date of this Agreement, performance of any provision of this Agreement or any transaction contemplated thereby shall become impracticable or impossible, the Parties shall use their reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by this Agreement in so far as permitted by law.

Executed as a deed by the Parties and delivered on the date of this Deed of Agreement.

**THE COMMON SEAL** of )  
**THE GREATER LONDON AUTHORITY** )  
was affixed to this deed )  
in the presence of: )

.....  
[Name and description of authorised signatory]

**THE COMMON SEAL** of )  
**THE MAYOR AND BURGESSES OF** )  
**THE LONDON BOROUGH OF** )  
**NEWHAM** )  
was affixed to this deed )  
in the presence of: )

.....  
[Name and description of authorised signatory]

**SCHEDULE 1**  
**MAP OF THE EZ BOUNDARY**

**SCHEDULE 2**  
**REGENERATION WORKS FINANCIAL MODEL**

## SCHEDULE 3

### ROYAL DOCKS: GOVERNANCE ARRANGEMENTS

This schedule sets out the (i) proposed governance arrangements between the London LEP and other key stakeholders in relation to the EZ and (ii) establishes the role of the EZ Programme Board.

#### 1. BACKGROUND

- 1.1. Both Parties acknowledge that the London LEP agreed in March 2016 to the creation of a Royal Docks enterprise zone programme board. It was agreed that the board would be a Subordinate Body of the London LEP and would assist the London LEP in meeting its remit by making recommendations in respect of the Regeneration Works, the EZ programmes in the OA more generally and in respect of any associated spending and programme delivery issues (the “EZ Programme Board”).
- 1.2. The Parties acknowledge and agree that there is a need to establish an appropriate governance structure for oversight and programme delivery in the EZ for which the London LEP has overall responsibility in order to:
  - 1.2.1. provide greater accountability with regards to the collection and use of EZ-related income streams; and
  - 1.2.2. form a coordinated approach in relation to the delivery and monitoring of regeneration and development projects set within the context of the wider OA for which the GLA and the Borough are joint leads.
- 1.3. It is proposed that the London LEP establish an EZ Programme Board for the purposes described in paragraphs 1.1 and 1.2 above.

#### 2. MEMBERSHIP AND CONSTITUTION

- 2.1. The EZ Programme Board will be Co-Chaired by a LEP Member and an elected representative from the Borough (as nominated by the Borough).
- 2.2. Both Parties agree that an equal number of representatives from the Borough and the GLA will be represented on the EZ Programme Board.
- 2.3. Both Parties acknowledge and agree that the Mayor of the Borough will hold an ex-officio place on the main London LEP Board whilst this Agreement remains in place.

#### 3. MEETINGS

- 3.1. The EZ Programme Board will meet quarterly or at such other intervals as the EZ Programme Board may agree. The Chair (or Co-Chairs) of the EZ

Programme Board may decide to cancel meetings or call additional meetings as required.

- 3.2. Reports for consideration by the EZ Programme Board, which will be sponsored by a named Board Member, will normally be issued to Members by the Secretariat a minimum of 5 working days before the meeting.

#### 4. **GOVERNANCE**

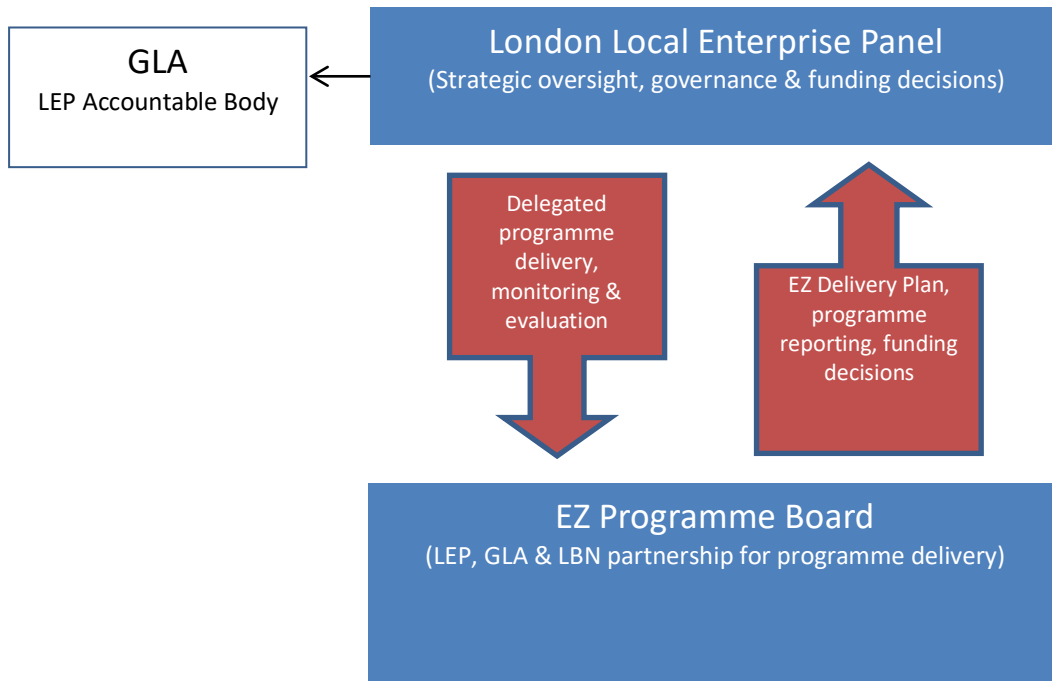
- 4.1. The Parties acknowledge and agree that, in accordance with its Terms of Reference, the London LEP will be responsible for the strategic oversight of the EZ through its involvement in the EZ Programme Board.
- 4.2. Both Parties understand that the EZ Programme Board shall act as a senior level forum to drive forward regeneration and economic growth opportunities within the EZ. Both Parties acknowledge and agree that the EZ Programme Board shall be required to adhere to those provisions in the London LEP Constitution applicable to Subordinate Bodies and also to the provisions of its own Terms of Reference, included in this Schedule 3 and as amended from time to time by the London LEP.

#### 5. **OVERSIGHT**

- 5.1. The London LEP shall retain strategic oversight and governance of the EZ including all funding decisions, and delegates programme delivery to the EZ Programme Board.
- 5.2. The London LEP will have overall approval of the EZ Detailed Delivery Plan, which will be presented to the London LEP every five years, with such approval taking the form of a Mayoral Decision.
- 5.3. It is understood by both Parties that the approval described in paragraph 5.2 will occur in accordance with the GLA's decision making protocol, programme management framework and compliance with the GLA Financial Regulations, Mayoral Scheme of Delegations, GLA Contracts and Funding Code and other applicable GLA policies and procedures, as applicable and as approved from time to time, as accountable body to the London LEP.
- 5.4. Both Parties agree and acknowledge that, unless there are exceptional circumstances requiring action to the contrary, the Mayor of London sign off shall be made in accordance with the recommendations of the EZ Programme Board.
- 5.5. It is agreed that the GLA and the Borough will each be responsible for following their own internal approval processes as required.

#### 6. **EZ GOVERNANCE PROCEDURE**

- 6.1. For the avoidance of doubt, the above described governance procedures are depicted below:



**7. SCOPE**

The EZ Programme Board's remit is limited to the implementation of the EZ Delivery Plan and the Royal Docks Regeneration Works.

**8. REPORTING**

The EZ Programme Board will be responsible for reporting to the London LEP.