

dated

2020

Greater London Authority

and

[]

**Small Sites Small Builders Capital Funding Agreement
(Retained Sites) – [*insert project title*]**

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Small Sites Small Builders Capital Funding Agreement

dated 2020

Parties

- (1) Greater London Authority of City Hall, The Queen's Walk, More London SE1 2AA (the **GLA**); and
- (2) [] of [] (the **Borough**).

Introduction

- (A) The GLA is empowered under the Act to make available the Funding.
- (B) The Borough has submitted proposals to the GLA pursuant to the Small Sites Small Builders Programme in respect of the proposed construction and/or delivery of the Project and the GLA has agreed in principle to make Funding available. The GLA's Small Sites Small Builders Programme is supported by the London Enterprise Action Partnership's Good Growth Fund.
- (C) This Agreement sets out the terms and conditions upon which specific amounts of Funding will be advanced to the Borough by the GLA in relation to the Agreed Intervention and Project set out in this Agreement.

Agreed terms

1 Definitions

- 1.1 In this Agreement (including in the Introduction and schedules) the following words and expressions have the following meanings:

Act means the Greater London Authority Act 1999;

Affordable Housing means any use of the Dwellings to provide housing to households whose needs are not adequately met on the open market, and Affordable Housing use shall include use as social, affordable or intermediate housing let/sold as social rent, London affordable rent, London living rent, London shared ownership or other affordable housing products which meet the requirements of policy H7 of the London Plan (or on such other terms as the GLA approves in writing);

Agreed Intervention means the outputs described in the Agreed Intervention Details in respect of which GLA has agreed to provide the Funding in accordance with this Agreement (as such Agreed Intervention may be varied from time to time with the prior written consent of GLA);

Agreed Intervention Budget means the budget for the Agreed Intervention comprised within the Agreed Intervention Expenditure Plan including a cashflow for the Agreed Intervention showing proposed drawdowns of Funding during each Financial Year of the Availability Period;

Agreed Intervention Details means information provided by the Borough in relation to the Agreed Intervention, which shall include:

- (a) the descriptive and other details in respect of the Agreed Intervention as set out in schedule 1;
- (b) the Works required to complete the Agreed Intervention;
- (c) the Agreed Intervention Budget;
- (d) the Milestone Dates;
- (e) the period (if any) for which the Agreed Intervention must be used for the purposes specified in schedule 1;

all in accordance with the Bid and each as varied from time to time in accordance with the terms of this Agreement;

[Agreed Intervention Development Agreement means the agreement between the Borough and [] dated [] relating to the Works and the Agreed Intervention;]

[DN: Borough to confirm contracting arrangements for the Agreed Intervention]

Agreed Intervention Expenditure means the costs of delivering the Agreed Intervention as listed and described set out in the Agreed Intervention Expenditure Plan which the GLA is satisfied either have been or will be reasonably and properly incurred by the Borough in delivering the Agreed Intervention and the Project but for the avoidance of doubt which does not include:

- (a) staff costs and other internal costs of the applicant;
- (b) statutory fees;
- (c) finance charges;
- (d) marketing costs;
- (e) VAT;
- (f) any costs of activities of a political or exclusively religious nature;
- (g) any costs of goods or services that the Borough has a statutory duty to provide;
- (h) payments reimbursed or to be reimbursed by other Public Sector Financial Assistance or private sector grants;
- (i) contributions in kind;
- (j) depreciation, amortisation or impairment of fixed assets owned by the Borough;
- (k) interest payments (including service charge payments for finance leases);

- (l) gifts, other than promotional items with a value of no more than £10 a year to any one person;
- (m) any costs of entertaining which would be a taxable benefit to the person being entertained according to current UK tax regulations;
- (n) statutory fines, criminal fines or penalties;
- (o) liabilities incurred before the date of this Agreement unless agreed in writing by the GLA; or
- (p) the costs of making good any damage to the Works caused by an insurable risk or the costs of making good any defects on the Works,

and where any costs relate to both construction works and professional fees (including design) then the proportion attributable to professional fees shall be included in the Agreed Intervention Expenditure (the amount of such proportion to be determined by the GLA).

Agreed Intervention Expenditure Plan means the plan set out in Annexure 2;

Agreed Intervention Milestones means the stages in the delivery of the Agreed Intervention set out in schedule 1 as the same may from time to time be extended in accordance with clause 8;

Agreed Intervention Sum means the amount specified in schedule 1 as the same may be amended from time to time in accordance with this Agreement;

Associated Person means in relation to the Borough, a person who performs or has performed services for or on the Borough's behalf;

Availability Period means the period from the date of this Agreement until 31 March 2021 (save that the GLA acknowledges that any Claim submitted in accordance with Schedule 6 and the other terms of this Agreement in respect of the Quarter 1 January 2021 – 31 March 2021 may be made within ten (10) Business Days after the end of this date) unless otherwise brought to an end pursuant to clause 2;

Balancing Payment means such sum as represents the difference between the quantum of the Agreed Intervention Sum paid to the Borough and that of the Agreed Intervention Sum as adjusted in accordance with clause 12.2.6;

Base Interest Rate means the base rate of The Royal Bank of Scotland plc or such other rate as the GLA determines (acting reasonably);

Best Practice has the meaning ascribed to it in clause 17.7;

Bid means the submission by the Borough of its proposal for the development of the Site including any supporting information relating to the Agreed Intervention and the Project;

Borough Senior Officer means [REDACTED];

Business Day means any day other than a Saturday, Sunday or statutory bank holiday in England;

CDM Regulations means the Construction (Design and Management) Regulations 2015;

CEDR means the Centre for Effective Dispute Resolution;

Certificate of Title means a certificate of title in relation to the Site in the form approved by GLA;

Change of Use means in relation to any asset funded pursuant to this Agreement a change in its use from that agreed in this Agreement or a reduction in the time for which it is to be used for any designated purpose as specified in this Agreement;

Claim means an application for drawdown of an instalment of Funding;

Claim Form means a claim form substantially in the form of schedule 3 or such other form as GLA will notify the Borough from time to time;

Competent Authority means (as the case may be):

- (a) the EU Competent Authorities during such time as the United Kingdom remains a Member State of the European Union or it is otherwise bound to comply with such European Union treaty obligations regulations or other instruments concerning State Aid; or
- (b) the English Competent Authorities if the United Kingdom ceases to be a Member State of the European Union and it is not otherwise bound to comply with such European Union treaty obligations regulations or other instruments concerning State Aid;

Confidential Information means in respect of GLA all information relating to GLA or the existence or terms of this Agreement in respect of which the Borough becomes aware in its capacity as a party to this Agreement or which is received by the Borough in relation to this Agreement from either GLA or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from GLA or any of its advisors in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Borough means such specific information as the Borough shall have identified to GLA prior to the date hereof as confidential information for the purposes of this Agreement;

Consents means and includes any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by, of or from any governmental or other authority, the local planning authority, landlord, funder, adjoining land owner or any other person required to undertake the Works, Agreed Intervention or the Project;

Considerate Constructors Scheme means the Code of Considerate Practice promoted by the construction industry a copy of which is to be found on the Considerate Constructors Scheme website;

Contractor means each contractor or other party (however described) engaged by the Borough (or on behalf of the Borough) or collaborating with the Borough in or for the delivery of the Works and /or the Agreed Intervention;

Contracts means the contracts to be entered into by the Borough with Contractors for or in relation to the Works and/or the Agreed Intervention;

Cost Overrun means at any time the amount by which the aggregate costs and expenses incurred by the Borough in relation to the Agreed Intervention exceed the Total Intervention Costs;

Dangerous Substance means any natural or artificial substance (whether in the form of a solid, liquid, gas or vapour) the generation, transportation, storage, treatment, use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing harm to man or any other living organism or causing damage to the Environment or public health and includes, but is not limited to, any controlled, special, hazardous, toxic, radioactive or dangerous waste or substance;

Data Controller has the meaning ascribed to it in the Data Protection Legislation;

Data Protection Legislation means the GDPR, the Data Protection Act 2018 and any other relevant national laws implementing, supplementing or relating to the derogation from the GDPR, and any formal guidance or Codes of Conduct issued by the Information Commissioner (or other competent authority) in each case as amended, superseded or replaced from time to time;

Design and Quality Standards means policy D4 (housing quality and standards) of the London Plan;

Direction means a direction by the Secretary of State under Section 15 of the Local Government Act 1999;

Disposal means a disposal of the whole or any part of a Site or asset funded by Funding pursuant to this Agreement;

Dwellings means each of the dwellings set out in schedule 2 forming part of the Project;

EIR means the Environmental Information Regulations 2004, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

EIR Exception means any applicable exemption to EIR;

Encumbrance means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignment in security, bond and floating charge or other security interest of any kind, and any right of set-off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security;

English Competent Authorities means:

- (a) such persons officeholders and bodies (however constituted) that are specified under any United Kingdom Competition Requirement as having responsibility for monitoring compliance with and/or legally enforcing State Aid or United Kingdom Competition Requirements or otherwise authorised to recover any Unlawful State Aid;

- (b) the courts of England and Wales;

Environment means the environment as defined in section 1(2) of the Environmental Protection Act 1990;

Environmental Consents means all licences, authorisations, consents or permits of any kind under or relating to Environmental Laws;

Environmental Claim means any claim by any person:

- (a) in respect of losses or liabilities suffered or incurred by that person as a result of or in connection with any violation of Environmental Laws; or
- (b) that arises as a result of or in connection with Environmental Contamination and that could give rise to any remedy or penalty (whether interim or final) that may be enforced or assessed by private or public legal action or administrative order or proceedings;

Environmental Contamination means the following and the consequences thereof:

- (a) any release, emission, leakage or spillage at or from the Site by any person into any part of the Environment of any Dangerous Substance; or
- (b) any accident, fire, explosion or sudden event which adversely affects the Environment and which is attributable to the operations, management or control of the Site by any person including (without limitation) the storage, handling, labelling or disposal of Dangerous Substances;

Environmental Law means any common or statutory law, regulation, publicly available code of practice, circular or guidance note (if not having the force of law being of a kind that is customary for the relevant person (or persons of its status or type carrying on a similar business) to comply with) issued by any official body, concerning the protection of human health, the workplace or the Environment;

EU Competent Authorities means:

- (c) the Commission of the European Union;
- (d) the Secretary of State if he is responding to a request from the Commission of the European Union;
- (e) a United Kingdom government department if it has competence and is responding to a request from the Commission of the European Union;
- (f) a court of England and Wales or the Court of Justice of the European Union;

Event of Default means any of the events set out at clause 12;

Exempted Information means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions;

FA means the Finance Act 2004;

FA Legislation means Chapter 3 of Part 3 of the FA and the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. No. 2005/2045) each as amended from time to time;

Final Certificate means in relation to the Works a certificate provided by the Borough certifying that:

- (a) the Agreed Intervention has been constructed in accordance with the Agreed Intervention Details;
- (b) the Highways, sewers drains and other services ancillary to and reasonably necessary for the proper enjoyment of the Agreed Intervention have been completed commissioned and are ready for use; and
- (c) all planning conditions relating to the Site and the Works have been satisfied in accordance with the most up-to-date planning permission (to the satisfaction of GLA);

Financial Year means from the date of this Agreement to the next 31 March and thereafter from 1 April to 31 March in each year;

FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

FOIA Authority/Authorities means a public authority as defined by FOIA and/or EIR;

FOIA Exemption means any applicable exemption to the FOIA;

Funding means the funding made available or to be made available by the GLA to the Borough under this Agreement for the purposes of reimbursing Agreed Intervention Expenditure incurred by the Borough in delivering or procuring the delivery of the Agreed Intervention and facilitating the Project;

GDPR means the General Data Protection Regulation (EU) 2016/679) as amended or updated from time to time;

GLA Group means the Greater London Authority, any Functional Body of the Greater London Authority as defined by the Greater London Authority Act 1999 (as amended from time to time) and subsidiaries thereof

GLA Senior Officer means the person notified as such by GLA to the Borough;

GLA Surplus has the meaning given in Schedule 8;

Good Industry Practice means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor (engaged in the delivery of works or outputs of the same type as the Works, the Agreed Intervention or the Project (as applicable) under the same or similar circumstances;

Highways means roads, cycleways, footpaths, pavements, accessways, squares, courtyards, driveways, forecourts, entranceways and ancillary verges, landscaped areas, lighting, street furniture, drains, other utilities and associated works;

HMRC means Her Majesty's Revenue & Customs;

HRA 2008 means the Housing and Regeneration Act 2008;

HS Act means the Health and Safety at Work etc. Act 1974;

Information means:

- (a) in relation to the FOIA has the meaning given under section 84 of the FOIA and which is held by GLA at the time of receipt of an RFI; and
- (b) in relation to the EIR has the meaning given under the definition of "environmental information" in section 2 of the EIR and which is held by GLA at the time of receipt of an RFI;

Intellectual Property Rights shall include without limitation all rights to, and any interests in, any patents, designs, trademarks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person;

Interest means interest accruing on the relevant amount at the Base Interest Rate from the date of receipt by the Borough of that amount up to and excluding the date of payment by the Borough to the GLA;

Intervention Related Documents means [the Agreed Intervention Development Agreement], each Contract, each Sub-Contract and all relevant construction documents to be entered into by the Borough in relation to the Agreed Intervention and Project including but not limited to planning agreements and the Project Delivery Agreement;

[DN: definition to be reviewed in the light of the Borough's contracting arrangements]

Law means any applicable law, Legislation, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate Legislation or notice of any Regulatory Body

Legal Opinion means a legal opinion in the form set out in schedule 4 given by the Borough's solicitor;

Legislation means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;

- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;

in each case in the United Kingdom; and

- (e) any regulations, orders, by-laws or codes of practice of any local or statutory or competent authority having jurisdiction over the territory in which the Agreed Intervention or Project are situated.

London Enterprise Action Partnership or LEAP means the London Local Enterprise Partnership established by the Mayor as an advisory unincorporated mayoral appointed body under section 30 of the Act;

London Living Wage means the basic hourly wage of £10.75 (ten pounds and seventy-five pence) (before tax, other deductions and any increase for overtime) as may be updated from time to time by GLA and notified to the Borough;

London Plan means the draft London Plan published by the GLA on 13 August 2018 as subsequently adopted and varied from time to time;

Material Adverse Effect means any present or future event or circumstances which could, in the opinion of GLA:

- (a) materially impair the ability of the Borough to perform and comply with its obligations under this Agreement (as amended or varied from time to time) or Intervention Related Document;
- (b) adversely affect the business, assets or financial condition of the Borough; or
- (c) materially impair the validity or enforceability of, or the effectiveness this Agreement or the rights or remedies of GLA under this Agreement;

Maximum Agreed Intervention Amount means the sum identified in schedule 1 being the maximum amount of grant funding to be provided by the GLA to the Borough under this Agreement;

Mayor means the Mayor of London as defined in section 424 of the Act;

Milestones means the Agreed Intervention Milestones and the Project Milestones;

Milestone Date means each date set out in schedule 1 and schedule 2 by which the relevant Milestone must have been achieved (as the same may be revised by GLA in accordance with clause 8.3) otherwise an Event of Default will occur;

Milestone Extension Events means any of the following:

- (a) exceptionally adverse weather conditions provided that any extension permitted on this ground will be restricted to the number of days for which the adverse weather continued;

- (b) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the Works or the delivery of the Agreed Intervention or Project by restricting the availability or use of labour which is essential to the proper carrying out of the Works or the delivery of the Agreed Intervention or Project or preventing the Borough from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of the Works or the delivery of the Agreed Intervention or Project;
- (c) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (d) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (e) failure by any statutory undertaker, utility company or other like body to carry out works or provide services which the Borough has taken all reasonable steps open to it to procure and expedite;
- (f) any failure or major shortage of power, fuel or transport;
- (g) any blockade or embargo;
- (h) any:
 - i official or unofficial strike;
 - ii lockout;
 - iii go-slow; or
 - iv other dispute;

generally affecting the house building industry or a significant sector of it or a Contractor engaged in the delivery of the Works to a material extent;
- (i) the exercise after the date of this Agreement by the United Kingdom Government (excluding for the avoidance of doubt, the Borough) of any statutory power which directly affects the Borough's obligations under this Agreement; or
- (j) any impediment, prevention or default, whether by act or omission by the GLA except to the extent caused or contributed to by any default, whether by act or omission, of the Borough.

unless any of the events arises (directly or indirectly) as a result of any wilful default or wilful act or negligent act of the Borough, any Contractor or the Project Developer;

Milestone Failure means a failure by the Borough to achieve any Milestone by the relevant Milestone Date;

Notifiable Event means an event of the type described in clause 10.1;

Open Book means the transparent and full disclosure of information to be undertaken in utmost good faith and to include the declaration of all information which the Borough is required to maintain keep or disclose under this Agreement and any other financial components such as price, profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and service, apportionments of these items with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

Permitted Disposal means:

- (a) any Disposal expressly contemplated in this Agreement; and/or
- (b) the Disposal of part or parts of the Site upon which an electricity sub-station, gas generation or pumping station or other statutory services or infrastructure have been or are to be constructed or installed and the immediate curtilage of the same together with ancillary easements; and/or
- (c) Disposals made pursuant to a planning obligation pursuant to section 106 of the Town & Country Planning Act 1990 or the Local Government (Miscellaneous Provisions) Act 1982 or section 33 and/or the Local Government Act 1972 section 111 and the Highways Act 1980 section (s) 38 and/or 278;

and any other Disposal which GLA agrees from time to time will become a Permitted Disposal;

[DN: Borough to confirm if any Disposals are anticipated (in which case the definition of "Permitted Disposal" will be reviewed in the light of relevance to the particular intervention)]

Permitted Encumbrance means:

- (a) any lien arising solely by operation of law in the ordinary course of the Borough's business in respect of any obligation which is not more than 30 days overdue for settlement;
- (b) the Disposal of part or parts of the Site upon which an electricity sub-station, gas generation or pumping station or other statutory services or infrastructure have been or are to be constructed or installed and the immediate curtilage of the same together with ancillary easements;
- (c) any Encumbrance arising out of title retention provisions in a supplier's standard conditions of supply in respect of goods supplied to the Borough in the ordinary course of its business;
- (d) any Encumbrance created pursuant to this Agreement; and
- (e) any Encumbrance granted with the prior written consent of GLA;

Personal Data has the meaning ascribed to it in the Data Protection Legislation;

Plan means the plan showing the location of the Agreed Intervention annexed to this Agreement as Annexure 1;

Planning Permission means an implementable planning permission for the Project granted by the appropriate local planning authority or the Mayor of London including the completion of an acceptable section 106 agreement;

Process has the meaning ascribed to it in the Data Protection Legislation and **Processing** shall be construed accordingly;

Procurement Law means (as the case may be):

- (a) prior to the date on which the United Kingdom ceases to be a Member State of the European Union all applicable United Kingdom and European Union procurement Legislation and any implementing measures including European Union Directives 2014/23/EU (on the award of concession contracts) and 2014/24/EU (on Public Procurement); the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 insofar as the same are applicable; and
- (b) on or after the date the United Kingdom ceases to be a Member State of the European Union the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 (insofar as the same are applicable) together with any statutory modification or replacement regulations or Legislation on procurement by public bodies (including Registered Providers);

Professional means any consultant or advisor with a design or supervisory responsibility for the Works appointed or engaged by the Borough or a Contractor in connection with the Works;

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of GLA any gift or consideration of any kind as an inducement or reward:
 - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or
 - ii for showing or not showing favour or disfavour to any person in relation to This Agreement;
- (b) entering into this Agreement or any other agreement with the GLA relative to this Agreement in connection with which commission has been paid or has been agreed to be paid by the Borough or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed to GLA;
- (c) committing any offence:

- i under legislation creating offences in respect of fraudulent acts;
 - ii at common law in respect of fraudulent acts in relation to this Agreement; or
 - iii under the Bribery Act 2010; or
- (d) defrauding or attempting to defraud or conspiring to defraud GLA;

Project means the outputs described in schedule 2;

Project Delivery Agreement means the agreement entered into, or to be entered into, between the Borough and a developer in respect of the Site for the delivery of the Project;

Project Developer means a developer selected or to be selected by the Borough (or on behalf of the Borough) to enter into a Project Delivery Agreement with the Borough;

Project Milestones means the stages in the delivery of the Project set out in schedule 2 as the same may from time to time be extended in accordance with clause 8;

Project Practical Completion means that stage in the execution of the Project when the works required to deliver the Project have been completed in accordance with the terms of any relevant building contract or development agreement, all the Dwellings are fit for beneficial occupation as a residential development in accordance with applicable National House-Building Council or equivalent requirements current at the date of inspection subject only to the existence of minor defects and/or minor omissions at the time of inspection which would be reasonable to include in a snagging list, and any commercial units are fit for beneficial occupation for the intended use in accordance with the Planning Permission;

Project Start on Site means the date on which all pre-planning conditions have been satisfied, the Project Developer has control of the Site and works in respect of the Project have commenced in accordance with the Planning Permission;

Public Sector Financial Assistance means any funding received or receivable by the Borough, the Project Developer or a Contractor to finance any part of the Agreed Intervention or Project from public sector bodies including but not limited to funding by the GLA (other than the Agreed Intervention Sum), funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Act 1993 and 1998;

Quarter means the period between a Quarter Date and the next following Quarter Date;

Quarter Date means 31 March, 30 June, 30 September and 31 December;

Register means the register maintained by the Regulator pursuant to section 111 HRA 2008;

Registered Provider means (as appropriate) a local authority entered on the Register pursuant to Section 114 of the HRA 2008 or a body entered on the Register as a profit making and/or a non-profit organisation (as such terms are defined in Section 115 of the HRA 2008);

Regulator means the Regulator of Social Housing established pursuant to Chapter 2 of the HRA 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

Regulatory Body means government departments or regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the GLA;

Remediation Plan means the plan described in clause 12.3.1 **Error! Reference source not found.**;

Report means a report under Section 114(3) or Section 114A of the Local Government Finance Act 1988 or Section 5 of the Local Government and Housing Act 1989;

Request for Information/RFI shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Agreed Intervention or the Project, or any activities or business of GLA;

Required Standards means the requirements of this Agreement, Good Industry Practice, all Consents and Legislation;

Review Meeting means a meeting of the type described in clause 10.3;

RIDDOR means Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time);

Section 151 Officer means an officer of the Borough appointed under section 151 of the Local Government Act 1972;

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect (such as sale or lease and leaseback, a blocked account, set-off or similar “flawed asset” arrangement);

Site means the land upon which the Agreed Intervention is to be constructed as identified in the Plan;

Small Sites Small Builders Programme means the programme administered by the GLA to unlock publicly-owned small sites for residential-led development;

Small Sites Small Builder Programme Default means a breach by the Borough of the obligations set out in paragraphs 4 and 5 of schedule 7;

Social Housing Assistance has the meaning given to it in section 32(13) of the Housing and Regeneration Act 2008 as interpreted in relation to the GLA in accordance with section 333ZE(2)(b) of the Act;

Solicitors means a firm of solicitors approved by GLA (acting reasonably and having regard, inter alia, to the number of partners, relevant experience and professional indemnity cover of any proposed firm) from time to time;

Special Conditions means the conditions set out in schedule 7;

Start on Site means [the date on which all pre-planning conditions have been satisfied and the Borough has control of the Site to enable Works to commence];

[DN: definition to be confirmed and aligned with the Borough's contracting arrangements]

Start on Site Date means the date identified in schedule 1 on which Start on Site is to have occurred;

State Aid means (as the case may be):

- (a) any aid granted by a Member State of the European Union or through the resources of such Member State in any form whatsoever which distorts or threatens to distort competition by favouring a particular undertaking or the production of certain goods, in so far as such aid affects trade between European Union Member States; or
- (b) any aid, benefit or advantage (which includes but is not limited to assets, rates, funds and land) granted by or through a public sector body which is subject to any United Kingdom Competition Requirements;

Statutory Deduction means the deduction referred to in section 61(1) FA or such other deduction as may be in force at the relevant time;

Sub-Contract means any sub-contract entered into or to be entered into by the Borough or a Contractor in respect of any part of the Works or the Agreed Intervention;

Sub-Contractor means any party entering into a Sub-Contract;

Tax means any tax, levy, impost, duty or other charge or withholdings and any charges of a similar nature, together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and Taxation or taxation and Taxes or taxes shall be construed accordingly;

Total Intervention Costs means, if all costs in relation to the Agreed Intervention:

- (a) have been incurred, the aggregate of such costs; or
- (b) have not yet been incurred, the actual and forecasted value (as relevant) of the aggregate of such costs

each as such costs are identified in the Agreed Intervention Budget;

Trigger Event means an event of the type described in any of clauses 12.1.1, 12.1.2, 12.1.3, 12.1.4, 12.1.5, 12.1.6, 12.1.8, 12.1.9, 12.1.11, 12.1.12, 12.1.13, 12.1.15, 12.1.17, 12.1.18 or 12.1.19;

Undrawn Amount means such part of the Agreed Intervention Sum as has not been paid to the Borough under this Agreement;

United Kingdom Competition Requirement means any Legislation which:

- (a) is in force and/or in effect and/or applies (in England) on or after the date the United Kingdom ceases to be a Member State of the European Union; and
- (b) which regulates any aid funding assets or advantage granted or directed by a public sector body to the extent that the same has the ability to threaten to or actually distort either competition or an economic market in the United Kingdom and/or in any part of the European Economic Area and/or in any other country or countries;

Unlawful State Aid means (as the case may be):

- (a) State Aid which has been granted in contravention of Article 108(3) Treaty of the Functioning of the European Union (TFEU), does not benefit from an exemption from notification and has not been approved by a decision of the European Commission under Article 107(2) or (3) TFEU;
- (b) State Aid which has been granted after the United Kingdom ceases to be a Member State of the European Union to the extent that the same is granted contrary to or is an infringement of any United Kingdom Competition Requirement;

VAT means Value Added Tax as presently charged under the Value Added Tax Act 1994 or any tax of similar nature;

Waiver Condition means provision of satisfactory evidence by the Borough to GLA that the relevant Prohibited Act was committed by:

- (a) an employee acting independently of the Borough and such employee's employment is terminated within twenty (20) Business Days of GLA serving notice on the Borough of such Prohibited Act; or
- (b) the Borough, the Contractor or a subcontractor (or any employee of a subcontractor not acting independently of the subcontractor) or the Project Developer and the relevant subcontract is terminated within twenty (20) Business Days of GLA serving notice on the Borough of such Prohibited Act; or
- (c) an employee of a subcontractor acting independently of such subcontractor and such employee's employment is terminated within twenty (20) Business Days of GLA serving notice on the Borough of such Prohibited Act; or
- (d) any person not specified in paragraphs (a), (b) or (c) and the Borough (or the Borough, the Contractor or any subcontractor or the Project Developer) has severed links with such person (whether his employment, appointment or any other link) within twenty (20) Business Days of GLA serving notice on the Borough of such Prohibited Act

where acting independently means not acting with the authority or knowledge of any one or more of the directors of the Borough or relevant subcontractor; and

Works means all the works (including design, infrastructure works and all other works necessary for obtaining access to the Site) to be undertaken in order to ensure that the Agreed Intervention meets the Required Standards;

Works Practical Completion means completion of the Works in accordance with the definition of "Practical Completion" (or equivalent) in the relevant Contract(s);

1.2 Interpretation

1.2.1 The masculine includes the feminine and vice versa.

1.2.2 The singular includes the plural and vice versa.

1.2.3 Any reference in this Agreement to any condition, sub-condition, paragraph, schedule, appendix or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, schedule, appendix or section heading of this Agreement.

1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.

1.2.5 Any reference to any enactment, order, regulation, determination or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.

1.2.6 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

1.2.7 Headings are for convenience of reference only.

1.2.8 A time of day shall be a reference to London time.

1.2.9 A party means a party to this Agreement.

1.2.10 The words includes or including are to be construed without limitation.

1.2.11 A document in the agreed form is to be the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties) or in the form set out in a schedule to this Agreement.

1.2.12 A paragraph in a schedule shall be construed as references to a paragraph in that particular schedule.

1.2.13 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.

- 1.2.14 In any case where the consent or approval of GLA (or any officer of GLA) is required or a notice is to be given by or to GLA, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified to the other parties from time to time. Any consent, approval or refusal to consent or approve should be issued within a reasonable time frame.
- 1.2.15 An obligation to do anything includes an obligation to procure its being done.
- 1.2.16 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.17 The term Site includes each and every part of it and any estate or interest in it.
- 1.2.18 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 No review comment or approval by GLA under the provisions of this Agreement shall operate to exclude or limit the Borough's obligations or liabilities under this Agreement save where GLA have confirmed the said review comment or approval in writing.
- 1.2.21 The Borough shall be responsible as against GLA for the acts or omissions of any Contractor or the Project Developer as if they were the acts or omissions of the Borough.
- 1.2.22 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of GLA shall, unless otherwise expressly stated in this Agreement or agreed in writing by GLA, relieve the Borough of any of its obligations under this Agreement or any of the Intervention Related Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of GLA in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.2.23 Save where a contrary intention is shown or where an express discretion is given by this Agreement, GLA will act in a commercially reasonable manner in deciding whether to give any consent, agreement, determination or approval or express its satisfaction and whether to give any such consent, agreement, determination or approval or express its satisfaction subject to restrictions, terms or conditions unless in each case to do so would fetter its statutory powers, rights or obligations.

2 **Provision of Funding**

2.1 GLA (in exercise of its powers under the Act) agrees to make available to the Borough during the Availability Period grant funding in an aggregate principal amount equal to the Maximum Agreed Intervention Amount on the terms set out in this Agreement.

2.2 The Borough acknowledges and agrees that the Agreed Intervention Sum may be adjusted by the GLA:

2.2.1 in the exercise of its rights under this Agreement; or

2.2.2 to accommodate factors such as (but without limitation):

(a) variations arising out of the operation of clause 8.3;

(b) changes to the Agreed Intervention or the Project agreed between the parties; or

(c) increases in income or other sources of financial assistance becoming available to the Borough, the Project Developer or any Contractor in relation to the delivery of the Agreed Intervention or the Project.

2.3 The Availability Period will come to an end in relation to all Undrawn Amounts on the termination of this Agreement.

3 **Representations and warranties**

As at the date of this Agreement, on the date of each Claim and the date of each Review Meeting (by reference to the facts and circumstances then existing) the Borough makes the representations and warranties set out in schedule 5 to the GLA.

4 **Payment of Funding**

4.1 **Initial Conditions Precedent**

4.1.1 GLA's obligations under this Agreement are subject to the condition precedent that it has conducted due diligence (including financial and legal due diligence) satisfactory to it in relation to the Agreed Intervention and has confirmed to the Borough that it has received all of the following in form and substance satisfactory to GLA:

(a) A Legal Opinion dated prior to the date of this Agreement;

(b) a copy of the Agreed Intervention Budget;

(c) an expected construction timetable consistent with the Milestones and Milestone Dates;

(d) a certificate from the Borough's Section 151 Officer that all expenditure to which Funding will be applied is classified (according to proper accounting practices) as capital expenditure;

- (e) evidence satisfactory to the GLA regarding commitments in relation to the delivery of the Project arising out of the delivery of the Agreed Intervention; and
- (f) evidence satisfactory to the GLA demonstrating that the arrangements relating to funding for the Agreed Intervention in addition to the Funding provided under this Agreement accord with the Agreed Intervention Budget.

4.2 **Conditions Precedent to each Claim for Funding**

4.2.1 The obligation of GLA to make available any Funding is subject to the further conditions precedent that, at or (in the case of the matters set out in sub-paragraphs (b), (c), (f), (g) and (h)) before the time of a Claim and at or (in the case of the matters set out in such sub-paragraphs) before the time GLA pays Funding that it has confirmed to the Borough that it has received all of the following in form and substance satisfactory to GLA:

- (a) evidence that the Borough has (and continues to have) sufficient funds (in addition to the Funding) whether from its own resources or otherwise to complete the Agreed Intervention and deliver or procure delivery of the Project;
- (b) counterparts of each Intervention Related Document (except for the Project Delivery Agreement if the Borough has not yet entered into the same) executed by the Borough;
- (c) a Certificate of Title in a form acceptable to GLA in respect of the ownership of the Site and the Borough's estate or interest in it (being either the freehold estate or a lease for a term of 99 years or more on terms acceptable to GLA) issued to GLA by the Solicitors certifying among other things that: (a) the Site is free from any conditions, restrictions, covenants or third party interests which do or might affect the right to carry out and maintain the Works or to deliver the Agreed Intervention and/or the Project; and (b) the Borough has sufficient rights appurtenant to its estate or interest in the Site to enable the Agreed Intervention and the Works to be fully carried out and fully serviced without the need to acquire further land or obtain any rights from any other party;
- (d) a valid Claim made in accordance with clause 4.3;
- (e) the amount of the Claim is in accordance with the Agreed Intervention Budget, as determined by GLA in its absolute discretion;
- (f) a copy of the grant of planning permission satisfactory to GLA (acting reasonably) including approval of siting, design, access and use, landscaping and materials for the whole of the Agreed Intervention;
- (g) copies of policies, certificates or cover notes relating to each contract or policy of insurance taken out by or on behalf of the Borough have been provided; and

- (h) evidence that all necessary Consents have been obtained and all other matters are in place to enable the Works in respect of the Agreed Intervention to be commenced.

4.2.2 The obligation of GLA to make available any Funding is also subject to the further conditions precedent that at the time of the Claim and at the time of paying such Funding:

- (a) no Event of Default has occurred and is continuing or would result from the proposed Funding;
- (b) any amount of Agreed Intervention Expenditure identified in the Agreed Intervention Budget as due to be paid by the Borough in relation to the Agreed Intervention prior to the date of the Claim has in fact been paid in full by the Borough;
- (c) GLA has received such evidence as GLA may (acting reasonably) require that all matters represented and warranted by the Borough under clause 3 are true and correct as if made at the date of each Claim and would be true and correct immediately after the making of any such Funding; and
- (d) prior receipt by the GLA of any approvals the GLA may require whether internally or as required by Legislation or by central Government.

4.3 **Mechanics and payment of Funding**

4.3.1 A Claim will not be regarded as having been validly made by the Borough unless:

- (a) it is submitted on a Claim Form which must be signed by the Borough Senior Officer and:
 - i is submitted to GLA within the Availability Period; and
 - ii is submitted to GLA in accordance with the stages and procedures set out in schedule 6;
- (b) it relates to Agreed Intervention Expenditure for which the Borough has not submitted any other Claim or received any other Funding and it is accompanied by written evidence satisfactory to GLA that such Agreed Intervention Expenditure has been incurred;
- (c) it accords with the Agreed Intervention Expenditure Plan or is accompanied by evidence satisfactory to GLA (in its absolute discretion) to justify any deviation;
- (d) it is for an amount which (if paid) would not cause the Maximum Agreed Intervention Amount to be exceeded; and
- (e) the conditions at clauses 4.1 and 4.2 have been satisfied.

4.3.2 Subject to the terms of this Agreement, GLA will pay each undisputed instalment of Funding to the Borough within fifteen (15) Business Days of receipt of a valid Claim.

4.3.3 Any amount of Funding not claimed by the Borough during the Availability Period will be automatically cancelled.

4.3.4 The Borough may not make more than one Claim per Quarter.

4.4 **Use of Funding**

4.4.1 The Funding will be the sole property of the Borough and must be used by the Borough for Agreed Intervention Expenditure only.

4.4.2 Without affecting the obligations of the Borough in any way, GLA is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

5 **Repayment and Overpayments**

5.1 If the Borough is required to repay any amount of Funding to the GLA, all such repayments must be paid in immediately available cleared funds to GLA into such bank account as GLA shall notify to the Borough from time to time.

5.2 If the Borough does not pay any amount it is obliged to pay under this Agreement when it is due, the Borough shall pay default interest on such outstanding amount from the due date until the date of actual payment (both before and after judgment) at a rate per annum equal to 5% above the Base Interest Rate.

5.3 All payments by the Borough under or in connection with this Agreement shall be made without set-off or counterclaim, free and clear of and without any deduction or withholding, including, without limitation, for or on account of all taxes except for taxes which must be deducted by law.

5.4 If the Borough is required by law to make any deduction or withholding the Borough shall:

5.4.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;

5.4.2 pay to GLA such additional amount as may be determined by GLA to be necessary to ensure that after making any required deduction or withholding GLA receives and retains a net amount equal to the full amount which would have been received had no deduction or withholding been required;

5.4.3 pay to the applicable taxation or other authorities within the period for payment permitted by law the full amount of the deduction or withholding; and

5.4.4 supply to GLA, within the period for the payment permitted by law, an official receipt of the applicable taxation or other authorities for all amounts deducted or withheld.

5.5 Without prejudice to any other provisions of this Agreement, if:

- 5.5.1 GLA is required by law to make any payment on account of taxes (other than taxes on its overall net income) on or in relation to any sum received or receivable by GLA from the Borough under or pursuant to this Agreement; or
- 5.5.2 any liability in respect of any such payment is imposed, levied or assessed against GLA

the Borough shall on demand by GLA indemnify GLA against such payment or liability together with any interest, penalties and expenses payable or incurred in connection with it.

- 5.6 If the GLA (acting reasonably) considers at any time that any part of the Agreed Intervention Sum was not expended by the Borough on Agreed Intervention Expenditure or if at any time the GLA has made any overpayment to the Borough or has paid the Borough any sum in excess of the Maximum Agreed Intervention Amount the Borough must immediately on written demand repay to the GLA such amount as may be stipulated by the GLA together with Interest.

5.7 **GLA Surplus**

The parties agree to comply with their respective obligations under Schedule 8 and the Borough agrees to pay the GLA Surplus in accordance with Schedule 8.

6 **Delivery obligations**

6.1 **Works commencement and completion**

The Borough will procure that the Works commence by the Start on Site Date and are carried out and completed in accordance with the Agreed Intervention Details by the date of Works Practical Completion (as such dates may be revised by the GLA in accordance with clause 8).

6.2 **Contractors and employees**

6.2.1 The Borough will procure that each Contractor and the Project Developer complies with each and all of its contracts which relate to the Works, the Agreed Intervention and the Project and the Borough will enforce and procure the enforcement of the terms of the Intervention Related Documents at all times.

6.2.2 The Borough will take all necessary steps to satisfy GLA that its procurement policies and procedures in relation to employees, suppliers and Contractors and the Project Developer (as applicable) are suitable and competent in all respects to allow the proper performance of all work or tasks in relation to the Agreed Intervention and the Project.

6.2.3 The Borough will ensure that all contracts entered into in connection with the Agreed Intervention and the Project are competitively procured (utilising a documented decision making process) and that the Agreed Intervention Expenditure represents fair market costs.

6.3 **Works**

6.3.1 The Borough shall procure that the Works are:

- (a) conducted and completed in accordance with all Consents and the technical specifications and to the Required Standards and in compliance with the Design and Quality Standards (where applicable); and
- (b) carried out in a good and workmanlike manner; and
- (c) in all material respects undertaken in accordance with the terms of the Bid; and
- (d) carried out in compliance with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Agreement and the provisions of the said scheme the provisions of this Agreement shall prevail; and
- (e) carried out so that the Agreed Intervention is delivered in accordance with the Agreed Intervention Details and in any event by **[30 April 2021]** and the Project is delivered in accordance with the timescales set out in this Agreement.

[DN: the longstop date for delivery of the Agreed Intervention may vary on a project by project basis but it should be noted that the Availability Period for the funding is fixed at 31 March 2021]

6.3.2 The Borough shall provide to GLA a copy of the Final Certificate promptly upon receiving it.

6.4 **Insurances**

6.4.1 The Borough shall procure that at all times during the carrying out of the Agreed Intervention there shall be maintained full and proper insurance policies including policies in respect of all buildings upon the Site and all works undertaken in carrying out the Works and all unfixed goods and materials in connection with such works for, in every case, the full reinstatement or replacement costs of them from time to time including professional fees.

6.4.2 The Borough shall supply evidence of such insurance policies (satisfactory to GLA) within five (5) Business Days of written request from GLA.

6.4.3 If any building upon the Site or any works forming part of the Works or the Agreed Intervention or any materials or goods required to undertake such works are destroyed or damaged (other than as necessary as part of the carrying out of the Works), the Borough shall procure the rebuilding, reinstatement or replacement of such building, work, goods or materials in accordance with the provisions of this Agreement as soon as reasonably practicable. If the insurance proceeds shall be insufficient the Borough shall make up any deficiency out of its own monies.

6.4.4 The Borough shall not do or permit or suffer to be done anything which may render any policy or policies of insurance void or voidable.

6.5 **Planning**

6.5.1 The Borough shall within ten (10) Business Days of the grant of Planning Permission in respect of the Project provide the GLA with a copy of the Planning Permission for the Site.

6.6 **Other**

6.6.1 The Borough must procure that the Project is delivered in accordance with the applicable Milestone Dates and by [31 December 2021].

[DN: This longstop date for delivery of the Project, i.e. the homes, may vary on a project by project basis]

6.6.2 The Borough will act at all times with the utmost good faith.

6.6.3 The Borough will allow GLA to visit the Site at reasonable times and on reasonable notice for the purposes of monitoring the Borough's progress as against each Milestone and its relevant Milestone Date.

6.6.4 Until such time as the Agreed Intervention and the Project have been fully delivered in accordance with the terms of this Agreement, the Borough will ensure that GLA has the right to be represented at each project meeting relating to the same and that such representative (the details of which are to be advised by GLA to the Borough) is provided with reasonable notice of all such meetings and all relevant meeting materials.

6.6.5 The Borough shall meet all Cost Overruns from its own resources.

6.6.6 The Borough must ensure that any on-lending or other advance to a third party by the Borough of the whole or a part of the Agreed Intervention Sum:

(a) is approved in principle by GLA in advance;

(b) is in the case of

i a loan, protected by such security arrangements as would be expected by a prudent lender advancing its own funds to the borrowing organisation with a view to ensuring their repayment in accordance with the terms of the on-lending agreement; or

ii a grant, protected by such arrangements as would be expected of a prudent grant giver advancing its own funds to the grant recipient with a view to ensuring the proper application of the grant monies for the purposes for which they were advanced and appropriate arrangements for their recovery; and

(c) is compliant with State Aid requirements and ensures the repayment (together with interest and any penalty) of any sums found to be unlawful State Aid.

7 Regulatory and operational obligations

7.1 Consents

The Borough will procure that no Works are commenced and/or continued without all necessary Consents being received and in particular will procure that no work constituting development for which planning permission is required under the Town and Country Planning Act 1990 is carried out without having obtained detailed planning consent and will provide such documents as GLA requires to demonstrate compliance with this clause 7.1.

7.2 Public procurement

The Borough must comply with all applicable Procurement Laws in connection with the procurement of the Agreed Intervention and the Project or any services relating to them and must further ensure that the procurement of works, equipment, goods and services by the Borough relating to such Agreed Intervention and the Project are based on value for money.

7.3 Legislation (including Health & Safety and Equality & Diversity)

7.3.1 The Borough shall comply in all material respects with all relevant Legislation, including but not limited to legislation relating to health and safety, welfare at work, modern slavery and equality and diversity, and will use reasonable endeavours to enforce the terms of the Intervention Related Documents to ensure compliance with this clause 7.3.

7.3.2 The Borough has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by the GLA.

7.3.3 The Borough shall have due regard to the public sector equality duty under Part 11 of the Equality Act 2010.

7.3.3 The Borough accepts that:

(a) it is a "client" as defined by the CDM Regulations and warrants that it is and will at all times remain competent to carry out the role of a client under the CDM Regulations; and

(b) it will act as the only client in respect of the Agreed Intervention and the Borough hereby elects to be the only client under the CDM Regulations for the Agreed Intervention.

7.3.4 GLA agrees to the election of the Borough as the only client for the Agreed Intervention for the purposes of CDM Regulations.

7.3.5 The Borough shall comply fully with all the obligations of the client under the CDM Regulations insofar as they relate to the Agreed Intervention including, without limitation, the obligations to appoint an appropriate principal contractor and principal designer.

- 7.3.6 The Borough shall not seek to withdraw, terminate or in any manner derogate from such election without GLA's prior written consent, which GLA may in its absolute discretion withhold.
- 7.3.7 The Borough shall ensure that any and all parties engaged in respect of the procurement and/or undertaking of the Agreed Intervention are aware of the terms of the Borough's election as the only client for the purposes of the CDM Regulations.
- 7.3.8 The Borough shall at all times comply with all obligations, requirements and duties arising under the HS Act in connection with the Agreed Intervention.
- 7.3.9 The Borough shall at all times procure the compliance with all obligations, requirements and duties arising under the HS Act by any and all parties appointed in connection with the Agreed Intervention or allowed on the Site.
- 7.3.10 The Borough shall maintain or procure that there is maintained an accurate record of all health, safety and environmental incidents which occur on or in connection with the Agreed Intervention and the Project, and shall (if requested) provide a report to GLA Senior Officer as part of the Review Meeting.
- 7.3.11 Without in any way limiting its obligations in clause 7.3.9, the Borough shall notify GLA Senior Officer immediately on the occurrence of any of the following events which arise out of or in connection with the Agreed Intervention, the Works or the Project:
- (a) a fatal accident to any worker or a member of the public;
 - (b) any injury to a member of the public requiring reporting under RIDDOR;
 - (c) any dangerous occurrence, as defined by RIDDOR;
 - (d) the service of any improvement or prohibition notice under the HS Act;
 - (e) any incident having health & safety implications which attracts the attention of the police and/or the media;
 - (f) the commencement of any criminal prosecution under the HS Act.
- 7.3.14 The Borough will procure that in respect of the Agreed Intervention all Contractors and Professionals comply at all times with the HS Act and the CDM Regulations and will procure that:
- (a) no Contractor or Professional will by any act or omission do anything that would cause the Borough to breach or be prosecuted under the HS Act and/or the CDM Regulations;
 - (b) each Contractor and Professional shall at all times have due regard to the protection and safety of members of the public and their property on the Site, adjoining land owners and their property, visitors to the Site and their property and will at all times comply with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations (including the CDM Regulations) and legislation relating to

the health and safety of workers, and to the undertaking of construction works.

7.3.15 [GLA agrees that the Project Developer will act as the only client in respect of the delivery of the Project and GLA agrees to the election of the Project Developer as the only client for the delivery of the Project for the purposes of CDM Regulations.]

7.3.16 [The Borough shall use reasonable endeavours to procure that the Project Developer:

- (a) complies with all the obligations of the client under the CDM Regulations in so far as they relate to the delivery of the Project including, without limitation, the obligations to appoint an appropriate principal contractor and principal designer;
- (b) procures that any and all parties engaged in respect of the procurement and/or undertaking of the delivery of the Project are aware of the terms of the Project Developer's election as the only client for the purposes of the CDM Regulations;
- (c) at all times complies with all obligations, requirements and duties arising under the HS Act in connection with the delivery of the Project;
- (d) at all times procures the compliance with all obligations, requirements and duties arising under the HS Act by any and all parties appointed in connection with the delivery of the Project;]

[DN: Regarding clauses 7.3.15 and 7.3.16, Borough to confirm who is to be the client for the delivery of the Project for the purposes of the CDM Regulations.]

7.4 London Living Wage

7.4.1 Without prejudice to any other provision of this Agreement, the Borough shall:

- (a) use all reasonable endeavours to ensure that none of its employees engaged in the provision of the Works, the Agreed Intervention and/or the Project is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- (b) use all reasonable endeavours to ensure that none of its employees engaged in the provision of the Works, the Agreed Intervention and/or the Project is paid less than the amount to which they are entitled in their respective contracts of employment;
- (c) provide to GLA such information concerning the London Living Wage as GLA or its nominees may reasonably require from time to time;
- (d) disseminate on behalf of GLA to its employees engaged in the provision of the Works, the Agreed Intervention and/or the Project such perception questionnaires as GLA may reasonably require from time to

time and promptly collate and return to GLA responses to such questionnaires; and

- (e) use all reasonable endeavours to co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

7.5 Disposals

7.5.1 The Borough must not, without the prior written consent of GLA, dispose of the whole or any part of the Site save by way of a Permitted Disposal.

7.5.2 In granting any consent under clause 7.5.1 the GLA may impose such conditions as it deems to be appropriate to such consent.

7.6 Other

7.6.1 The Borough must:

- (a) supply to GLA a copy of any valuation of the Site the Borough obtains, promptly upon obtaining it; and
- (b) provide the GLA or any Regulatory Body with such information as may be requested to demonstrate compliance with the Borough's obligations under clauses 6 and 7.

8 Variations and Milestone Date Amendments

8.1 The Borough may not make any amendment to the Agreed Intervention, the Agreed Intervention Details or the Project without the prior written consent of GLA other than minor amendments which have no impact upon the delivery of the Agreed Intervention, the Agreed Intervention Sum, the achievement of Milestones or the Project.

8.2 If a Milestone Failure occurs or is in the reasonable opinion of GLA likely to occur (having regard to the information supplied pursuant to this Agreement) and such Milestone Failure is not the result of a Milestone Extension Event GLA shall be entitled (but not obliged) and in its absolute discretion to:

8.2.1 exercise the rights described under clause 12; or

8.2.2 agree a revised Milestone Date with the Borough in which case any relevant condition of this Agreement shall apply (changing that which needs to be changed) to the revised Milestone Date.

8.3 Where any Milestone Failure occurs or is in the reasonable opinion of GLA likely to occur (having regard to the information supplied in each pursuant to this Agreement or otherwise) and GLA (acting reasonably) determines that such failure is the result of a Milestone Extension Event GLA shall extend the relevant Milestone Date by such period (acting reasonably) as it considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event SAVE THAT the GLA shall not for any reason be required to extend any Milestone Date which would delay the delivery of the Agreed Intervention and/or the Project beyond the respective dates set out in clause 12.4.

9 **Special Conditions**

9.1 The parties agree that the Special Conditions have effect.

10 **Notifications, reporting and audit**

10.1 The Borough shall notify GLA:

10.1.1 immediately upon any change (whether actual or estimated) required to the Agreed Intervention Details other than any change permitted under this Agreement;

10.1.2 immediately upon becoming aware of any event which:

- (a) has or might have a Material Adverse Effect on the Borough; or
- (b) has a detrimental effect on any aspect of the Agreed Intervention including, but not limited to, any Milestone Failure; or
- (c) prejudices or might prejudice the Borough's ability to deliver the Project; or
- (d) has resulted in or might give rise to the making of a Report or Direction

10.1.3 as soon as reasonably practicable on becoming aware of any claim brought against the Borough arising out of or relating to the activities of the Borough in relation to the Funding or pursuant to the Project Delivery Agreement;

10.1.4 immediately upon there being a proposed change to:

- (a) any Intervention Related Documents which is material;
- (b) the use of any asset funded by means of Funding made available under this Agreement (including the purposes for which it is to be used and/or any time periods for which the asset is to be used);
- (c) the ownership of any asset funded by means of Funding made available under this Agreement

10.1.5 immediately upon the occurrence of an Event of Default;

10.1.6 immediately upon becoming aware of any investigations into or findings of any breach of:

- (a) any equality or anti-discrimination legislation or regulations directly or indirectly related to the Works (or any part of them) whether or not the Borough and/or any Contractor and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate) (such notice to be addressed to GLA Senior Officer); and/or
- (b) the Data Protection Legislation whether or not the Borough and/or any Contractor and/or any other third party is responsible for the breach or is

the subject of the investigation (as appropriate) (such notice to be addressed to GLA Senior Officer); and/or

- (c) any challenge under, investigations into or findings of any breach of the Procurement Laws whether or not the Borough and/or any Contractor and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate) (such notice to be addressed to GLA Senior Officer);

10.1.7 immediately upon becoming aware of:

- (a) any audit or statutory or regulatory investigation in relation to any aspect of the Agreed Intervention or the Project; or
- (b) the occurrence of any act/omission of the Borough or of any of its Contractors, the Project Developer or subcontractors that harms or has the potential to harm the reputation of the GLA Group, the Mayor or the Small Sites Small Builder Programme or to bring them into disrepute.

10.1.8 immediately upon becoming aware that the Agreed Intervention Sum is greater than is necessary to deliver the Agreed Intervention to which it relates; and/or

10.1.9 immediately, in the event of the receipt by it of any other income or funds or other Public Sector Financial Assistance or guarantees of them, or the offer of the same, in respect of the Agreed Intervention or the Project beyond any amounts of the same notified by the Borough to the GLA as part of or in connection with its Bid.

10.2 **Resolution**

In the event of notification by the Borough under this clause 10, if applicable and if requested by GLA, the Borough will provide, together with such notification, a proposal for resolution or mitigation of the event and will take into account all representations of GLA on such proposals.

10.3 **Review Meetings**

10.3.1 From the date of this Agreement until the Project has been delivered in accordance with the terms of this Agreement the Borough shall provide the GLA with a progress report within ten (10) Business Days of each Quarter Date (or within such longer period as the GLA may at its absolute discretion agree) containing the following information:

- (a) progress in delivering the Agreed Intervention and the Project;
- (b) the Borough's projections in relation to its future performance in delivering the Agreed Intervention and the Project;
- (c) the occurrence of any Milestone Failure;
- (d) the implications of any Notifiable Events; and

- (e) such other matters in relation to the performance of this Agreement as the GLA may reasonably require from time to time.
- 10.3.2 The GLA or the Borough may also call a Review Meeting at any time provided that the party requesting the meeting:
 - (a) gives reasonable prior written notice to the other of such meeting; and
 - (b) includes with the notice an agenda for such meeting.
- 10.3.3 The Borough shall provide the GLA as soon as is reasonably practicable with such information or reports as the GLA shall reasonably require to support the reports or facilitate the meetings referred to in this Agreement and to monitor the performance of the Borough's obligations under this Agreement.
- 10.3.4 The GLA and the Borough shall each use all reasonable endeavours to ensure that any representatives at any meeting held pursuant to this clause 10.3 have the necessary authority and knowledge to deal with the items on the agenda for such meeting.
- 10.3.5 Subject to the prior approval of the other party (such approval not be unreasonably withheld or delayed) either party may request that additional persons attend a meeting to provide detailed or particular advice or information.
- 10.3.6 Save as otherwise agreed between the parties, any meeting under this clause 10.3 shall be minuted by the Borough and such minutes shall be distributed within ten (10) Business Days following the meeting to GLA and any other attendee.
- 10.3.7 Nothing in this clause 10.3 shall prevent GLA from requesting (whether on behalf of itself or any Government office) at any other time information from the Borough in respect of any of the items listed in this clause 10 and the Borough shall promptly respond to any such request.

10.4 **Inspection and audit facilities**

- 10.4.1 The Borough shall, as and when requested by GLA, make available on an Open Book basis and in a timely manner to GLA where required in connection with this Agreement a copy of each of:
 - (a) all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Borough for the purposes of this Agreement; and
 - (b) all such data, materials, documents and accounts created, acquired or brought into existence by the Borough's officers, employees, agents or consultants relating to the Agreed Intervention or the Project and which have been supplied to the Borough for the purposes of this Agreement.
- 10.4.2 The Borough shall at all times:

- (a) maintain a full record of particulars of all the income received and expenditure incurred by the Borough in respect of the Agreed Intervention;
 - (b) when required to do so by GLA, provide a summary of any of the income and expenditure referred to in clause 10.4.2(a) as GLA may require to enable it to monitor the performance by the Borough of its obligations under this Agreement; and
 - (c) provide such facilities as GLA may require for its representatives to visit any place where the records are held and examine the records maintained under this clause 10.4.
- 10.4.3 The Borough shall ensure that it, the Project Developer and each Contractor keeps on an Open Book basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Agreed Intervention, the Works or the Project which identify items of revenue received and expenditure incurred in relation to the same.
- 10.4.4 On the expiry of this Agreement or (if earlier) upon termination thereof, the Borough shall, if requested to do so, deliver up to GLA all the data, materials, documents and accounts referred to in this clause 10.4 which it has in its possession, custody or control and shall procure the handing over to GLA such data, materials, documents and accounts referred to in clause 10 or as otherwise directed by GLA.
- 10.4.5 The Borough must (and shall procure that each Contractor and the Project Developer does) for a period of 10 (ten) years from the date of the last payment made to the Borough under this Agreement retain all of the data, documents, materials and accounts referred to in this clause 10.4 and the Borough may retain such data, documents, materials and accounts in electronic form only which may for the avoidance of doubt comprise copies where the originals have been supplied to GLA pursuant to this clause 10.

11 **Change in financial circumstances**

- 11.1.1 The Borough shall notify GLA immediately where there is or has been any change in its financial circumstances which has or might have a Material Adverse Effect, including for the avoidance of doubt any withdrawal or reduction of any funding or income available to the Borough relative to the delivery of the Agreed Intervention and/or the Project.
- 11.1.2 In the event that GLA (acting reasonably) believes that any change notified to it pursuant to clause 11.1.1 or which it otherwise becomes aware of has or might have a Material Adverse Effect, GLA shall be entitled to exercise any of the rights and remedies set out in clause 12.

12 Events of Default

12.1 An Event of Default occurs where:

- 12.1.1 a Milestone Failure occurs or is in the opinion of GLA likely to occur (having regard to the information supplied pursuant to clauses 10 and 10.4.5 or otherwise) and such Milestone Failure is not the direct result of a Milestone Extension Event;
- 12.1.2 the Borough fails to perform and/or observe any obligation or restriction on it under any Intervention Related Document (to which it is a party) such that delivery of the Agreed Intervention or the Project in the reasonable opinion of GLA is unlikely to be achieved in accordance with the requirements of this Agreement;
- 12.1.3 any representation or warranty made by the Borough pursuant to clause 3 is incorrect in any material respect when made or repeated;
- 12.1.4 an event or circumstance occurs in relation to the Borough that might in the opinion of GLA have a Material Adverse Effect;
- 12.1.5 an Intervention Related Document is not or ceases to be effective or to have the priority expressed in it (or is alleged by any person (other than GLA) to be ineffective or not to have such priority for any reason) and the GLA is of the opinion that such circumstance has a Material Adverse Effect;
- 12.1.6 any Consent is withdrawn or revoked, where such withdrawal or revocation is likely to have a Material Adverse Effect;
- 12.1.7 the Borough or where applicable any Contractor, subcontractor, employee, officer or agent or the Project Developer commits any Prohibited Act (in respect of which the Waiver Condition has not been satisfied);
- 12.1.8 the Project Delivery Agreement is terminated or otherwise determines;
- 12.1.9 GLA in its absolute discretion considers (whether as a result of its due diligence or otherwise) that the Borough or any Contractor does not have sufficient funds or resources available to them to complete the Works and/or the Agreed Intervention in accordance with the Agreed Intervention Details;
- 12.1.10 the Availability Period expires;
- 12.1.11 a Report or Direction is made;
- 12.1.12 a Change of Use or Disposal other than a Permitted Disposal has occurred without the prior consent of GLA;
- 12.1.13 any Intervention Related Document is terminated without the prior consent of GLA and such termination is likely in the opinion of the GLA to have a Material Adverse Effect;
- 12.1.14 there has been an act/omission on the part of the Borough or of any of its Contractors or the Project Developer that in the GLA's opinion harms or has the

potential to harm the reputation of the GLA Group, the Mayor or the Small Sites Small Builders Programme or to bring them into disrepute;

12.1.15 any change is made to the Project Delivery Agreement which affects or in the opinion of the GLA is likely to affect the Project or the timetable for its delivery;

12.1.16 clause 27.3 applies;

12.1.17 a Small Sites Small Builder Programme Default has occurred;

12.1.18 any other material breach by the Borough of any of its obligations under this Agreement has occurred; or

12.1.19 the Final Certificate issued by the Borough is inaccurate or misleading in any respect.

12.2 Where an Event of Default has occurred the GLA may (subject to clause 12.3) by notice to the Borough:

12.2.1 require the Borough to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the plan to GLA within ten (10) Business Days of such request for approval; and/or

12.2.2 suspend or alter the timing of the payment of any Funding for such period as GLA will determine in its sole discretion; and/or

12.2.3 reduce the Maximum Agreed Intervention Amount; and/or

12.2.4 require the Borough to immediately repay the Funding and all other amounts due under this Agreement together with Interest; and/or

12.2.5 terminate this Agreement and cancel any Undrawn Amount; and/or

12.2.6 in the case of a failure by the Borough to procure delivery of the Project in accordance with the requirements of this Agreement, adjust the Agreed Intervention Sum by such amount as the GLA in its discretion considers appropriate to reflect such failure and in that case the Borough must immediately repay the Balancing Payment to the GLA together with Interest.

12.3 Where an Event of Default which is a Trigger Event has occurred, the rights of the GLA under clause 12.2 shall be suspended pending the completion and outcome of the following steps:

12.3.1 the Borough must submit a proposed remediation plan (the **Remediation Plan**) to the GLA within five (5) Business Days of the occurrence of the Trigger Event setting out the Borough's proposals for the steps to be taken to remedy or mitigate the effects of the Trigger Event and a basis for testing whether this has been achieved within an appropriate timeframe;

12.3.2 the GLA will notify the Borough as to whether the Remediation Plan is approved as submitted within ten (10) Business Days of its receipt;

- 12.3.3 if the Remediation Plan is not approved, senior representatives of the parties (acting in good faith with a view to securing delivery of the Agreed Intervention and the Project or otherwise the repayment of the Funding) must meet as soon as practicable (and in any event within ten (10) Business Days of the GLA's notification under clause 12.3.2 or such later date as the GLA may agree) to try to agree a revised Remediation Plan. In default of agreement, an Event of Default shall be deemed to occur and the GLA shall be entitled freely to exercise its rights under clause 12.2 without any further suspension;
- 12.3.4 if the Remediation Plan is approved, the Borough must comply with the obligations set out in the Remediation Plan and any failure to do so will be treated as an Event of Default entitling the GLA to exercise its rights under clause 12.2 free of any rights of suspension which would otherwise benefit the Borough; and
- 12.3.5 within ten (10) Business Days of the end of the timeframe specified in the Remediation Plan, senior representatives of the parties must meet to review the efficacy of the Remediation Plan in remedying or mitigating the effects of the Trigger Event. If in the opinion of the GLA (acting reasonably) the Remediation Plan has not been effective, the GLA shall be entitled in its absolute discretion either to extend the timeframe for the Remediation Plan's operation or to declare that the Remediation Plan has failed in which case an Event of Default shall be deemed to have occurred entitling the GLA to exercise its rights under clause 12.2 free of any rights of suspension which would otherwise benefit the Borough.
- 12.4 Nothing in clause 12.3 shall require the GLA to agree any measure which would delay the delivery of:
- 12.4.1 the Agreed Intervention beyond [31 April 2021]; or
- 12.4.2 the Project beyond [31 December 2021].

[DN: The above dates should be consistent with clauses 6.3.1(e) and 6.6.1]

- 12.5 In relation to the exercise by GLA of its rights under clause 12.2 the exercise by GLA of its rights under clause 12.2 will be without prejudice to any other right of action or remedy of GLA (including any claim for damage) in respect of the Event of Default.

13 **Public relations and publicity**

- 13.1 Save as expressly agreed by the GLA in writing or as otherwise set out in this clause 13, the Borough shall not and shall procure that no Contractor, officer, employee or agent nor the Project Developer shall communicate with any representative of any press, television, radio or other communications media on any matter concerning this Agreement without GLA's prior written consent (not to be unreasonably delayed).
- 13.2 GLA will have the right to approve any announcement in relation to this Agreement, the Agreed Intervention, the Project and the Small Sites Small Builders Programme before it is made.
- 13.3 The Borough shall:

- 13.3.1 notify GLA's Press Office and Communications Team (from time to time) in advance of any publicity plan, event or communication which it proposes to implement, hold or issue and ensure that any proposals for any launch or other related publicity activity in respect of the Agreed Intervention and/or Project are approved in writing by the GLA at least one month before the date of such proposed launch or other related publicity activity;
 - 13.3.2 ensure that pro-active positive press releases issued in respect of the Agreed Intervention and the Project acknowledge in the body of their text the fact that the Mayor of London, the LEAP and HM Government are financially supporting the Agreed Intervention and the Project and comply with any guidance on publicity and/or branding provided by the GLA from time to time;
 - 13.3.3 ensure that such wording as GLA may reasonably require from time to time is included within all press releases in respect of the Agreed Intervention and the Project;
 - 13.3.4 not produce any publication touching or concerning the Works, the Agreed Intervention or the Project (or the performance of any party in relation to the same) without the prior written approval of GLA, to be obtained at least two weeks in advance of any release of publicity material (in any form), save where such publication is in the overwhelming public interest (and in any event without first consulting GLA and allowing GLA to make representations on such proposed disclosure);
 - 13.3.5 comply with such requirements as to Site signage as GLA may notify to it from time to time; and
 - 13.3.6 ensure that any publicity material (including, without limitation, on hoardings/construction signboards and relevant online platforms) prepared in relation to the Agreed Intervention and the Project includes the logo of GLA, the LEAP, HM Government (in the form set out in Annexure 4) and/or the logo of any other organisation advised from time to time by GLA.
- 13.4 The Borough grants to GLA a non-exclusive, royalty free licence (to the extent it can grant such a licence) to use any photographs, records, images, articles or illustrations relating to the Agreed Intervention or the Project undertaken by or for the Borough for use in any publicity or advertising, whether published alone or in conjunction with any other person.
- 13.5 During the term of this Agreement, GLA grants the Borough a non-exclusive licence to use GLA's and LEAP's logo only for the purposes of the Agreed Intervention and the Project. The Borough will not grant sub licences of this licence or any part of it or use such logo for any other purposes save where approved in advance by GLA.
- 13.6 The Borough acknowledges that GLA's logo and the LEAP's logo is owned by and will remain the property of GLA.
- 14 **Reputation of the parties**
- 14.1 The Borough will not, and will use all reasonable endeavours to procure that neither its Contractors nor the Project Developer will knowingly do or omit to do anything in relation to the Agreed Intervention and the Project or in the course of their other activities that may

bring the standing of GLA or the LEAP into disrepute or attract adverse publicity for GLA or the LEAP.

- 14.2 No party will publish any statement, orally or in writing, relating to the other party which might damage that other party's reputation or that of any of its officers or employees.
- 14.3 The Borough has not at any time, engaged in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 14.4 No Associated Person of the Borough has bribed another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of the business for the Borough, and the Borough has in place adequate procedures in line with guidance published by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent its Associated Persons from undertaking any such conduct.
- 14.5 Neither the Borough nor any of its Associated Persons is, or has, been the subject of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Bribery Act 2010, and no such investigation, enquiry or proceedings are pending or to the best of the Borough's knowledge and belief having made all due enquiry have been threatened which, if adversely determined, might be expected to have a Material Adverse Effect and there are no circumstances likely to give rise to any such investigation, enquiry or proceedings.
- 14.6 The Borough is not ineligible to be awarded any contract or business under the Public Contracts Regulations or section 26 of the Utilities Contracts Regulations 2006 (SI 2006/6) (each as amended).
- 14.7 The Borough will not engage (directly or indirectly) in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 14.8 The Borough will maintain in place adequate procedures in line with guidance published by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent any Associated Person of a person from bribing another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of the business of a person. The Borough shall supply to GLA, promptly on request of GLA, copies of such documentation or other evidence as is reasonably requested by GLA to enable GLA to satisfy itself that such procedures are in place.
- 14.9 The Borough shall supply to GLA, promptly on becoming aware of them, details of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body relating to any offence or alleged offence under the Bribery Act 2010 against it.

15 **Confidentiality and freedom of information**

15.1 **Confidentiality**

- 15.1.1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.

- 15.1.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to GLA arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.
- 15.1.3 The obligations of confidence referred to in clause 15.1 will not apply to any Confidential Information which:
- (a) is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or
 - (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
 - (c) is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
 - (d) is independently developed without access to the Confidential Information of the other party.
- 15.1.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- (a) to enable the disclosing party to perform its obligations under this Agreement or Intervention Related Document; or
 - (b) by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA and the EIR and the Borough acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and GLA may nevertheless be obliged to disclose such Confidential Information; or
 - (c) by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
 - (d) In order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.
- 15.1.5 The Borough will ensure that all Confidential Information obtained from GLA under or in connection with this Agreement:
- (a) is given only to such of its and the Borough's employees, professional advisors, Contractors, the Project Developer or consultants engaged to advise it in connection with this Agreement as is strictly necessary for

the performance of this Agreement and only to the extent necessary for the performance of this Agreement;

- (b) is treated as confidential and not disclosed (without GLA's prior written approval) or used by any such staff or professional advisors, Contractors or consultants or by the Project Developer otherwise than for the purposes of this Agreement;
- (c) Where it is considered necessary in the opinion of GLA the Borough will procure that such staff, professional advisors, Contractors, the Project Developer or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

15.1.6 Nothing in this clause 15.1 shall prevent GLA:

- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of GLA's accounts; or
 - ii any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which GLA has used its resources; or
- (b) disclosing any Confidential Information obtained from the Borough:
 - i to any other department, office or agency of the Crown; or
 - ii to any person engaged in providing any services to GLA for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review (or any equivalent review by any successor body or agency carrying out the same or similar functions in whole or in part);
- (c) provided that in disclosing information under clauses 15.1.6(b)i or 15.1.6(b)ii GLA discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

15.1.7 Nothing in this clause 15.1 shall prevent a party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

15.1.8 Nothing in the clause 15.1 shall prevent GLA from publishing information relating to Total Intervention Costs, the Agreed Intervention Expenditure, the Agreed Intervention Sum, the Agreed Intervention or the Project.

15.2 **Freedom of information**

15.2.1 The parties to this Agreement are FOIA Authorities and:

- (a) are subject to legal duties which may require the release of information; and
- (b) FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.

15.2.2 The FOIA Authority in receipt of or to receive the RFI (Relevant FOIA Authority) will be responsible for determining in its absolute discretion whether:

- (a) any Information is Exempted Information or remains Exempted Information; and/or
- (b) any Information is to be disclosed in response to a Request for Information;

and in no event shall any party, other than the Relevant FOIA Authority, respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.

15.2.3 Subject to clause 15.2.4 below, each party acknowledges that the Relevant FOIA Authority may disclose Information:

- (a) without consulting the other; or
- (b) following consultation with the other party and having taken (or not taken, as the case may be) its views into account.

15.2.4 Without in any way limiting clauses 15.2.2 and 15.2.3, in the event that the Relevant FOIA Authority receives a RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other party.

15.2.5 Each party will assist and co-operate as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and will procure that its agents and sub-contractors will), at their own cost:

- (a) transfer any RFI received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a RFI;
- (b) provide all such assistance as may be required from time to time by the Relevant FOIA Authority and supply such data or information as may be requested by the Relevant FOIA Authority;
- (c) provide the Relevant FOIA Authority with any data or information in its possession or power in the form that the Relevant FOIA Authority requires within five (5) Business Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information; and

- (d) permit the Relevant FOIA Authority to inspect any records as requested from time to time.

15.2.6 Nothing in this Agreement will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.

15.2.7 The Borough acknowledges and agrees that GLA may in its absolute discretion redact all or part of the Information prior to its publication. In so doing and in its absolute discretion GLA may take account of any EIR Exemptions and FOIA Exemptions. GLA may in its absolute discretion consult with the Borough regarding any redactions to the Information to be published pursuant to this clause 15. GLA will make the final decision regarding publication and/or redaction of the Information.

15.2.8 The obligations in this clause 15 will survive the expiry or termination of this Agreement for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

15.3 Publication of information before Parliament

The Borough acknowledges that the National Audit Office has the right to publish details of this Agreement in its relevant reports to Parliament.

16 Data protection

16.1 The Borough shall ensure that at all times it complies with its obligations under this Agreement in a manner so as to comply with the Data Protection Legislation and all relevant regulations relating to data protection.

16.2 The Borough warrants and represents that it has obtained all necessary registrations, notifications and consents required by the Data Protection Legislation to Process Personal Data for the purposes of performing its obligations under this Agreement.

16.3 The Borough undertakes that to the extent that the Borough and/or any of its employees receives, has access to and/or is required to Process Personal Data on behalf of GLA (**GLA's Personal Data**) for the purpose of performing its obligations under this Agreement it will at all times act as if it were a Data Controller and comply with the provisions of the Data Protection Legislation:

16.3.1 the Borough shall at all material times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to the GLA's Personal Data and any person it authorises to have access to any of the GLA's Personal Data will respect and maintain the confidentiality and security of the GLA's Personal Data; and

16.3.2 the Borough shall allow the GLA to audit the Borough's compliance with the requirements of this Condition 16 on reasonable notice and/or, at GLA's

request, provide the GLA with evidence of the Borough's compliance with the obligations within this Condition 16.

- 16.4 The Borough undertakes not to disclose or transfer any of the GLA's Personal Data to any third party without the prior written consent of the GLA save that without prejudice to Condition 16.3 the Borough shall be entitled to disclose the GLA's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Borough to perform its obligations under this Agreement, or to the extent required under a court order.
- 16.5 The Borough agrees to use all reasonable efforts to assist GLA to comply with such obligations as are imposed on the GLA by the Data Protection Legislation.
- 16.6 The Borough shall indemnify GLA against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the GLA as a result of the Borough's destruction of and/or damage to or loss of any of GLA's Personal Data processed by the Borough, its employees, agents, or any breach of or other failure to comply with the obligations in the Data Protection Legislation and/or this Condition 16 by the Borough, its employees, agents or sub-contractors.
- 16.7 The Borough undertakes to include obligations no less onerous than those set out in this Condition 16, in all contractual arrangements with agents engaged by the Borough in performing its obligations under this Agreement to the GLA.

17 **Intellectual property**

- 17.1 Subject to the provisions of this clause 17.1 the Borough hereby grants, to the extent it can grant, to GLA a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy, use (from computer disk or otherwise) and to make publicly available all and any Intellectual Property Rights, drawings, reports, specifications, calculations and other documents and information provided by the Borough or which are or become owned by the Borough and which relate to the Agreed Intervention or the Project, for any purpose either relating to this Agreement or to the dissemination by GLA of Best Practice.
- 17.2 To the extent that any of the data, materials and documents referred to in clause 17.1 are generated by or maintained on a computer or in any other machine readable format, the Borough shall if requested by GLA procure for the benefit of GLA at the cost of the Borough the grant of a licence or sub-licence for the term of this Agreement and supply any relevant software and/or database to enable GLA making such request to access and otherwise use such data for the purposes referred to in clause 17.1.
- 17.3 No party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 17.4 The Borough shall fully indemnify GLA within five (5) Business Days of demand under this clause 17.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this clause 17.1, any breach by the Borough of this clause 17.1 and against all costs and damages of any kind which GLA may incur in connection with any actual or threatened proceedings before any court or adjudication body.

- 17.5 The Borough shall only be entitled to revoke the licence granted to GLA under clause 17.1 on the termination of the whole of this Agreement.
- 17.6 The Borough shall provide whatever assistance and explanation is required by GLA to enable it to disseminate Best Practice (including the methods by which the Works were conducted).
- 17.7 GLA's decision as to what constitutes Best Practice shall be final (and GLA acknowledges that it does not intend to use this clause 17.7 to make commercially sensitive information publicly available).
- 17.8 GLA shall be entitled to amend any of the Intellectual Property Rights or information provided under this clause 17.1 or to combine them with any other information or know how as it thinks fit when compiling and publishing Best Practice in exercise of the right conferred under clause 17.1.

18 **Further assurance**

At any time upon the written request of GLA the Borough will promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for GLA the full benefit of this Agreement and of the rights and powers therein granted.

19 **Indemnity**

The Borough shall:

- 19.1 be liable for and will indemnify GLA in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to GLA or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Borough and/or the performance or non-performance or delay in performance by the Borough of its obligations under this Agreement except to the extent that the same is due to any wilful neglect of GLA; and
- 19.2 be liable for and shall indemnify GLA against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connect with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Borough.

20 **Senior Officers**

20.1 **Authority of the Borough Senior Officer**

The Borough represents to GLA that the Borough Senior Officer has full authority to act on its behalf for all purposes under this Agreement. GLA and the GLA Senior Officer are entitled to treat any act of the Borough Senior Officer in connection with this Agreement as being expressly authorised by the Borough (save where the Borough has notified GLA that such authority has been revoked) and GLA will not be required to determine whether any express authority has in fact been given.

20.2 **Borough Senior Officer's power to delegate**

The Borough Senior Officer may authorise any of its subordinates to exercise its powers under this Agreement by notice to GLA.

20.3 **Authority of GLA Senior Officer**

GLA represents to the Borough that GLA Senior Officer has full authority to act on its behalf for all purposes under this Agreement. The Borough is entitled to treat any act of GLA Senior Officer in connection with this Agreement as being expressly authorised by GLA (save where GLA has notified the Borough that such authority has been revoked) and the Borough will not be required to determine whether any express authority has in fact been given.

20.4 **GLA Senior Officer's power to delegate**

GLA Senior Officer may authorise any of its subordinates to exercise any of its powers under this Agreement by notice to the Borough.

20.5 **Notices**

Subject to clause 29, any notice, information, instructions or public communication given in writing to GLA Senior Officer or the Borough Senior Officer will be deemed to have been given to their respective appointing party.

21 **No agency, partnership or employment**

21.1 Nothing in this Agreement or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association or, save as expressly provided, the relationship of principal and agent between the parties for any purpose whatsoever.

21.2 The Borough shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between GLA and the Borough. Neither the Borough nor any of its respective employees shall at any time hold itself or themselves out to be an employee of GLA.

21.3 The Borough will not say or do anything which may pledge the credit of or otherwise bind GLA or that may lead any other person to believe that the Borough is acting as GLA.

22 **Assignment and sub contracting**

22.1 The GLA will be entitled to assign, transfer or novate its rights and obligations under this Agreement.

22.2 The Borough will not be entitled to assign, transfer or novate its rights and obligations under this Agreement.

23 **Value Added Tax**

23.1 The parties understand and agree that the Funding by GLA under this Agreement is not consideration for any supply for Value Added Tax (VAT) purposes whether by the Borough or otherwise.

23.2 If, notwithstanding the agreement and understanding of the parties as set out in clause 23.1 above, it is determined that the Funding is consideration for a supply for VAT purposes, the Funding shall be treated as inclusive of any VAT.

23.3 All sums or other consideration payable to or provided by the Borough to GLA at any time will be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided, the Borough will pay to GLA all the VAT payable upon the receipt of a valid VAT invoice.

24 **Construction industry scheme**

24.1 Not later than twenty one (21) Business Days before:

24.1.1 the date on which the first payment of Funding is due; or

24.1.2 where Regulation 6(4) of the Income Tax (Construction Industry Scheme) Regulations 2005 does not apply, the date on which any further payment of Funding is due

the Borough will provide GLA with its unique taxpayer reference and any other information which GLA may be required to give to HMRC in order to verify the Borough's tax status.

24.2 GLA will verify the Borough's tax status with HMRC in accordance with the FA Legislation and shall notify the Borough in writing at least ten (10) Business Days before the date on which the first payment of Funding is due to be made if it intends to make any Statutory Deduction and at what rate.

24.3 GLA shall be entitled to make such Statutory Deductions from any payment of Funding as it is required to make in accordance with the FA Legislation, at such rate as may be in force from time to time.

24.4 Where any error or omission has occurred in calculating or making the Statutory Deduction then:

24.4.1 in the case of an over-deduction, GLA will correct that error by repayment of the sum over deducted to the Borough; and

24.4.2 in the case of an under-deduction, the Borough shall correct that error or omission by repayment of the sum under deducted to GLA.

24.5 If compliance with the provisions of this clause 24 involves either GLA or the Borough in not complying with any other term of this Agreement then the provisions of this clause 24 will take precedence.

25 **No fettering of discretion/statutory powers**

Nothing contained in or carried out pursuant to this Agreement and no consents given by GLA or the Borough will unlawfully prejudice GLA's or the Borough's (as appropriate) rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments, orders or regulations.

26 **Fees and Expenses**

26.1 **Costs**

Each party shall pay its own costs in connection with the negotiation, preparation, and execution of this Agreement, and all documents ancillary to it.

26.2 **Variations and Enforcement Costs**

The Borough shall, forthwith on demand, pay to GLA the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:

26.2.1 in connection with the variation or amendment of, or the enforcement or preservation of any rights under this Agreement; or

26.2.2 in investigating any Event of Default which has or is believed to have occurred.

27 **State Aid**

27.1 The Borough agrees that it shall use the Funding in a manner which is compliant with State Aid requirements.

27.2 If the Funding is found to constitute Unlawful State Aid (or is under investigation or subject to judicial proceedings in relation to State Aid compliance) then:

27.2.1 the parties acting in good faith will seek to restructure the arrangements surrounding the Agreed Intervention and the terms of this Agreement to the extent necessary to ensure State Aid compliance; and/or

27.2.2 the parties shall promptly cooperate in good faith to provide evidence that the Agreed Intervention (or the restructured Agreed Intervention) is or will be State Aid compliant.

27.3 If the Agreed Intervention is found to constitute Unlawful State Aid and/or is not capable of being restructured so as to be compliant then the Borough must repay any sum of Unlawful State Aid plus such interest as is prescribed by State Aid law within fifteen (15) Business Days of the GLA issuing it with a written demand for payment.

27.4 The GLA may review this Agreement at any time prior to or following the withdrawal of the United Kingdom from the European Union to ensure that the provisions of the Agreement comply with any United Kingdom Competition Requirements which may be applicable to it or the parties and to ensure that no Unlawful State Aid has or is likely to arise.

27.5 If as a result of any review undertaken in accordance with clause 27.4 it is found that a United Kingdom Competition Requirement applies or will apply to this Agreement then the Borough and the GLA shall amend this Agreement to the extent necessary to ensure that the provisions of this Agreement are compatible with any applicable United Kingdom Competition Requirement.

28 **Co-operation**

28.1 Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and the delivery of the Agreed Intervention and the Project and in particular will (subject to clause 28.2):

28.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the other party;

28.1.2 not interfere with the rights of any other party (nor its employees, agents, representatives, contractors or subcontractors) in performing its obligations under this Agreement nor in any other way hinder or prevent any other party (nor its employees, members, agents, representatives, contractors or subcontractors) from performing those obligations provided that this provision shall not prevent any party from exercising its express rights under this Agreement.

28.2 Nothing in clause 28.1 shall:

28.2.1 interfere with the right of each of the parties to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement and in connection with the Agreed Intervention or the Project in the manner in which it considers to be the most effective and efficient; or

28.2.2 relieve a party from any obligation contained in this Agreement.

28.3 The Borough shall co-operate fully and in a timely manner with any reasonable request from time to time:

28.3.1 of any auditor (whether internal or external) of GLA to provide documents, or to procure the provision of documents, relating to the Agreed Intervention or the Project, and to provide, or to procure the provision of, any oral or written explanation relating to the same; and/or

28.3.2 of GLA where GLA is required under any legislation to provide any document relating to the Agreed Intervention or the Project to any person.

28.4 The Borough shall promptly and fully co-operate with any request for information or evidence or for it to provide an explanation to the GLA to the extent this arises from compliance with State Aid requirements or if the GLA is required to provide to a third party such information or evidence either under Legislation or by a Competent Authority.

29 **Notices**

29.1 Any notice to be given hereunder shall be in writing addressed to GLA Senior Officer and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by the Recorded Delivery Service addressed in the case of any party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

29.2 Any notice shall be deemed to be given by the sender and received by the recipient:

29.2.1 if delivered by hand, when delivered to the recipient; or

29.2.2 if delivered by the Recorded Delivery Service, three (3) Business Days after delivery including the date of postage

provided that if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm it is to be regarded as received at 9.00am on the following Business Day.

30 **Rights of third parties**

Except as otherwise expressly provided no person who is not a party shall be entitled to enforce any terms of this Agreement solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

31 **Entire agreement**

31.1 This Agreement and the conditions herein contained together with the schedules and annexures constitute the entire agreement between the parties in relation to its subject matter and may only be varied or modified in accordance with clause 39.

31.2 The Borough hereby acknowledges that save as set out or referred to in the Agreement there are and have been no representations made by or on behalf of GLA of whatsoever nature on the faith of which the Borough is entering into this Agreement.

32 **Counterparts**

This Agreement may be executed in any number of counterparts and each counterpart will when executed be an original of this Agreement and all counterparts together will constitute one instrument.

33 **Severance**

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be omitted from this Agreement and shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

34 **Cumulative rights and enforcement**

Any rights and remedies provided for in this Agreement whether in favour of GLA or the Borough are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.

35 **Waiver**

35.1 The failure of any party at any one time to enforce any provision of this Agreement in no way affects its right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

35.2 Where in this Agreement any obligation of a party is to be performed within a specified time that obligation shall be deemed to continue after that time if the party fails to comply with that obligation within the time.

35.3 Any waiver or release of any right or remedy of a party must be specifically granted in writing signed by that party and shall:

35.3.1 be confined to the specific circumstances in which it is given;

35.3.2 not affect any other enforcement of the same or any other right; and

35.3.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

36 **Disclaimer**

GLA will not be liable to the other party for any advice given by a representative of GLA. In addition, GLA gives no assurance as to the suitability or viability of the Agreed Intervention or the Project and no endorsement of the same.

37 **Dispute Resolution**

37.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this Condition 37.

37.1.1 In the event that the Borough or the GLA consider that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the parties shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this Condition 37.

37.1.2 Representatives of the parties shall meet within five (5) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of receipt of a Notice of Dispute.

37.1.3 Where either no representatives of both parties are available to meet within the period set out in Condition 37.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executive (or nominated deputy) of the Borough and the GLA's Head of Paid Service (the **Senior Executives**).

37.1.4 The Senior Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Senior Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.

37.1.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Senior Executives, such Dispute must be dealt with in accordance with Condition 37.2 unless it is a Dispute under Schedule 8 in which case paragraph 5 of Schedule 8 shall apply.

37.2 In the circumstances contemplated in Condition 37.1.5, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR. The parties agree that:

- 37.2.1 to initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the Dispute requesting a mediation. A copy of the request should be sent to CEDR.
- 37.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR notice; and
- 37.2.3 except where the right to issue proceedings would be prejudiced by a delay, no party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.

38 **Governing law**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of clause 37 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

39 **Amendment**

- 39.1 The parties agree that (save as otherwise provided) this Agreement may be amended by agreement in writing between the GLA and the Borough.
- 39.2 In granting any consent or waiver under this Agreement the GLA may impose such conditions as it deems to be appropriate to such consent.

40 **Survival of this agreement**

- 40.1 Insofar as any of the rights and powers of the GLA provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 40.2 Insofar as any of the obligations of the Borough provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.

41 **Miscellaneous**

- 41.1 Any approval by GLA or any person on behalf of GLA pursuant to this Agreement of any matter submitted by the Borough for approval will not be deemed to be an acceptance by GLA of the correctness or suitability of the contents of the subject of the approval or consent.
- 41.2 The parties will and will ensure that their respective officers and employees will act at all times in a way which is compatible with the Convention Rights within the meaning of the Human Rights Act 1998.
- 41.3 A certificate by GLA as to any sum payable hereunder by the Borough will be conclusive save in the case of manifest error.

In witness of which this Agreement has been duly executed as a deed and is delivered and takes effect on the date written at the beginning of this Agreement.

Schedule 1

Agreed Intervention Details

Agreed Intervention Name: [REDACTED]

Agreed Intervention Information

[REDACTED]

Agreed Intervention Sum: £[REDACTED]

Maximum Agreed Intervention Amount: £[REDACTED]

Milestones and Milestone Dates

Agreed Intervention Milestone	Milestone Date
Submission of all necessary Consents to enable the Works in respect of the Agreed Intervention to be commenced	[REDACTED]
All necessary Consents obtained to enable the Works in respect of the Agreed Intervention to be commenced	[REDACTED]
Start on Site	[REDACTED]
Works Practical Completion	[REDACTED]

Schedule 2

Project

Project Description:

[]

Project Milestone	Milestone Date
Procurement of a Project Developer	[]
Assessment of bids by the Borough for a Project Developer	[]
Project Delivery Agreement between Borough and Project Developer completed	[]
Planning application submission	[]
Planning consent secured	[]
Project Start on Site	[]
Project Practical Completion	[]

Schedule 3

Claim Form

To: GLA

From: [insert full name of Borough]

Date: []

Small Sites Small Builders Capital Funding Agreement dated [] 2020 (the Agreement)

1 We refer to the Agreement. This is a Claim Form. Terms defined in the Agreement have the same meaning in this Claim Form.

2 We wish to drawdown an instalment of Funding as follows:

2.1 Amount: [];

2.2 Date of drawdown: [].

3 Payment Instructions

3.1.1 Bank name: [];

3.1.2 Bank branch/address: [];

3.1.3 Bank sort code: [];

3.1.4 Bank account number: []; and

3.1.5 Bank account name: [].

4 We confirm that each condition specified in clause 4 of the Agreement required to be satisfied on the date of this Claim Form is so satisfied and we know of no reason why any condition specified in clause 4 to be satisfied on or before the date of drawdown will not be so satisfied.

5 We confirm compliance with each representation and warranty specified in the Agreement.

6 We confirm that the Funding to be provided pursuant to this Claim Form will be used to meet Agreed Intervention Expenditure.

By:

Borough Senior Officer
for and on behalf of []

Schedule 4

Legal Opinion

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Greater London Authority
City Hall
The Queen's Walk
More London
London
SE1 2AA

To: Greater London Authority (the GLA)

Dear Sirs,

**Legal Opinion re [] Small Sites Small Builders Capital Funding Agreement
and related matters**

I refer to the proposed Small Sites Small Builders Capital Funding Agreement to be entered into between [] (the **Borough**) and the GLA (the **Agreement**) for the purposes of, inter alia, providing or facilitating the delivery of residential-led development and related outcomes which is dated on or about the date hereof. In connection with the giving of this opinion, I have examined:

- 1 the Agreement in its final form prior to execution and delivery thereof by the Borough;
- 2 the Borough 's [Standing Orders] for approving entry into and the execution and delivery of deeds by the Borough and for the delegation of its authority and the powers of the Borough's Executive; and
- 3 such other documents I consider appropriate for the purposes of giving this opinion.

I do not express any opinion as to, nor have I investigated the law of any jurisdiction other than England.

I am of the opinion that, as at the date hereof, as a matter of English law, the Borough has the power and authority to enter into, observe and perform the terms and obligations on its part to be observed

and performed by it under the Agreement and has taken all necessary action and has obtained all relevant consents and approvals (statutory or otherwise) to authorise the execution and delivery of the Agreement and the performance and validity of the obligations under it.

Neither the execution and the delivery of, nor the performance by the Borough of its obligations under the Agreement will violate any provisions of any existing application law, rule, regulation or agreement binding on the Borough, and the Agreement constitutes a valid and legally binding obligation on the Borough enforceable in accordance with its terms. I have given this opinion, taking into account the common law and statutory duties applicable to the exercise of power by the Borough.

The above opinions are subject to the reservation that under English law, the power of the court to order or pursue performance of an obligation and any other equitable remedies is discretionary and, accordingly, an English court might make an award of damages where specific performance of an obligation at work or remedy is sought.

This opinion is given by virtue of my position as Solicitor to the Borough and is only given as the holder of that office. I am not giving this opinion in a personal capacity, nor do I accept any private or personal liability for any error or omission in it or which may arise therefrom and the recipient, in seeking to place reliance on the contents of this letter, must duly acknowledge the same if any error or omission is later to be found. This opinion is addressed to the GLA and is solely for its benefit. It may not be disclosed to or relied upon by any other person or made public in any way without my prior consent. This opinion is limited to matters addressed herein and is not to be read as an opinion with respect to any other matter.

Yours faithfully

Borough Solicitor

There follows the specimen signatures and titles of those who will or may attest the execution as a deed of the Agreement referred to above.

Name	Title	Specimen Signature
------	-------	--------------------

Schedule 5

Representations and Warranties

1 Powers, vires and consents

1.1 It:

1.1.1 has the power to enter into and to exercise its rights and perform its obligations under this Agreement and the Intervention Related Documents (to which it is a party); and

1.1.2 has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this Agreement and Intervention Related Documents (to which it is a party) (or, in the case of any Intervention Related Document to be executed by it after the date hereof, such action will be taken before such execution).

1.2 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to have a Material Adverse Effect.

1.3 Its obligations under the Intervention Related Documents (to which it is a party) constitute its legal, valid and binding obligations, enforceable in accordance with their terms.

1.4 The execution, delivery and performance by it of the Intervention Related Documents (to which it is a party) do not:

1.4.1 insofar as it is aware contravene any applicable law or directive or any judgment, order or decree of any court having jurisdiction over it;

1.4.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or

1.4.3 contravene or conflict with its constitutional documents or arrangements.

1.5 All consents or steps, required by it in connection with the execution, delivery, issue, validity or enforceability of the Intervention Related Documents (to which it is a party) have been obtained or taken and have not been withdrawn or omitted.

1.6 It is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.

1.7 No claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect.

1.8 It has not committed any Prohibited Act.

1.9 It has not, and its Associated Persons have not, engaged in and will not engage (directly or indirectly) at any time, in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.

Deliverability

- 2.1.1 No third party has any Security over the Site or any part of it or any other assets of the Borough which would prejudice the delivery of the Agreed Intervention.
- 2.1.2 All Consents have been obtained and have not been withdrawn.
- 2.1.3 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.
- 2.1.4 The Borough has sufficient legal control of the Site to enable Works Practical Completion of all Works.
- 2.1.5 It will procure that all Works have been and will be undertaken:
- (a) in a way to ensure that the Agreed Intervention meets the Required Standards and permits the delivery of the Project; and
 - (b) in accordance with the terms of the Bid.
- 2.1.6 The Site is free from any conditions, restrictions or covenants which do or might affect the right to carry out the Works or achieve Works Practical Completion of all Works.
- 2.1.7 It shall take all reasonable steps to satisfy GLA that its members and any contractors employed in connection with the Works are suitable and competent in all respects to allow the proper performance of all necessary work or tasks in relation to the Works.
- 2.1.8 It shall in carrying out the Works comply with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Agreement and the provisions of the said scheme the provisions of this Agreement shall prevail.
- 2.1.9 Save as disclosed in the Certificate of Title, the Borough has:
- (a) good title to the Site and all other assets (including, but not limited to, intellectual property rights), free from Encumbrances other than a Permitted Encumbrance or freedom to use those assets for that purpose under all applicable laws; and
 - (b) access to and freedom to use under all applicable laws:
 - i the Site;
 - ii any buildings or fixtures on the Site;
 - iii any easement, wayleaves or other rights necessary for access to and use of the Site.
- 2.1.10 The Borough is in compliance with all applicable Environmental Laws.

- (a) The Borough is in compliance with the terms of all Environmental Consents necessary for the ownership and operation of the Site, facilities and businesses as presently owned and operated and as presently proposed to be owned and operated.
- (b) Save as disclosed in the Certificate of Title, there is no Environmental Claim which is current, pending or threatened against it and there are no past or present acts, omissions, events or circumstances that could form the basis of any Environmental Claim against it.
- (c) Save as disclosed in the Certificate of Title, there are no circumstances that may prevent or interfere with it obtaining or being in compliance with any Environmental Consent in the future and no action is pending or threatened by any authority against it which would result in any Environmental Consent being revoked, suspended or varied.
- (d) To the best of its knowledge and belief (having made all reasonable and proper enquiries) and save as disclosed in the Certificate of Title, no Dangerous Substance has been used, disposed of, generated, stored, transported, dumped, released, deposited, buried or emitted at, on, from or under any premises owned, leased, occupied, controlled or used by the Borough in circumstances where this results or could be expected to result in a liability on the Borough

3 Operational issues

- 3.1.1 No Event of Default has occurred and is continuing or would result from the making of any Funding.
- 3.1.2 No other event or circumstance is continuing which constitutes (or with the giving of notice, the lapse of time, the determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing), would or could be expected to constitute a default by it under any other document or arrangement which is binding on it or on any of its assets in any case to an extent or in a manner which has or could be expected to have a Material Adverse Effect.

4 Information

- 4.1.1 All information supplied by or on behalf of it to GLA or its agents or employees in connection with the Borough's initial application for Funding or in the course of the subsequent negotiations was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 4.1.2 It has informed GLA of any material change that has occurred since the date of submission of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect.

- 4.1.3 It is not aware of any material fact or circumstance that has not been disclosed to GLA and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.
- 4.1.4 The Bid and the Agreed Intervention Budget supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.
- 4.1.5 All data or other information submitted to the GLA to date under this Agreement is accurate.
- 4.1.6 So far as the Borough is aware (having made all reasonable enquiries) the Agreed Intervention and the Project (including, inter alia, all Milestone Dates) remain capable of being delivered in accordance with the Agreed Intervention Details without the need for change.

5 **Reports and Directions**

- 5.1 No Report or Direction has been made nor is the Borough aware of any circumstances that would give rise to the making of a Report or a Direction in relation to the Borough's obligations under this Agreement and Intervention Related Documents (to which it is a party) constitute its legal, valid and binding obligations, enforceable in accordance with its terms.

Schedule 6

Payment Arrangements

1. The Borough must make Claims to draw down instalments from the Agreed Intervention Sum quarterly in arrears in accordance with the expenditure and drawdown profiles set out in the Agreed Intervention Expenditure Plan.
2. The Borough must submit a Claim no later than ten (10) Business Days after the end of the Quarter to which the Claim relates.

Schedule 7

Special Conditions

- 1 The Borough shall support the Small Sites Small Builders Programme objectives by taking reasonable steps to ensure its procurement process for a Project Developer is as accessible as possible to small builders This can be achieved by identifying and removing barriers to participation (in the tendering, evaluation and assessment process) for example by:
 - Considering whether a PQQ is required.
 - Challenging and avoiding assumptions that bigger firms are better or less risky to deal with.
 - Using financial criteria with care not to discriminate against small builders.
 - Considering shorter contracts and/or breaking requirements into lots.
- 2 The Borough should use reasonable endeavours to:
 - Encourage suppliers to support a sustainable local economy – wherever they operate.
 - Support suppliers in identifying local supply chain and sub-contracting partners.
 - Encourage suppliers to take steps to make supply chain opportunities accessible to local organisations, including small builders.
- 3 When assessing tender returns from prospective contractors the Borough shall, inter alia, take into consideration the following:
 - Whether the tender return is consistent with the outputs for the Project, as defined in this Agreement;
 - The credibility of the tender return in accordance with the scoring criteria;
 - The relevant bidder's track record in delivering projects of a similar type and scope to the Project; and
 - The relevant bidder's ability and commitment to ensure that the Project would be delivered in accordance with the Design and Quality Standards.
- 4 The Borough must procure that the Project Developer ensures that the Project is constructed in accordance with the Design and Quality Standards (Policy D4 The London Plan).
- 5 The Borough will enforce the terms of the Project Delivery Agreement at all times.

Schedule 8

Planning Overage

1 Definitions and interpretation

1.1 In this Schedule the following terms have the following meanings:

Base Value means the amount (expressed in pounds sterling per square metre) of Net Internal Area in relation to each type of accommodation and tenure as detailed in Annexure 3 or in the event that another type of accommodation or tenure is permitted by the Planning Permission such other amount as is agreed between the parties before the date of the Planning Permission or if none is agreed such amount as is determined by the GLA acting reasonably and taking into account the amounts detailed in Annexure 3;

Contract Rate means 4% (four per cent) above the base lending rate from time to time of Barclays Bank plc or if such rate shall cease to be published the Law Society's interest rate from time to time in force;

Expert shall have the meaning given to it in paragraph 5 of this Schedule;

GLA Surplus means the sum calculated using the following equation:

$$A = 50\% \times (B - C)$$

where:

"A" is the GLA Surplus;

"B" is the Project Planning Value; and

"C" is the Project Base Value;

provided that if C is greater than B then the GLA Surplus shall be deemed to be nil;

Leading Counsel means counsel of at least 10 years call specialising in the area subject to dispute between the Parties;

Open-book Basis means involving the declaration of all price and cost components including (without limitation) profit, overheads, the sorts of materials, goods, equipment, work and services, with all and any relevant books of account, correspondence, agreements, orders, invoices, receipts and other relevant documents available for inspection;

Payment Date means the date which is twenty (20) Business Days after the Trigger Event;

Project Base Value means £[];

[DN: This figure should be the predicated gross development value of the Project agreed as part of the bid process. £ per square foot figures for each type of accommodation and tenure should be agreed to populate annexure 3]

Project Planning Value means the total sum calculated by aggregating the result of the following equation in relation to each type of accommodation and tenure permitted by the Planning Permission:

$$D = E \times F$$

where:

"D" is the value for the relevant type of accommodation and tenure permitted by the Planning Permission;

"E" is the Base Value for the relevant type of accommodation and tenure;

"F" is the amount of Net Internal Area for the relevant type of accommodation and tenure permitted by the Planning Permission agreed between the Parties or determined pursuant to paragraph 5;

Trigger Event means, for the purposes of this Schedule 8, the grant of the Planning Permission;

2 **GLA Surplus**

- 2.1 The Borough agrees to pay the GLA Surplus to the GLA, payment to be made in sterling by the Borough to the GLA on the Payment Date by way of CHAPS transfer of cleared funds.
- 2.2 The Borough may propose to the GLA prior to the Payment Day that the GLA Surplus be reinvested by the Borough in other affordable housing.
- 2.3 Any proposal by the Borough under paragraph 2.2 shall be subject to the GLA's agreement acting completely at its own discretion. In the event that the GLA does so agree then both parties shall use reasonable endeavours to agree terms for such reinvestment and enter into a deed to record such terms.
- 2.4 If the GLA and the Borough agree to terms of the reinvestment then the Borough shall not be required to pay the GLA Surplus to the GLA under this Schedule but shall instead reinvest the GLA Surplus in accordance with such terms.
- 2.5 At any time prior to entry into the deed referred to in paragraph 2.3 the GLA may elect by notice in writing to the Borough to receive the GLA Surplus in cash instead in which case the Borough shall pay it to the GLA within 20 Business Days of such notice.
- 2.6 Any payment due to be made by the Borough under this Schedule shall be made together with interest on such amount at the Contract Rate upon such payment from the date payment is due until the date of actual payment where payment is not made by the Borough in full upon the due date.

3 **Trigger Event**

- 3.1 The Borough shall notify the GLA within five (5) Business Days of the Trigger Event occurring.

- 3.2 Within 10 Business Days of the Trigger Event the Borough will submit its calculation of the GLA Surplus to the GLA for agreement plus all supporting evidence required in accordance with this Schedule.
- 3.3 Within 20 Business Days of the Trigger Event the Borough shall pay to the GLA the amount of the GLA Surplus which the calculation it supplied to the GLA under paragraph 3.1 demonstrates is due.
- 3.4 In the event the GLA does not agree with any aspect of the Borough's submission under Paragraph 3.1 it may refer such point to dispute resolution in accordance with paragraph 5.
- 3.5 Within 10 Business Days of either agreement or determination of the GLA Surplus due as at the Trigger Event the Borough shall pay to the GLA a sum equal to the amount by which such GLA Surplus (agreed or determined) exceeds the sum calculated by the Borough under paragraph 3.1 (plus interest in accordance with paragraph 2).

4 **Evidence and records**

- 4.1 The Borough agrees upon any written request from the GLA to supply or make available to the GLA such particulars and information as the GLA reasonably requires in connection with the Net Internal Area of all types of accommodation and tenure permitted by the Planning Permission, the Project Base Value, the Project Planning Value, the Planning Permission and the GLA Surplus and to allow the GLA full rights to inspect any files, records and other information or particulars which relates to any of those or any other figures or calculations that the Borough relies upon under this Schedule.
- 4.2 The Borough shall make all of the evidence and records referred to in Paragraph 4.1 available on an Open-book Basis.
- 4.3 The Borough agrees to make available to the Expert all files, records, particulars and information as the Expert requires on an Open-book Basis.

5 **Disputes**

Any dispute or difference between the parties in connection with this Schedule will unless expressly stated otherwise be referred initially for resolution under Clause 37.1 and only if unresolved as described in clause 37.1.5 is to be settled by an independent expert (the **Expert**) whose decision in relation to such matters shall be final and binding upon the Parties except in the case of fraud or manifest error.

5.1 **Selection of Expert**

- 5.1.1 If the dispute relates to the rights and liabilities of a party or to the terms or conditions to be embodied in any deed or document it will be referred to Leading Counsel agreed upon by the parties but in default of agreement appointed at the request of either of the parties by or on behalf of the chairman for the time being of the General Council of the Bar.
- 5.1.2 If the dispute relates to methods of accounting or otherwise to matters usually and properly within the knowledge of a chartered accountant it will be referred to a chartered accountant agreed upon by the parties but in default of

agreement appointed at the request of any of the parties by or on behalf of the President for the time being of the Institute of Chartered Accountants in England and Wales.

5.1.3 If the dispute relates to matters usually and properly within the knowledge of a chartered surveyor it will be referred to an independent chartered surveyor agreed upon by the parties but in default of agreement appointed at the request of any of the parties by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors.

5.1.4 If the parties fail to agree as to the nature of the dispute and in relation to any other disputes then it shall be referred to Leading Counsel agreed upon by them but in default of agreement appointed at the request of any of the parties by or on behalf of the Chairman for the time being of the General Council of the Bar to decide the nature of the Expert.

5.2 **Expert's Role**

The Expert acts as an expert and not an arbitrator and the provisions of the Arbitration Act 1996 shall not apply to the Expert, his decision or the procedure by which he reaches his decision.

5.3 **Notice of Appointment**

Subject to the provisions of Paragraph 5.1, the party wishing to appoint the Expert will give notice in writing to that effect to the other parties, together with details of the matter which he wishes to refer to the Expert.

5.4 **Exclusion of Certain Persons**

A person can only be appointed to act as an Expert if at the time of the appointment he is not:

5.4.1 a director, office holder or employee of the Borough or an Associated Person;

5.4.2 directly or indirectly retained as an adviser or in any other professional capacity by any funder of the Borough;

5.4.3 directly or indirectly retained as a consultant or in any other professional capacity by the Borough; or

5.4.4 any party to this Agreement or any company or person associated with any such party.

5.5 **Procedure**

Within ten (10) Business Days from his appointment the Expert will call the parties to a meeting at which he will give directions as to the future conduct of the matter referred and will from time to time give such further directions as he shall see fit. The Expert will allow the parties to make written representations and written counter-representations to him but will not be in any way fettered by such representations and counter-representations and will rely on his own judgment.

5.6 **Assistance**

The parties will give to the Expert such assistance as the Expert considers necessary to carry out his function.

5.7 **Decision**

The Expert will give notice in writing of his decision to the parties within four (4) weeks of his appointment or within such extended period as the parties may agree in writing.

5.8 **Costs**

The costs of the reference to the Expert will be borne as he directs and failing any such direction will be shared equally between the parties.

5.9 **Original Expert**

If the Expert (the **Original Expert**):-

- 5.9.1 fails to determine the matter referred to him;
- 5.9.2 fails to give notice of his decision within the time and in the manner provided for in this Paragraph 5;
- 5.9.3 relinquishes or does not accept his appointment;
- 5.9.4 dies; or
- 5.9.5 it becomes apparent for any reason that he is unable to complete the duties of his appointment,

either of the parties may apply for a substitute to be appointed (but not after the Original Expert has given notice of his decision to the parties in dispute). In such event the Original Expert is no longer the expert, the provisions of this Paragraph apply as if the Original Expert had not been appointed and will be repeated as many times as necessary. Any reference to the Expert in this Paragraph 5 is deemed to include any substitute appointed pursuant to this Paragraph 5.9.

6 **Good faith**

6.1 Each of the parties undertakes with the other that it will at all times:

- 6.1.1 act in an open and transparent manner with the utmost good faith towards the other in relation to the matters covered by this Schedule; and
- 6.1.2 perform its obligations contained herein to enable the objectives in this Schedule to be fulfilled to the mutual benefit of the parties; and in particular:
 - (a) the Borough agrees to maintain on a fully open book basis full and accurate records and accounts (with all accompanying receipts vouchers completion statements and other documents) in connection with the its obligations under this Schedule; and

- (b) at any time upon reasonable request the Borough shall provide the GLA with or afford the GLA the opportunity to view such reasonable evidence as the GLA may reasonably require in order to verify that the Borough has complied and is continuing to comply with its obligations under this Schedule.

6.2 Notwithstanding the provisions of paragraphs 6.1.1 and 6.1.2 above nothing in this Schedule shall constitute a partnership or a joint venture between the parties or constitute any one party acting as the agent of any other party.

7 **Additional Overage Provisions**

7.1 The Borough will not structure the Project in a way that has a primary objective of the avoiding or reducing of the GLA Surplus that would otherwise be due to the GLA.

7.2 All payments to be made by the Borough to the GLA under this Schedule shall be made without any deduction or set off (save as required by legislation) whatsoever except as expressly provided under this Schedule.

Annexure 1

Plan

[DN: Borough to provide]

Annexure 2

Agreed Intervention Expenditure Plan

[DN: Borough to provide]

Annexure 3

Base Values

[DN: Borough to provide]

Annexure 4

GLA, LEAP and HM Government Logos

MAYOR OF LONDON



HM Government

Signatory page

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a **DEED** by affixing)
The common seal of the)
GREATER LONDON AUTHORITY)
In the presence of:

Authorised Signatory

EXECUTED as a **DEED** by affixing)
The common seal of)
[])
)
)
in the presence of:

Authorised Officer