



**Dated** 19 MARCH 2019

**WIRRAL BOROUGH COUNCIL  
MUSE DEVELOPMENTS LIMITED  
WIRRAL GROWTH COMPANY LLP**

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**PARTNERSHIP AGREEMENT  
in relation to Wirral Growth Company LLP**

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THIS PARTNERSHIP AGREEMENT is dated 19 MARCH 2019

## PARTIES

- (1) **WIRRAL BOROUGH COUNCIL** of Town Hall, Brighton Street, Wallasey, Wirral, CH44 8ED (the Council)
- (2) **MUSE DEVELOPMENTS LIMITED**, a limited liability company registered in England and Wales with number 2717800 whose registered office is at Kent House, 14-17 Market Place, London, W1W 8AJ (the PSP)
- (3) **WIRRAL GROWTH COMPANY LLP**, a limited liability partnership registered in England and Wales with number OC423097 whose registered office is at Wallasey Town Hall, Brighton Street, Wallasey, Wirral, CH44 8ED (the LLP)

## RECITALS

- (A) The LLP was incorporated as a limited liability partnership governed pursuant to the Act on 26 June 2018. The LLP has been incorporated for the purpose of carrying on the Business.
- (B) The JV Partners and the LLP have agreed to execute this Agreement to regulate their respective responsibilities and the dealings between them in relation to the Business, management and affairs of the LLP.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless the context requires a different meaning:

**Accounting Policies/Principles** has the meaning given in clause 9.2.1

**Act** means the Limited Liability Partnerships Act 2000

**Additional Council Finance** means funding provided or to be provided (subject to and in accordance with the terms of this Agreement) by the Council or a member of the Council's Group to the LLP or a Development Subsidiary on arm's length commercial terms (in place of a Third Party Funder)

**Additional PSP Finance** means funding provided or to be provided (subject to and in accordance with the terms of this Agreement) by the PSP or a member of the PSP's Group to the LLP or a Development Subsidiary on arm's length commercial terms (in place of a Third Party Funder)

**Adopted Further Site** has the meaning given in clause 6.3.3

**Adopted Non-Council Site** has the meaning given in clause 6.4.4

**Affordability Gap** the subsidy required for a Development of a Site to satisfy the Viability Test

**Agreed Form** means (as applicable):

- (a) the form agreed by the JV Partners and initialled by them or on their behalf on the Effective Date for the purposes of identification; or
- (b) the form in which the relevant agreement has been executed on the Effective Date,

**Agreement** means this deed

**Annual Accounts** means the accounts of the LLP prepared in respect of each Financial Year



**Approved Indicative SDP** has the meaning given in clause 6.2.6

**Approved Distribution** has the meaning given in clause 12.3.1

**Asset Transformation Programme** means the Council's asset transformation programme as the same may be updated from time to time

**Auditors** means such firm of auditors as the JV Partners may agree from time to time

**Available Assets** has the meaning given in Part 2 of Schedule 9

**Bank** means such bank as the JV Partners may agree from time to time



**Board Approved Further Site** has the meaning given in clause 6.3.2

**Board Approved Non-Council Site** has the meaning given in clause 6.4.2

**Business** has the meaning given in clause 5.1

**Business Day** means 9.00 am to 5.00 pm on any day (other than i) a Saturday or Sunday or a public holiday in the United Kingdom and ii) 27<sup>th</sup> December to 31<sup>st</sup> December in each year inclusive) on which clearing banks in the City of London are open for the transaction of normal sterling banking business

**Business Plans** means the Partnership Business Plans and Site Development Plans in force from time to time and **Business Plan** shall mean any one of them

**Cabinet Report Milestone** means the delivery of report from Council officers (based on the preliminary Draft Indicative SDP provided by the PSP) supporting the Development of Phase 1 of Birkenhead Commercial District which is to be considered by the Council's Cabinet on 26<sup>th</sup> November 2018

**Capital Contribution** means, in respect of any JV Partner, an amount equal to the capital contribution provided to the LLP in accordance with clause 10

**CEDR** means the Centre for Effective Dispute Resolution

**Chair** means the chair from time to time of the JV Board

**Change of Control** means in relation to an undertaking:

(a) any person having control (as defined in section 1124 of the Corporation Tax Act 2010) of that undertaking and ceasing to have such control; or

(b) a disposal of substantially all of its business and/or assets to a person not within its Group

**Companies Act** means the Companies Act 2006, as that Act applies to limited liability partnerships

**Completion** means the completion of this Agreement in accordance with its terms

**Confidential Information** has the meaning given in clause 28.4

**Conflict Matter** means a Council Conflict Matter or a PSP Conflict Matter as the case may be

**Connected Person** means any person connected (within the meaning of section 1122 of the Corporation Tax Act 2010) with any of the Parties or with any directors of any Party

**Council Conflict Matter** means, in relation to a proposed or existing contract or arrangement between (whether exclusively or amongst others) the LLP or any of its subsidiary undertakings (on the one hand) and the Council or a Connected Person of the Council (on the other hand):

(a) any decision by or on behalf of the LLP or the relevant subsidiary undertaking in relation to the service of any notice relating to any dispute regarding such a contract or arrangement or in relation to any claim that a breach or alleged breach of such a contract or arrangement has occurred, any decision by or on behalf of the LLP and/or the relevant subsidiary undertaking to enforce, defend or otherwise protect its or their rights (including by responding to any notice of dispute or claim for breach or alleged breach made against the LLP and/or the relevant subsidiary undertaking);

(b) any decision by or on behalf of the LLP or the relevant subsidiary undertaking to make any request of, make any representation to, or issue any instruction or confirmation or issue any other notice to the Council or a Connected Person of the Council (in its capacity as the counterparty to such contract or arrangement) in relation to such contract or arrangement;

(c) any decision by or on behalf of the LLP or the relevant subsidiary undertaking to agree any matter with the Council or a Connected Person of the Council (in its capacity as the counterparty or prospective counterparty to such contract or arrangement) in relation to such contract or arrangement, including (i) in relation to the determination of the Market Value or Price of a Site under and in accordance with the terms of the Option Agreement; or (ii) in relation to the agreement of the terms of any such proposed contract or arrangement (and any proposed amendments to such terms);

(d) any decision by or on behalf of the LLP or the relevant subsidiary undertaking to enforce any rights of the LLP or the relevant subsidiary undertaking in relation to the Initial Council Loan; the Council Loan; any Additional Council Finance; any Initial Council Loan Notes and/or Council Loan Notes

**Council Default Event** means any of the events listed in clause 22

**Council Loan Note Instrument** means a loan note instrument in the Agreed Form and constituting Council Loan Notes

**Council Loan Notes** means the loan notes of £1 each constituted by the LLP and which are to be issued by the LLP to the Council from time to time subject to and in accordance with the terms of this Agreement

**Council Loan** means the loan to be made by the Council to the LLP on the terms of this Agreement and the Council Loan Note Instrument

**Council's Objectives** has the meaning given in clause 4.1

**Council Officer Representatives** means the Council Representatives who are officers of the Council appointed by the Council to the JV Board in accordance with clause 14

**Council Member Representatives** means the Council Representatives who are members of the Council's Cabinet appointed to the JV Board in accordance with clause 14

**Council's Procurement Officer** means the procurement officer appointed by the Council from time to time and notified in writing to the PSP and to the LLP

**Council Representatives** means the Council Officer Representatives and the Council Member Representatives

**Council Security Agreement** means the security agreement dated on or around the date hereof and made between (1) the LLP; and (2) the Council, in the Agreed Form

**Current Account** has the meaning attached to it in clause 11.1

**Data Controller** has the meaning given in the Data Protection Legislation

**Data Protection Legislation** means, for the periods in which they are in force in the United Kingdom, the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR and all applicable Laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time

**Data Security Breach** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data

**Data Subject** has the meaning given in the Data Protection Legislation

**Deadlock Matter** has the meaning given in clause 18.1

**Deadlock Notice** has the meaning given in clause 18.2.1

**Deed of Adherence** means a deed of adherence in substantially the same form as that set out at Schedule 7

**Deed of Priority** means the deed of priority dated on or around the date hereof and expressed to be made between (1) the LLP; (2) the PSP; and (3) the Council

**Default Event** means a Council Default Event or a PSP Default Event

**Default Notice** has the meaning given to it in clause 22.3.2

**Delegation Policy** means the delegation policy contained in Schedule 3

**Development** in relation to a Site, has the meaning given to it in the Option Agreement and in relation to a Non-Council Site the carrying out of the works to that Non-Council Site for the purpose set out in the Site Development Plan for that Non-Council Site

**Development Costs** means the aggregate of all the following necessary costs fees and expenses reasonably expended or incurred by the LLP or relevant Development Subsidiary (as the case maybe) from (unless otherwise specified in this Agreement), in the case of the Initial Priority Sites, 9th May 2018 and otherwise from the date upon which the relevant item of expenditure is approved by the JV Board in relation to the relevant Site or Non-Council Site:

- (a) the cost of acquisition of estates and interests in the Site (including the Price) or Non-Council Site (including the consideration paid for the Non-Council Site) including any stamp duty land tax search fees and Land Registry fees in respect thereof and those costs relating to the acquisition by compulsory purchase;
- (b) the cost of acquisition of any easements required for the Development of any Site or Non-Council Site;
- (c) the cost of extinguishment or variation of any interests or rights in, over or against the Site or Non-Council Site held by a person who by the lawful exercise of his powers could prevent or impede the carrying out or progress of the Development or its use and enjoyment;
- (d) compensation or damages which have been paid by reason of any interference with rights of light by the Development;
- (e) the premium paid for any title indemnity insurance policy or policies required in relation to the Development of the Site or Non-Council Site;
- (f) compensation paid to tenants on quitting the Site or Non-Council Site and for improvements and goodwill on termination of tenancies of business premises;
- (g) the cost of obtaining requisite consents and the costs of obtaining planning permission (including costs incurred in negotiating and complying with any Planning Agreement);
- (h) legal surveyors and other professional fees and other costs and expenses in connection with satisfying the Site Conditions;
- (i) the cost of site supervision and security in relation to the Site or Non-Council Site;
- (j) the costs of land and soil investigations and surveys and rights of light surveys and investigations carried out in respect of the relevant Site or Non-Council Site;
- (k) the costs of obtaining all the closure and/or diversion order(s);
- (l) the costs of diversion of any services passing through or adjacent to a Site or Non-Council Site to the extent that such diversions have been carried out and were necessitated by the carrying out of the Development and the costs of entering into any related agreements with all relevant bodies;
- (m) statutory services searches and surveys;
- (n) the cost of carrying out any demolition works, decontamination works, infrastructure works and building works required as part of the Development;
- (o) the fees paid to the professional team appointed in connection with the Development excluding the fees of the Development Manager
- (p) the cost of advertising or marketing the Site or Non-Council Site including any advertising promotion research and other such marketing costs;
- (q) the cost of letting and disposal of the Site or Non-Council Site including, any inducements to any prospective tenant or purchaser in relation to any agreement for lease or sale entered into with such prospective tenant or purchaser including but not limited to improved specifications fitting out allowances rent free periods financial inducements and contributions and monies payable pursuant to guarantees (including any guarantees of rent, service charge and (to the extent not covered by limb (aa) below) insurance in connection with any unoccupied units on a sale);

- (r) any proceedings brought or threatened by or against the LLP or a Development Subsidiary which need to be issued or defended in order to protect or preserve the Site or Non-Council Site or any part thereof for the purposes envisaged by the Site Development Plan including (but without prejudice to the generality of the foregoing) the expulsion of trespassers and effecting of security arrangements;
- (s) the costs of providing guarantees and bonds to Third Parties;
- (t) interest paid on loans or other monies obtained by the LLP or the relevant Development Subsidiary to finance or fund Development, but excluding any interest and other monies paid by the JV Partners as part of their own costs of providing finance to the LLP or to the relevant Development Subsidiary;
- (u) guarantee fees, commitment fees, procurement fees and finance charges (including in relation to Forward Funding Agreements) incurred or paid in connection with finance obtained to fund the Development but excluding guarantee fees, commitment fees, procurement fees, finance charges and interest thereon:
  - (i) in relation to JV Partner Loans, Additional Council Finance and Additional PSP Finance; and
  - (ii) paid by the JV Partners as part of their own costs of providing finance to the LLP or to the relevant Development Subsidiary;
- (v) legal and surveyors fees, agency commission, advertising, promotional expenses and other costs in connection with the matters referred to in the foregoing paragraphs (a) to (u) (and excluding all legal and professional fees incurred by the PSP both in tendering to the Council to become the PSP and in connection with the negotiation, preparation, execution and implementation of this Agreement and the other agreements entered into by the PSP or the LLP on or around the Effective Date);
- (w) fees paid to the Development Manager pursuant to the Development Management Agreement;
- (x) rent payable by the LLP or relevant Development Subsidiary (as the case maybe) under a lease of a Site or Non-Council Site ;
- (y) all rates, water rates and other outgoings or impositions lawfully assessed in respect of the Site or Non-Council Site or on the owner or occupier of it in respect of the Development;
- (z) all costs of managing, securing, maintaining and repairing and upkeep the Development insofar as in all such cases the responsibility therefor is not assumed by or recoverable from any Third Party;
- (aa) the insurance premiums and insurance premium tax incurred in putting in place and maintaining the usual types of insurance typical for the relevant type of Development;
- (bb) the cost of the provisions of services;
- (cc) the costs of enforcing any obligation that benefits a Site or a Non-Council Site against the third party subject to that obligation;
- (dd) the costs of setting up and running management companies;
- (ee) Value Added Tax on supplies of goods and services to the extent that it is not recoverable by credit against output tax or repayment by the Commissioners of HM Customs and Excise;
- (ff) any other item of expenditure in relation to a Development and/or the Site or Non-Council Site not specifically mentioned in the foregoing items, but which has been agreed by the JV Board;

provided that any such Development Costs which fall within more than one of sub-paragraphs (a) – (ff) above shall only be counted once in each instance of such cost being incurred

**Development Manager** means Muse Developments Limited, a company registered in England with company number 2717800, whose registered office is at Kent House, 14-17 Market Place, London, W1W 8AJ

**Development Management Agreement** means the development management agreement in relation to certain services to be provided in connection with the Sites (as defined in the Development Management Agreement) made on or around the date hereof between (1) the LLP; and (2) the Development Manager, in the Agreed Form

**Development Programme** means the programme of development of the Sites for the next three year period at any given point in time as set out in the Partnership Business Plan

**Development Subsidiary** means a limited liability partnership vehicle which is or is to be established by the LLP and the Nominee as its sole members, and which shall be established and governed in accordance with Schedule 6

**Development Subsidiary Loan Notes** means, in relation to a Development Subsidiary, the loan notes of £1 each to be constituted by such Development Subsidiary and which are to be issued by such Development Subsidiary to the LLP from time to time subject to and in accordance with clause 7.12

**Development Subsidiary Loan Note Instrument** means a loan note instrument to be entered into by a Development Subsidiary in the Agreed Form and constituting Development Subsidiary Loan Notes

**Development Subsidiary Security Agreement** means the security agreement to be made between (1) the LLP and (2) the Development Subsidiary, in the Agreed Form

**Disclosing Party** has the meaning given in clause 28

**Draft Formal SDP** has the meaning given in clause 6.2

**Draft Indicative SDP** has the meaning given in clause 6.2

**Effective Date** means the date of this Agreement

**EIR** means the Environmental Information Regulations 2004

**Expert** means:

- (a) (where a dispute or difference hereunder is on a point of law or legal drafting) a Queen's Counsel practising in English real property law or construction law or corporate law or banking law (as applicable) being such Queen's Counsel as may be appointed by the JV Partners (acting unanimously); or
- (b) (where a dispute or difference concerns a planning matter) a Queen's Counsel practising at the planning bar being such Queen's Counsel as may be appointed by the JV Partners (acting unanimously); or
- (c) (where a dispute or difference concerns a financial matter) a qualified accountant from the Institute of Chartered Accountants in England and Wales as may be jointly appointed by the JV Partners (acting unanimously); or
- (d) (in the case of any other matter) a senior Chartered Surveyor having at least 10 years' post-qualification experience in the development and/or management of premises in the South

East and Home Counties regions of England as may be jointly appointed by the JV Partners (acting unanimously),

or (in default of such unanimous agreement) such Expert as is nominated by CEDR pursuant to clause 18

**Finance Document** means any agreement relating to the provision of Third Party Funding entered into by either the PSP and/or the PSP Guarantor with any Third Party Funder

**Financial Year** means each accounting reference period of 12 months ending on the Financial Year End (other than in relation to the first accounting reference period of the LLP which shall run on and from the incorporation of the LLP and end on the Financial Year End in the following calendar year) or such longer or shorter period as the JV Partners may from time to time agree

**Financial Year End** means 31 December in each year or such other date as the JV Partners may from time to time agree

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Act

**Forward Funding Agreement** means an agreement for the sale and / or lease of a site or sites or part thereof under which the buyer or lessee (inter alia) agrees to provide funding for the development of that site by the LLP or relevant Development Subsidiary (as the case maybe).

**Further Site** has the meaning given to it in the Option Agreement

**GDPR** means (a) the General Data Protection Regulations (Regulation (EU) 2016/679) which came into force on 25 May 2018; and (b) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679)

**Group** means in relation to an undertaking:

- (a) that undertaking;
- (b) any parent undertaking of that undertaking (which, for these purposes in relation to the PSP, includes the member(s) of the PSP from time to time and any of its or their parent undertakings from time to time);
- (c) any undertaking which is a subsidiary undertaking of such a parent undertaking; and
- (d) any undertaking (or subsidiary of such undertaking) at least one fifth of the issued share capital (or equivalent) of which is beneficially owned by any person falling under (a), (b) or (c),

and each such undertaking is a **member of the Group** or **Group Member**. Unless the context otherwise requires, the application of the definition of Group to any undertaking at any time shall apply to that undertaking as it is at that time

**Indicative Drawdown Profile** means the indicative profile contained within the Partnership Business Plan or the relevant Site Development Plan which sets out the JV Partner Loans required to be made and the dates by which such loans shall be made

**Information** has the meaning given under section 84 of the Freedom of Information Act 2000

**Initial Council Loan** means the amounts to be provided by the Council to the LLP from time to time in accordance with clause 7.7.1

**Initial Council Loan Note Instrument** means a loan note instrument in the Agreed Form and constituting Initial Council Loan Notes

**Initial Council Loan Notes** means the loan notes of £1 each constituted by the LLP and which are to be issued by the LLP to the Council from time to time subject to and in accordance with clause 7.7.1

**Initial Loan** means the Initial Council Loan and/or the Initial PSP Loan, as the context requires

**Initial Loan Commitment** means, in respect of a JV Partner, such maximum amount as the JV Partner shall be required to make available to the LLP or a Development Subsidiary by way of Initial Loan, as set out in the Indicative Drawdown Profile.

**Initial Loan Drawdown Notice** has the meaning given in clause 7.8.1

**Initial Priority Sites** means:

- (a) Phase 1 of Birkenhead Commercial District;
- (b) the former Foxfield School site, Douglas Drive, Moreton;
- (c) Moreton Complex, Pasture Road, Moreton
- (d) the former MOD site being land on the south east side of Old Hall Road, Bromborough,

as such Sites are more particularly defined in Schedule 1 of the Option Agreement, together with such other Sites as the Council the PSP and the LLP agree in writing prior to the Effective Date

**Initial PSP Loan** means the amounts to be provided by the PSP to the LLP from time to time in accordance with clause 7.7.1

**Initial PSP Loan Note Instrument** means a loan note instrument in the Agreed Form and constituting Initial PSP Loan Notes

**Initial PSP Loan Notes** means the loan notes of £1 each constituted by the LLP and which are to be issued by the LLP to the PSP from time to time subject to and in accordance with clause 7.7.1

**Intellectual Property** means all patents, trademarks, service marks, goodwill, registered designs, utility models, design right, copyright (including copyright in computer software), semi-conductor, topography, rights, inventions, trade secrets and other confidential information, know how, and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the works, whether registered or not or capable of registration or not and including the right to apply for and all applications for any of the foregoing rights and the right to sue for past infringements of any of the foregoing rights

**JV Board** means the board of Representatives of the LLP appointed in accordance with clause 14

**JV Group** means the LLP and any member of its Group

**JV Objectives** means the Council's Objectives and the LLP Objectives (and Objective shall mean any one of them) including the Mandatory Objective

**JV Partner Loan** means the Initial Council Loan, the Council Loan or the Initial PSP Loan or the PSP Loan (as the context shall require) and **JV Partner Loans** shall be construed accordingly

**JV Partner Loan Note** means a Council Loan Note or a PSP Loan Note (as the context shall require) and **JV Partner Loan Notes** shall be construed accordingly

**JV Partner Loan Note Instrument** means the Initial Council Loan Note Instrument, the Council Loan Note Instrument, the Initial PSP Loan Note Instrument or the PSP Loan Note Instrument (as the context shall require)

**JV Partners** means (subject to any such persons ceasing to be a JV Partner in accordance with this Agreement) the Council, the PSP and any other persons who may from time to time and for the time being be admitted as JV Partners of the LLP in accordance with the terms of this

**Lease** has the meaning given in the Option Agreement

**LLP's Objectives** has the meaning given in clause 4.2

**LLP's Return** means:

- (a) in relation to any Development which comprises a residential element of apartments and/or maisonettes and/or flats which is commenced without there being a Pre-Sale, [REDACTED] of the aggregate amount of the Development Costs relating to the residential element of apartments and/or maisonettes and/or flats;
- (b) in relation to any Development which comprises a residential element of houses and/or bungalows which is commenced without there being a Pre-Sale, [REDACTED] of the aggregate amount of the Development Costs relating to the residential element of houses and/or bungalows;
- (c) in relation to any Development which comprises a residential element (whether houses and/or bungalows and/or apartments and/or maisonettes and/or flats) which is commenced with there being a Pre-Sale [REDACTED] of the aggregate amount of the Development Costs;
- (d) in relation to any Development (excluding residential or the residential element of a mixed use scheme) which is commenced without there being either (or neither):
  - (i) a Pre-Let; or
  - (ii) a Pre-Sale,[REDACTED] of the aggregate amount of the Development Costs
- (e) in relation to any Development (excluding residential or the residential element of a mixed use scheme) which is commenced:
  - (i) with there being a Pre-Let;
  - (ii) but with no Pre-Sale,[REDACTED] of the aggregate amount of the Development Costs in relation to the part of the Development which is Pre-Let and [REDACTED] of the aggregate amount of the Development Costs in relation to the remainder of the Development;
- (f) in relation to any Development (excluding residential or the residential element of a mixed use scheme) which is commenced:
  - (i) with there being a Pre-Sale;
  - (ii) but with no Pre-Let,[REDACTED] of the aggregate amount of the Development Costs.
- (g) in relation to any Development (excluding residential or the residential element of a mixed use scheme) which is commenced:

- (i) with there being a Pre-Let; and
- (ii) a Pre-Sale,

■ of the aggregate amount of the Development Costs in relation to the part of the Development which is Pre-Let and 12.5% of the aggregate amount of the Development Costs in relation to the remainder of the Development.

For the purpose of this definition:

- (a) the LLP or relevant Development Subsidiary (as the case maybe) shall be treated as having commenced the Development at the time when the Site is transferred or a lease is granted to the LLP or to the relevant Development Subsidiary (as the case maybe); and
- (b) where any Development is a mixed-use development incorporating a residential element or is part Pre-Let when the Development is commenced the LLP's Return shall be calculated on the Development Costs as follows:
  - (i) in the case of fit out works they will be wholly apportioned to the use of the part of the building concerned; and
  - (ii) otherwise they will be apportioned on a square footage basis as between the various uses or parts of the Development (as the case maybe)

**Loan Drawdown Notice** has the meaning given in clause 7.7.2

■

**Mandatory LLP Objective** has the meaning given in clause 4.2

**Market Value** in relation to a Site, has the meaning given to it in the Option Agreement

**Material Breach** means a breach of this Agreement or the Option Agreement which is material and/or persistent (provided that, in the case of a persistent breach, the breach by reason of the persistence has become material) in each case having regard to all relevant circumstances including the nature of the relationship between the parties to such agreement and the need for each such party to maintain the confidence of the others, the nature of the breach (and in particular whether it be intentional, negligent or otherwise), the regularity with which the obligation which has been breached falls to be performed under the relevant agreement and the consequences of the breach and for the avoidance of doubt shall include but shall not be limited to any breach of this Agreement or the Option Agreement that gives rise to a right to terminate it in its entirety

■

[REDACTED]

**Net Profits or Net Profit** means the profits of the LLP for a Financial Year as shown in the Annual Accounts for that Financial Year after all expenditure and including any amounts deemed available for distribution in accordance with clause 12

**Nominee** means Wirral Growth Company Nominee Limited, a limited liability company registered in England with company number 10669793, whose registered office is at Town Hall, Brighton Street, Wallasey, Wirral CH44 8ED

**Non-Council Site** has the meaning given in clause 6.4

**Non-Defaulting JV Partner** has the meaning given in clause 22.3.2

**OJEU Concession Notice** means an advertisement placed in the Official Journal of the European Union (notice reference 2017-092674 and notice number in the OJ S: 2017/S 131-268762 (as amended)) for the procurement of a private sector partner to be the private sector JV Partner

**Option Agreement** means the option agreement in relation to the Sites in the Agreed Form to be made between the Council and the LLP to be entered into on the Effective Date

**Original PSP** means Muse Developments Limited, a company registered in England with number 2717800, whose registered office is at Kent House, 14-17 Market Place, London, W1W 8AJ

[REDACTED]

**Partnership Assets** means any assets held by the LLP from time to time for the avoidance of doubt including but not limited to its Intellectual Property and any money received from any disposal of Sites and/or Non-Council Sites

**Partnership Business Plan** means the three year rolling partnership business plan in the format set out in Schedule 1 and prepared and adopted in accordance with clause 6

**Party** means a party to this Agreement

**Personal Data** means personal data and sensitive personal data (otherwise known as 'special category personal data' for the purposes of GDPR) (as defined in the Data Protection Legislation) which is shared by each Party with the other Party as necessary pursuant to or in connection with this Agreement

**Phase 1 of Birkenhead Commercial District** means such land and buildings [REDACTED] as are necessary to deliver a scheme which is viable and in accordance with the Site Development Plan for Birkenhead Commercial District within the red line or such other area as may be agreed by the JV Partners from time to time

**Planning Agreement** means any of the following; an agreement or undertaking pursuant to Section 106 or Section 297 of the Town and Country Planning Act 1990; Section 33 of the Local Government (Miscellaneous Provisions) Act 1982; Section 38 and/or 278 of the Highways Act 1980; Section 104

of the Water Industry Act 1991; or any provision or provisions to similar intent or an agreement with the local water undertaker or other appropriate authority as to the water supply to or drainage of surface water and effluent from the Site or Non-Council Site; or an agreement with any competent authority or body relating to other services;

**Pre-Let** means a contract or contracts exchanged by the LLP or relevant Development Subsidiary (as the case maybe) with a tenant (or tenants) which is or which has become unconditional (except for the requirement to build the property) before the Development is commenced for the grant of the lease of (in the case of commercial property) 75% or more of the anticipated lettable floor space of all of the commercial units to be developed on the relevant Site or part of a Site;

**Pre-Sale** means a contract or contracts exchanged by the LLP or relevant Development Subsidiary (as the case maybe) with a buyer (or buyers) which is or which has become unconditional (except for the requirement to build the property) before the Development is commenced for the sale (by way of freehold transfer or grant of a lease for a term of 99 years or more at a premium) for the whole of the relevant Site;

**Price** in relation to a Site, has the meaning given to it in the Option Agreement

**Priority Sites** has the meaning given to it in the Option Agreement

**Procurement Strategy** means the Procurement Strategy attached at Schedule 6 (as may be varied from time to time by agreement of the JV Partners) to be adhered to by the LLP in accordance with clause 5.3

**Project Agreements** means each and any of the contract(s) to be entered into by the LLP and/or a Development Subsidiary relating to the Business (or the business of the Development Subsidiary, as applicable) including this Agreement, the Option Agreement, the Supply Chain Contracts and the Development Management Agreement

**PSP Conflict Matter** means, in relation to a proposed or existing contract or arrangement between (whether exclusively or amongst others) the LLP or any of its subsidiary undertakings (on the one hand) and the PSP or a Connected Person of the PSP, including the PSP Guarantor (on the other hand):

- (a) any decision by or on behalf of the LLP or the relevant subsidiary undertaking in relation to the service of any notice relating to any dispute regarding such a contract or arrangement or in relation to any claim that a breach or alleged breach of such a contract or arrangement has occurred, any decision by or on behalf of the LLP and/or the relevant subsidiary undertaking to enforce, defend or otherwise protect its or their rights (including by responding to any notice of dispute or claim for breach or alleged breach made against the LLP and/or the relevant subsidiary undertaking)
- (b) any decision by or on behalf of the LLP or the relevant subsidiary undertaking to make any request of, make any representation to, or issue any instruction or confirmation or issue any other notice (to the extent not covered by paragraph (b) above) to the PSP or a Connected Person of the PSP (in its capacity as the counterparty to such contract or arrangement) in relation to such contract or arrangement;
- (c) any decision by or on behalf of the LLP or the relevant subsidiary undertaking to enforce any rights of the LLP or the relevant subsidiary undertaking in relation to the Initial PSP Loan; the PSP Loan; any Additional PSP Finance; and any Initial PSP Loan Notes and/or any PSP Loan Notes;
- (d) any decision by or on behalf of the LLP or the relevant subsidiary undertaking to agree any matter with PSP or a Connected Person of the PSP (in its capacity as the counterparty or prospective counterparty to such contract or arrangement) in relation to such contract or arrangement, including in relation to the agreement of the terms of any such proposed contract or arrangement (and any proposed amendments to such terms)

**PSP Loan Note Instrument** means a loan note instrument in the Agreed Form and constituting PSP Loan Notes

**PSP Loan Notes** means the loan notes of £1 each constituted by the LLP and which are to be issued by the LLP to the PSP from time to time subject to and in accordance with this Agreement

**PSP Loan** means the loan to be made by the PSP to the LLP on the terms of this Agreement the PSP Loan Note Instrument

**PSP Outstanding Loan Commitment** has the meaning given in clause 7.7.2

**PSP Representatives** means the Representatives appointed by the PSP to the JV Board in accordance with clause 14.1

**PSP Security Agreement** means the security agreement dated on or around the date hereof and made between (1) the LLP and (2) the PSP, in the Agreed Form

**Public Sector Body** means any UK person classified as falling within the public sector for the purposes of the national accounts by the Office of National Statistics including any successor body which assumes some or all of the functions formerly exercised by that person

**Quarter** means each period from 1 January to 31 March, 1 April to 30 June, 1 July to 30 September or 1 October to 31 December and **Quarterly** shall be construed accordingly

**Regulations** means the Limited Liability Partnership Regulations 2001

**Receiving Party** has the meaning given in clause 28.4

**Related Party Contract** has the meaning given in clause 5.4

**Relevant Intellectual Property** has the meaning given in clause 25.2

**Representatives** means the Council Representatives and/or the PSP Representatives as the context may require

**Requests for Information** shall have the meaning set out in the FOIA or the EIR as relevant

**Resource Plan** means the resource plan to be contained in each Site Development Plan and the Partnership Business Plan

**Satisfactory Planning Permission** has the meaning given in the Option Agreement

**Security Agreement** means the Council Security Agreements and the PSP Security Agreements

**Senior Officer** has the meaning given in clause 18.2.2

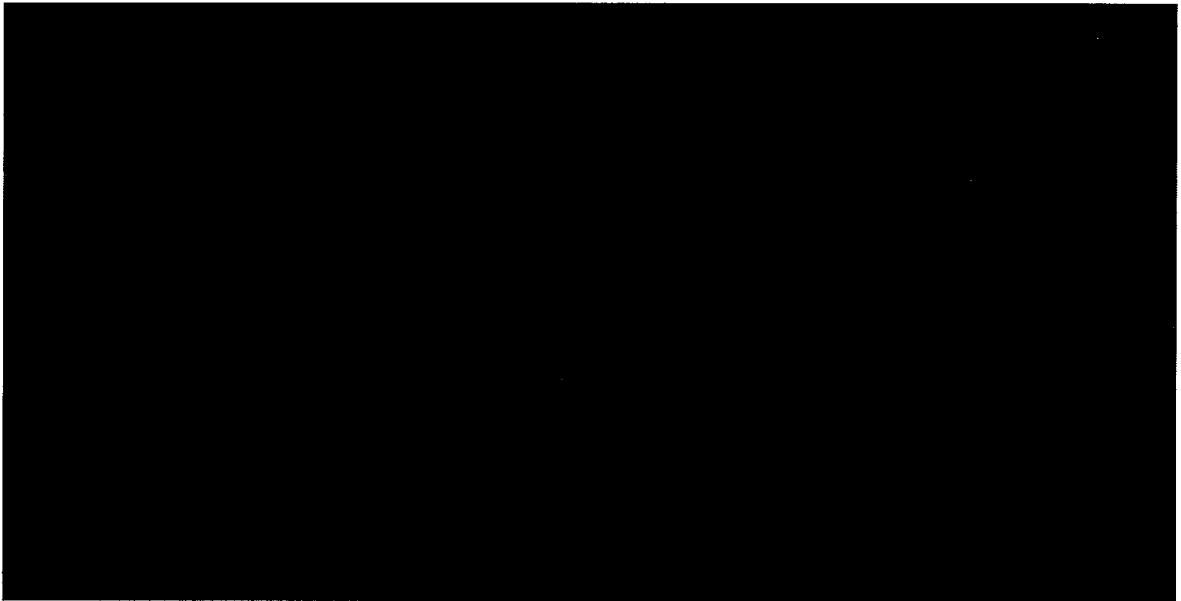
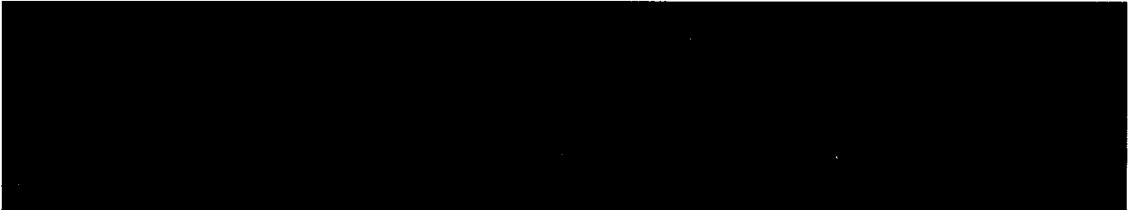
**Share** means the entire legal and economic interest, rights and obligations a JV Partner has in and against the LLP from time to time to the extent the same is in its capacity as a member of the LLP (and not, for the avoidance of doubt, in its capacity as a senior debt provider or service provider or counterparty to any arm's length agreement with the LLP) (whether arising under this Agreement, the Act (or other law or regulation relating to limited liability partnerships) or otherwise) including:

- (a) all of its interest in the capital of the LLP;
- (b) all of its rights to receive the Net Profits;
- (c) all of its rights to receive payments from the LLP (including any dividend or interest) from the LLP;
- (d) all of its rights to receive any distribution of the assets of the LLP;
- (e) all of its rights to participate in the management of the LLP; and
- (f) (to the extent issued) the benefit of any outstanding JV Partner Loan Notes, and the burden of any obligation to subscribe for JV Partner Loan Notes

**Share Value** means the value of a Share determined in accordance with Schedule 9

**Site Completion** means, in relation to a Site or a Non-Council Site, the date on which completion of all development works and receipt of all proceeds, receipts, and payments from such development of such Site or Non-Council Site has occurred

**Site Conditions** in relation to a Site, has the meaning given to it in the Option Agreement



**Site Development Plan** means a business plan in relation to a Site or a Non-Council Site prepared and approved and/or adopted in accordance with clause 6.2

**Sites** except as otherwise provided in this Agreement, means the Priority Sites and the Board Approved Further Sites or Adopted Further Sites (as the context shall require) and Site shall be construed accordingly

**Site Social Impact Plan** means a social impact plan with specific social impact metrics for the particular Site or Non-Council Site which furthers the objectives of the Social Impact Plan and which is subsequently agreed with the successful bidder for a contract let in accordance with the Procurement Strategy

**Social Impact Plan** means the framework social impact plan to be adopted by the LLP pursuant to clause 20.2.4, [REDACTED]

**Statement of Good Standing** means the "Statement of Good Standing – Criteria for the Rejection of Candidates" that was issued by the Council to candidates as part of the pre-qualification questionnaire (at Part 1, Appendix C) as part of the Council's procurement process relating to the LLP and the "Wirral Growth Company", as the same is set out in Schedule 10

**Super Profit** means the profit (or loss) from the Development of any Site or Non-Council Site following the payment of:

- (a) all interest on Initial Loans and the JV Partner Loan Notes relating to that site;
- (b) the Development Costs for that site (excluding, where the site is a Site, the Price paid);
- (c) the LLP's Return for that site.

**Supply Chain Contracts** means any development agreement, build contract or material supply chain contract awarded by the LLP or a Development Subsidiary

**Termination Event** has the meaning given in clause 23.1

**Third Party** means:

- (a) in relation to the PSP, any person not being a member of its Group;
- (b) in relation to the Council, any person not being a Public Sector Body to which the Council is permitted to transfer its Share without the consent of the PSP pursuant to clause 21; and
- (c) in relation to the LLP or any Development Subsidiary, any person which is not a member of the JV's Group and who falls within limbs (a) or (b) above.

**Third Party Funder** means an institutional lender or any Third Party providing finance or refinance

**Third Party Funding** means debt or equity funding provided or to be provided on arm's length terms by a Third Party Funder to the LLP and/or a Development Subsidiary

**Valuation Price** has the meaning given in clause 24.3.1

**Valuation Report** has the meaning given in clause 24.3.1

**Valuer** means such independent third party valuer as may be appointed by the LLP for the purposes of providing a valuation where required pursuant to this Agreement

**Viability Condition** in relation to a Site, has the meaning given to it in the Option Agreement

**Viability Test** in relation to a Site, has the meaning given to it in the Option Agreement

**Winding Up Practitioner** means an agreed independent third party appointed by the JV Partners to administer a winding up of the LLP including distribution of assets of the LLP to those entitled and, in the case of a voluntary insolvent winding up, means a liquidator as referred to under section 91 of the Insolvency Act 1986

**Wirral Growth Plan** means the Council's plan available at the following website: <https://www.wirral.gov.uk/sites/default/files/all/About%20the%20council/Wirral%20Plan/Wirral%20Growth%20Plan.pdf>, as the same may be updated from time to time

## 1.2 Interpretation

In this Agreement, unless the context requires a different meaning:

- 1.2.1 the headings and sub-headings and references to them shall not be deemed to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement;
- 1.2.2 a reference to a statute or a statutory provision includes a reference to:
  - (a) the statute or statutory provision as modified or re-enacted or both from time to time (whether before or after the Effective Date); and
  - (b) any subordinate legislation made under the statute or statutory provision (whether before or after the Effective Date),provided that any such modification, re-enactment or legislation made after the Effective Date does not materially change the relevant provision;
- 1.2.3 references to clauses, paragraphs, Parts and Schedules are references to clauses, paragraphs, and parts of and schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to sections, appendices and attachments to or contained in this Agreement;
- 1.2.4 in the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence;
- 1.2.5 words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, councils, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity;
- 1.2.6 where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter and vice versa;
- 1.2.7 the language of this Agreement is English. All correspondence, notices, and information shall be in English;
- 1.2.8 references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation;
- 1.2.9 the words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem;
- 1.2.10 in construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word(s) "other" or "includes" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- 1.2.11 where this Agreement states that an obligation shall be performed no later than or within or by a stipulated date or event which is a prescribed number of Business Days after a stipulated

date or event, the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned;

- 1.2.12 unless expressly stated otherwise, where consent or approval of any party to this Agreement is required for any purpose under or in connection with the terms of this Agreement it shall be given in writing and within a reasonable time following a receipt for a request in writing for such consent or approval;
- 1.2.13 references to a JV Partner agreeing to do something or to sign or execute a document shall include a duly authorised representative of the JV Partner giving such consent, and signing or executing such document on behalf of the JV Partner;
- 1.2.14 references to any agreement, document (including this Agreement) or policy include a reference to that agreement, document or policy as validly varied, supplemented, substituted, novated or assigned;
- 1.2.15 the expressions body corporate, parent undertaking and subsidiary undertaking shall have the respective meanings given in the Companies Act and a company or an undertaking shall be treated, for the purposes only of the membership requirement contained in subsections 1162(2)(b) and (d) of that Act, as a member of another undertaking even if the shares or capital interests in that other undertaking are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, section 1162 of that Act shall be amended so that:
- (a) references in subsections 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
  - (b) reference in subsection 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right:
    - (i) to appoint or remove a majority of the directors, management board members or equivalent officers of that limited liability partnership; or
    - (ii) if no such directors, management board member or equivalent officers exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,
- and unless the context otherwise requires, the application of the definitions of body corporate, parent undertaking and subsidiary undertaking shall apply as to the relevant company or undertaking as it is at that time;
- 1.2.16 any reference to books, records or other information includes paper, electronically or magnetically-stored data, film, microfilm, and information in any other form, and a reference to "writing" or "written" shall include any legible reproduction of words delivered in permanent and tangible form (but excluding fax and email);
- 1.2.17 any reference to any profits or losses of the LLP include a reference to profits and losses of a capital nature;
- 1.2.18 an obligation to do or act includes an obligation to procure that it is done and an obligation not to do something includes an obligation not to cause or allow that thing to be done;
- 1.2.19 where the JV Partners, or either of them, have agreed to procure that the LLP, any subsidiary undertaking of the LLP, the JV Board or particular Representatives shall do or refrain from doing any particular act, such obligation shall be deemed to have been discharged by them if they shall have exercised all voting rights and other powers of control as are available to them

in relation to the LLP to seek to ensure that the particular act occurs or does not occur, as the case may be;

1.2.20 where a party is required to make any payment pursuant to this Agreement, then such payment shall be made by that party within the timescale (if any) stipulated in full on demand and without set-off, counterclaim or other deduction; and

1.2.21 the provisions contained in paragraph 7 of the Limited Liability Partnerships Regulations 2001 (SI 2001/1090) shall not apply as between or to the LLP and the JV Partners, or as between or to the LLP and any of its subsidiary undertakings from time to time.

### **1.3 Council's statutory obligations**

The Council will at all times be bound by the provisions of section 123 of the Local Government Act 1972 and any other statute or secondary legislation which imposes obligations on it as regards the consideration, approval and/or publicity of the matters contained in this Agreement or any Business Plan. In the event of any discrepancy or conflict between the Council's statutory obligations as a council (on the one hand) and its obligations arising pursuant to this Agreement and/or those Business Plans (on the other hand), the Council's statutory obligations shall prevail.

### **1.4 Clause to survive termination**

This clause 1 shall survive termination of this Agreement.

## **2 COMMENCEMENT AND PARTIES' OBLIGATIONS ON THE EFFECTIVE DATE AND AT INITIAL BOARD MEETINGS**

### **2.1 Commencement of this Agreement**

The parties agree that the members' agreement made between the parties to this Agreement on 26 June 2018 shall be terminated with effect from the Effective Date. This Agreement comes into force with effect from the Effective Date.

### **2.2 Status of the LLP**

The PSP and the Council each warrants to the other on the Effective Date that, as at the Effective Date and immediately prior to entry into this Agreement:

2.2.1 the LLP has not traded or carried out any activity prior to the Effective Date (other than prepare for the Effective Date and preparing the draft Partnership Business Plan and the Draft Indicative SDPs for the Initial Priority Sites); and

2.2.2 the LLP has no assets, liabilities or commitments of any nature whatsoever.

### **2.3 Obligations on the Effective Date**

On the Effective Date:

2.3.1 the relevant parties shall execute (or shall procure that the relevant parties shall execute) the following documents:

(a) the Development Management Agreement;

(b) the Option Agreement; and

2.3.2 the JV Partners meeting minutes approving entry into the Partnership Agreement, the DMA, the Option Agreement will be signed by the chair of the JV Partners meeting.

2.3.3 the Council and PSP shall initial each of the following documents as being in the Agreed Form:

- (a) the Initial Council Loan Note Instrument / the Council Loan Note Instrument;
- (b) the Initial PSP Loan Note Instrument / the PSP Loan Note Instrument;
- (c) the Development Subsidiary Loan Note Instrument;
- (d) the Council Security Agreement;
- (e) the PSP Security Agreement;
- (f) the Development Subsidiary Security Agreement;
- (g) the Deed of Priority;
- (h) the Lease;
- (i) the Deed of Variation (as defined in the Option Agreement); and
- (j) the Freehold Transfer (as defined in the Option Agreement).

2.3.4 Completion shall not be deemed to have occurred unless and until all of the matters referred to in this clause 2.3 have been effected or waived by both JV Partners.

## 2.4 Administrative matters

Within three weeks of the Effective Date meetings of the JV Board and the JV Partners shall be held at which:

- 2.4.1 the JV Partners shall appoint their respective Representatives to the JV Board in accordance with clause 14.1 and letters of appointment referred to in that clause shall be delivered duly executed by each Representative;
- 2.4.2 the first Chair shall be appointed in accordance with clause 14.4;
- 2.4.3 the Auditors and the Bank shall be appointed;
- 2.4.4 the Council and the PSP shall make the following Capital Contributions:
  - (a) Council - £100
  - (b) PSP - £100; and
- 2.4.5 the JV Board meeting minutes approving the actions set out above will be signed by the chair of the JV Board meeting.

2.5



## 2.6 Approval of initial Partnership Business Plan

- 2.6.1 A meeting of the JV Board shall be convened as soon as reasonably practicable following the Effective Date [REDACTED] from and including the [REDACTED] at which the draft Partnership Business Plan and the Draft Indicative SDPs in relation to the Initial Priority Sites shall be presented to the JV Board, and if approved,

the JV Board shall immediately pass them to the JV Partners with a recommendation that they be approved and adopted.

- 2.6.2 Each JV Partner seek internal approvals of the Partnership Business Plan and the Draft Indicative SDPs in relation to the Initial Priority Sites as soon as reasonably practicable following the approval of the draft Partnership Business Plan and the Draft Indicative SDPs in relation to the Initial Priority Sites by the JV Board, and each shall inform the other and the LLP once such approval has been received.
- 2.6.3 A meeting of the JV Partners shall be convened as soon as reasonably practicable following the approval of the draft Partnership Business Plan and the Draft Indicative SDPs in relation to the Initial Priority Sites by the JV Board, and in any event before the date [REDACTED] from and including the date of approval of the draft Partnership Business Plan and the Draft Indicative SDPs in relation to the Initial Priority Sites by the JV Board, at which the draft Partnership Business Plan and the Draft Indicative SDPs in relation to the Initial Priority Sites shall be presented, and if approved the:
- (a) JV Partners shall initial the Partnership Business Plan as being in the Agreed Form; and
  - (b) the Draft Indicative SDPs in relation to the Initial Priority Sites shall become Approved Indicative SDPs.
- 2.6.4 If the JV Partners shall fail to adopt the first Partnership Business Plan and/or the Draft Indicative SDPs in relation to Phase 1 of Birkenhead Commercial District by the date specified in clause 2.6.3:
- (a) due to the Council or the PSP failing to approve the Partnership Business Plan and/or the Draft Indicative SDPs in relation to Phase 1 of Birkenhead Commercial District, the provisions of clause 18 shall apply and the timescale for the adoption of the Partnership Business Plan and/or the Draft Indicative SDPs in relation to Phase 1 of Birkenhead Commercial District shall be extended accordingly;
  - (b) due to unforeseen and unexpected circumstances, which are outside of the control of either JV Partner, the JV Partners may agree to extend the timescale for the approval of the Partnership Business Plan and/or the Draft Indicative SDPs in relation to Phase 1 of Birkenhead Commercial District to such date by when such circumstances are expected to no longer exist.

## **2.7 Agreement survives Completion**

This Agreement (other than the obligations that have already been fully performed) remains in full force after Completion.

## **3 NAME, PLACE OF BUSINESS AND MEMBERSHIP**

The name of the LLP shall be Wirral Growth Company LLP or such other name as the JV Partners may agree from time to time and as is registered under the Act.

### **3.1 Registered office and place of business**

- 3.1.1 The registered office address of the LLP shall be Town Hall, Brighton Street, Wallasey, Wirral CH44 8ED or such other address as may be agreed between the JV Partners.
- 3.1.2 The Business of the LLP shall be carried on at the registered office address from time to time of the LLP or such other additional or alternative place(s) as the JV Partners may agree from time to time in accordance with the terms of this Agreement.

### **3.2 Designated members**

- 3.2.1 The Council and the PSP shall be "designated members" for the purposes of the Act and shall comply with all obligations which are required of them under the Act. The designated members shall not be entitled to any remuneration or reimbursement in connection with their status as designated members.
- 3.2.2 The Council and the PSP hereby delegate to their respective Representatives from time to time the responsibility for delivering any document on behalf of the LLP which is required to be delivered to the Registrar of Companies in connection with the LLP.
- 3.2.3 The LLP and the Nominee shall be the "designated members" of the each Development Subsidiary from the date of its incorporation for the purposes of the Act and shall comply with all obligations which are required of them under the Act. The designated members of each Development Subsidiary shall not be entitled to any remuneration or reimbursement in connection with their status as designated members.
- 3.2.4 The LLP hereby delegates (for itself and on behalf of the Nominee) to the members of the board of a Development Subsidiary from time to time the responsibility for delivering any document on behalf that Development Subsidiary which is required to be delivered to the Registrar of Companies in connection with the Development Subsidiary.

### **3.3 Restriction on conferring interests in any Share**

The LLP shall not confer any interest in any Share in favour of any person without the written consent of the Members (other than by way of an increase in a JV Partner's Share in accordance with this Agreement).

### **3.4 Admission of a new JV Partner**

A person shall only be admitted to the LLP as a new JV Partner if its admission is unanimously approved by the then JV Partners and such person executes a Deed of Adherence, provided that JV Partner approval will be deemed to have been given where the JV Partners have consented to (or are deemed to have consented to) a transfer of a Share to that person subject to and in accordance with this Agreement.

### **3.5 Resignation or unilateral withdrawal of a JV Partner**

A JV Partner may only resign or unilaterally withdraw from the LLP as a JV Partner with the unanimous agreement of the remaining JV Partners, provided that JV Partner agreement shall be deemed to have been given to a JV Partner so resigning/withdrawing where that JV Partner has transferred the whole of its Share in accordance with the terms of this Agreement.

## **4 JV OBJECTIVES**

### **4.1 Council's Objectives**

4.1.1 The **Council's Objectives** in relation to the Business are to:

- (a) secure local economic growth;
- (b) make a positive contribution towards delivery of the Council's Asset Transformation Programme;
- (c) contribute to ensuring that businesses encouraged to invest in the Wirral have access to property that meets their needs and delivers business rate growth;
- (d) better utilise the Council's assets to drive socio-economic change to secure a sustainable future for the benefit of the community;

- (e) maximise the Council's financial return from the disposal of its land and property assets with a preference to generate secure revenue streams;
- (f) positively contribute towards the Council's Medium/Long Term Financial Strategy (LTFS);
- (g) improve the environment;
- (h) ensure the Council is not exposed to undue financial risk;
- (i) comply with the Council's obligation to obtain best consideration reasonably obtainable on a disposal of its land;
- (j) to ensure and encourage additional private sector investment, capacity and capability which is enabled to support the broad regeneration objectives of the Council.

4.1.2 Subject to the unanimous written agreement of the JV Partners:

- (a) any of the Council's Objectives may from time to time be revised, replaced or removed; and/or
- (b) any additional objective may become one of the Council's Objectives,

provided that the JV Partners shall procure that no proposed revision, replacement, removal or addition shall be made to the extent that, if it were made, the Council's Objectives (or any of them) would fall outside of the parameters of the OJEU Concession Notice. Any revision, replacement, removal or addition to the Council's Objectives shall take effect upon the date of such written agreement by the JV Partners.

4.1.3 For the avoidance of doubt, no Deadlock Matter shall be capable of arising in relation to any decision as to whether:

- (a) any of the Council's Objectives shall be revised, replaced or removed; or
- (b) any additional objective shall become one of the Council's Objectives.

## 4.2 LLP's Objectives

4.2.1 The LLP's Objectives in relation to the Business are to:

- (a) bring forward, in a timely manner and responding to market demand, the development of the Sites and to undertake other site development;
- (b) bring forward, responding to market demand, the Development of Sites which are considered more difficult to develop at a comparable rate with Sites which are considered easier to develop;
- (c) make strategic and opportunistic acquisitions, in particular interventions that support the implementation of the Wirral Growth Plan or the development of an improved retail commercial and public sector offer in Birkenhead and other Wirral town centres;
- (d) secure an adequate return to the JV Partners commensurate with their investment and the level of risk in respect of such investments to maximise the profits made by the LLP (this is the **Mandatory LLP Objective**); and
- (e) support the Council in pursuit of its wider objectives by identifying and helping deliver favourable solutions that balance financial, economic and social returns.

4.2.2 Subject to, and by, the unanimous written agreement of the JV Partners:

(a) any of the LLP's Objectives may from time to time be revised, replaced or removed; and/or

(b) any additional objective may become one of LLP's Objectives,

provided that the JV Partners shall procure that no such proposed revision, replacement, removal or addition shall be made to the extent that, if such proposed revision, replacement, removal or addition were made, the LLP's Objectives (or any of them) would fall outside of the parameters of the OJEU Concession Notice. Any revision, replacement, removal or addition to or of an LLP Objective shall take effect upon the date of such written agreement by the JV Partners.

4.2.3 For the avoidance of doubt, no Deadlock Matter shall be capable of arising in relation to any decision as to whether:

(a) any of LLP's Objective shall be revised, replaced or removed; or

(b) any additional objective shall become one of LLP's Objectives.

#### 4.3 Resolution of contradiction between Objectives

In relation to a proposed site development of a Site, where there is any contradiction between the JV Objectives, the JV Objectives shall be interpreted in the following descending order of priority:

4.3.1 the Mandatory LLP Objective;

4.3.2 the Council's Objectives; and

4.3.3 the LLP's Objectives (other than the Mandatory LLP Objective).

### 5 BUSINESS ACTIVITIES OF THE LLP

#### 5.1 The Business

5.1.1 The business of the LLP and its Development Subsidiaries from time to time (collectively the **Business**) shall be:

(a) during any period for which a Partnership Business Plan has been adopted and is in force, to undertake such business(es) as is or are set out in that Partnership Business Plan;

(b) during any period for which a Site Development Plan has been adopted and is in force, to undertake such business(es) as is or are set out in that Site Development Plan; and

(c) to undertake such other business(es) as the JV Partners may from time to time unanimously agree,

provided in all circumstances that such business(es) promote the achievement of the JV Objectives.

5.1.2 The Parties shall procure (insofar as they are able by the exercise of their rights and powers) that the Nominee shall not carry out any other business than the business of a member of the Development Subsidiaries from time to time.

#### 5.2 Capacity and authority of the LLP

5.2.1 Subject always to the provisions of this Agreement, each JV Group member shall have full power, capacity and authority to carry out all and any of the JV Objectives and do all acts and

things which the relevant JV Group member may in its absolute discretion consider necessary or desirable (including executing, delivering and performing all contracts and other undertakings and participating in any activities and transactions) pursuant to the Business, including taking a direct role in some or all of the following activities in order to achieve the JV Objectives:

- (a) land acquisition and land assembly;
- (b) the construction and master planning design process;
- (c) the development (or procuring the development) of Sites;
- (d) ongoing consultation and communication with stakeholders;
- (e) obtaining planning consents;
- (f) commissioning construction phases and entering into appropriate construction contracts in accordance with this Agreement and the Procurement Strategy;
- (g) entering into estate management and maintenance contracts in relation to Sites;
- (h) marketing and managing sales of those Sites highlighted as appropriate for sale within the Business Plans and entering into necessary sales agency contracts and consultancy contracts in accordance with the Procurement Strategy;
- (i) (where appropriate) entering into legacy arrangements for the long term management and maintenance of the Sites;
- (j) (where required) securing financial support for the Business;
- (k) co-operating with the Council in carrying out its statutory obligations in so far as these directly relate to its membership of the LLP;
- (l) identifying new opportunities for the LLP, including (but not limited to) preparing feasibility studies and (where necessary) draft Business Plans;
- (m) at all times carrying out its duties with due regard to the need for those in a public service environment to observe reasonable standards of efficiency, economy, probity, courtesy, consideration and hygiene.

5.2.2 It is intended that, save where otherwise agreed by the JV Partners (and in accordance with the Procurement Strategy), the LLP shall act as a developer and enter into direct contractual arrangements with appropriate contractors, sub-contractors and sales agents.

5.2.3 The LLP shall not, and shall use its reasonable endeavours to procure (so far as it is able) that each JV Group member, its sub-contractors, agents and/or representatives shall not, knowingly do or knowingly omit to do anything which:

- (a) brings the standing of the LLP, any Development Subsidiary and/or any of the JV Partners into serious disrepute; or
- (b) (so far as practicable having regard to the JV Objectives and the contractual obligations of the LLP and each Development Subsidiary) attracts material adverse publicity to the LLP, any Development Subsidiary and/or any of the JV Partners.

### **5.3 Procurement of works and services**

- 5.3.1 The LLP and its Development Subsidiaries shall, when entering into any direct or indirect contractual arrangements for the supply of works or services to the LLP or its Development Subsidiaries, comply in all respects with the relevant provisions of the Procurement Strategy.
- 5.3.2 The LLP shall be required to demonstrate transparency and value for money in procuring any internal and external resources, both initially and during the life of the LLP.
- 5.3.3 Subject always to the terms of the Procurement Strategy, services shall be competitively tendered by the LLP and the outcome of any such tender process shall be reported to the JV Board.

### **5.4 Related Party Contracts**

In relation to the proposed entry by the LLP or any Development Subsidiary into a contract with any JV Partner or any member of a JV Partner's Group (a **Related Party Contract**) (or any material amendment or variation to a Related Party Contract), the entry into (or the material amendment or variation to) the Related Party Contract shall be:

- 5.4.1 in accordance with the Procurement Strategy;
- 5.4.2 approved at a JV Board meeting;
- 5.4.3 subject to a written report provided to the JV Board at least five Business Days prior to the meeting referred to in clause 5.4.2 which:
  - (a) summarises the material terms of the Related Party Contract (or the proposed material amendment or variation to the Related Party Contract as the case may be); and
  - (b) confirms that the proposed Related Party Contract (or the proposed material amendment or variation to the Related Party Contract) is, in the reasonable opinion of the Representatives appointed by the JV Partner which is not part of the Group seeking to enter into or benefit from the Related Party Contract, on arm's length commercial terms.

## **6 BUSINESS PLANS**

### **6.1 Partnership Business Plans**

- 6.1.1 Following the approval of the initial Partnership Business Plan in accordance with clause 2.6, subsequent Partnership Business Plans shall be prepared and adopted in accordance with the remaining provisions of this clause 6.1.
- 6.1.2 The JV Board shall, no earlier than three months and no later than one month before the end of each Financial Year, prepare, agree and circulate for approval to the JV Partners a draft Partnership Business Plan for the next three Financial Years (to contain detailed content for the first two Financial Years and outline content in relation to the final Financial Years). The JV Partners shall use their reasonable endeavours to agree (by unanimous vote) the draft Partnership Business Plan (and any proposed amendments thereto) within 20 Business Days of the date it is first circulated. Upon the draft Partnership Business Plan being so approved (with such amendments as are agreed), it shall become the Partnership Business Plan in place of the then current Partnership Business Plan.
- 6.1.3 Any other variations or updates to a Partnership Business Plan shall only be effective if approved unanimously by the JV Partners.

## 6.2 Site Development Plans

6.2.1 Each Site Development Plan must meet:

- (a) the Mandatory LLP Objective;
- (b) at least two other LLP Objectives; and
- (c) at least three Council Objectives.

6.2.2 For each Site identified in a Partnership Business Plan from time to time and in accordance with the Development Programme, the LLP shall prepare or procure the preparation of a draft indicative site development plan (**Draft Indicative SDP**) in accordance with Schedule 2 for approval by the JV Board.

6.2.3 The Chair shall within 10 Business Days of the date of completion of the Draft Indicative SDP convene a meeting of the JV Board to:

- (a) consider the extent to which the Draft Indicative SDP satisfies clause 6.2.1 and whether the scheme for developing the particular Site is financially viable and is likely to satisfy the Viability Test; and
- (b) if thought fit, approve the Draft Indicative SDP.

6.2.4 Upon the JV Board approving the Draft Indicative SDP, the JV Board shall as soon as reasonably practicable but in any event within five Business Days, circulate the same to JV Partners for approval.

6.2.5 Within 20 Business Days of the JV Partners receiving the Draft Indicative SDP from the JV Board, a meeting of the JV Partners shall be convened in accordance with clause 16 for them to consider and, if thought fit, approve the Draft Indicative SDP.

6.2.6 Following the JV Partners' approval of a Draft Indicative SDP (which, on and with effect from the date of such approval, shall become an **Approved Indicative SDP**), the JV Board shall identify (or procure the identification of) any required changes to the Approved Indicative SDP as and when such changes become required. Subject to the terms of the Development Management Agreement (insofar as it provides that certain amendments to an Approved Indicative SDP may be validly made by the Development Manager from time to time), any variations or updates to an Approved Indicative SDP shall only be effective if approved unanimously in writing by the JV Partners in accordance with clause 16. For the avoidance of doubt, any variations or updates to an Approved Indicative SDP which:

- (a) relate to any circumstance that has a material adverse impact on the timing or amount of stated projected returns to the JV Partners as such returns are forecast and articulated in the relevant Approved Indicative SDP; or
- (b) relate to an issue that would have the effect of materially changing the stated regeneration objectives in the Approved Indicative SDP,

shall require the unanimous written approval by the JV Partners in accordance with clause 16 or escalation for determination or otherwise by the Senior Officers in accordance with the provisions of clause 18.2.

6.2.7 The LLP shall prepare or procure the preparation of a full planning application following a Draft Indicative SDP being approved by the JV Partners. Following the procurement of Satisfactory Planning Permission in relation to the Site, the LLP shall prepare (or procure the preparation of) a fully costed and complete site development plan in relation to that Site (**Draft Formal SDP**) in accordance with Schedule 2 for approval by the JV Board.

6.2.8 The Chair shall within 10 Business Days of the date of completion of the Draft Formal SDP convene a meeting of the JV Board to:

(a) consider the extent to which the Draft Indicative SDP satisfies clause 6.2.1 and whether the scheme for developing the particular Site is financially viable and is likely to satisfy the Viability Test; and

(b) if thought fit, approve the Draft Formal SDP.

6.2.9 Upon the JV Board approving the Draft Formal SDP, the JV Board shall as soon as reasonably practicable but in any event within five Business Days, circulate the same to JV Partners for approval.

6.2.10 Within 20 Business Days of the JV Partners receiving the Draft Formal SDP from the JV Board, a meeting of the JV Partners shall be convened in accordance with clause 16 for them to consider and, if thought fit, approve the Draft Formal SDP.

6.2.11 Upon the JV Partners approving the Draft Formal SDP, the Draft Formal SDP shall be immediately deemed to have been adopted by the LLP as the Site Development Plan in relation to the relevant Site and, subject to the Option Agreement in relation to that Site and any changes agreed pursuant to clause 6.2.12, the development of the Site shall be delivered by the LLP (unless unanimously agreed otherwise pursuant to with clause 7.4.1) pursuant to the terms of that Site Development Plan.

6.2.12 Following the JV Partners' approval of a Site Development Plan the JV Board shall identify (or procure the identification of) any required changes to the Site Development Plan as and when such changes become required. Any:

(a) material change(s) to a Site Development Plan shall only be effective if approved unanimously in writing by the JV Partners in accordance with clause 16; and

(b) non-material change(s) to a Site Development Plan shall only be effective if approved by the JV Board, provided that if all of the Council Representatives and/or all of the PSP Representatives vote to refer the proposed change(s) to the JV Partners, such change(s) shall be referred to the JV Partners for determination whereupon the provisions of paragraph (a) above shall apply.

### 6.3 Site Development Plans for Further Sites

6.3.1 Any of the PSP, the Council and any Representative may at any time notify the JV Board in writing of any Further Site in which it (acting reasonably) believes that the LLP (or a Development Subsidiary) should consider acquiring an interest.

6.3.2 The Chair shall, within 20 Business Days of the PSP, LLP and/or the Council giving such notice, convene a meeting of the JV Board to consider the matter. If the LLP's (or a Development Subsidiary's) acquisition of the relevant Further Site is approved in principle by the JV Board (a **Board Approved Further Site**), the LLP shall within a reasonable period of time prepare a Draft Indicative SDP in accordance with clause 6.2.2 in respect of the Board Approved Further Site.

6.3.3 The approval process for the Draft Indicative SDPs, Approved Indicative SDPs and Draft Formal SDPs in relation to a Board Approved Further Site shall be as is set out in clause 6.2 save that references to "Site" shall be construed as references to "Board Approved Further Site" and upon there being an adopted Site Development Plan in relation to the relevant Board Approved Further Site, the relevant Board Approved Further Site shall be deemed for the purposes of this Agreement to be an **Adopted Further Site**.

## 6.4 Site Development Plans for Non-Council Sites

- 6.4.1 Any of the PSP, the Council and any Representative may at any time notify the JV Board in writing of any site owned by the PSP or any other person (not being the Council) (a **Non-Council Site**) in which it (acting reasonably) considers that the LLP (or a Development Subsidiary) should consider acquiring an interest.
- 6.4.2 The Chair shall, within 20 Business Days of the PSP, LLP and/or the Council giving such notice, convene a meeting of the JV Board to consider the matter. If the LLP's (or a Development Subsidiary's) acquisition of the relevant Non-Council Site is approved in principle by the JV Board (a **Board Approved Non-Council Site**), the LLP shall within a reasonable period of time prepare a Draft Indicative SDP in accordance with clause 6.2.2 in respect of the Board Approved Non-Council Site.
- 6.4.3 The LLP shall use reasonable endeavours to procure that the third party that owns the Non-Council Site shall enter into a conditional purchase agreement or option agreement in respect of the Non-Council Site as soon as reasonably practicable following the approval in principle by the JV Board to the acquisition of a Non-Council Site in accordance with clause 6.4.2, provided that neither the LLP nor any subsidiary of the LLP shall acquire a Non-Council Site in circumstances where there is no adopted Site Development Plan in respect of the Board Approved Non-Council Site.
- 6.4.4 The approval process for the Draft Indicative SDPs, Approved Indicative SDPs and Draft Formal SDPs in relation to a Non-Council Site shall be as is set out in clause 6.2 save that references to "Site" shall be construed as references to "Board Approved Non-Council Site" and upon there being an adopted Site Development Plan in relation to the relevant Board Approved Non-Council Site, the Board Approved Non-Council Site shall be deemed for the purposes of this Agreement to be an **Adopted Non-Council Site**.
- 6.4.5 The Site Development Plans for any Adopted Non-Council Site shall include, amongst other things, provision for how such Adopted Non-Council Site is to be acquired by the LLP (or a Development Subsidiary) and funded as between the JV Partners and any third parties, and how any Net Profit attributable to such Non-Council Site is to be divided between the JV Partners notwithstanding the provisions of clause 12.
- 6.4.6 Save to the extent expressly stated to the contrary in this Agreement, references in this Agreement to a "Site" shall not include references to a Non-Council Site or an Adopted Non-Council Site.
- 6.4.7 Unless otherwise unanimously agreed by the JV Partners, it is intended that activities of the LLP in relation to an Adopted Non-Council Site shall be carried out through the LLP.

## 7 SITE DEVELOPMENT

### 7.1 Timing of transfer

Subject to the terms of the Site Development Plan in relation to a Site, the Site shall not be transferred or leased (as the case maybe) to the LLP or a Development Subsidiary unless and until all the Site Conditions are fulfilled in relation to that Site in accordance with clause 5.5 of the Option Agreement.

### 7.2 Satisfaction of conditions relating to Sites and Non-Council Sites

- 7.2.1 The LLP shall (and the JV Partners shall, insofar as they are respectively able by the exercise of their rights and powers), procure that the LLP shall:
- (a) use its reasonable endeavours to procure, so far as it is able within the exercise of its rights and powers, that all Site Conditions in relation to each Site are fulfilled as soon as reasonably practicable in accordance with the programme in the relevant Site Development Plan; and

- (b) provide to the JV Partners within five Business Days of receipt a copy of any and all relevant consents and any other documentation or correspondence relevant to the satisfaction of the Site Conditions.

7.2.2 The LLP (acting by the PSP or the PSP Representatives) may seek and/or negotiate a waiver of a Site Condition in relation to a Site under and in accordance with the Option Agreement. For the avoidance of doubt, a decision by the LLP relating to that waiver of any of the Site Condition on behalf of the LLP shall be a Council Conflict Matter.

7.2.3 Unless otherwise waived in accordance with clause 7.2.2, within five Business Days of satisfaction of each and all of the Site Conditions in respect of a Site, the LLP shall provide to the JV Partners such written evidence as they may reasonably require showing that the Site Conditions have been satisfied on the terms of the Option Agreement.

7.2.4 The parties agree that the provisions of clauses 7.2.1 to 7.2.3 shall apply with the necessary changes being made in relation to Non-Council Sites to reflect the relevant site conditions and other conditions under any relevant agreement for the acquisition of that Non-Council Site or in any Approved Indicative SDP relating to that Non-Council Site.

### **7.3 Process by which the LLP calls for Sites to be transferred or leased**

Subject to clause 7.2, the LLP (acting by the PSP or the PSP Representatives (as applicable, only (such decision being deemed to be a Council Conflict Matter))) may call for the transfer or grant of a lease to it (or to a nominated Development Subsidiary or to a third party at the direction of the LLP) of:

7.3.1 any Priority Site on the terms of the Option Agreement; and

7.3.2 any Adopted Further Site on the terms of clause 5.5 of the Option Agreement.

### **7.4 Development Subsidiaries**

7.4.1 It is intended that activities of the LLP in relation to a Site or a Non-Council Site shall be carried out through the LLP and only in circumstances where it is deemed advantageous or necessary and is unanimously agreed by the JV Partners, shall activities be carried out through a Development Subsidiary.

7.4.2 Each Development Subsidiary carrying out activities relating to a Site or a Non-Council Site shall, if deemed necessary and agreed by the JV Partners, unless otherwise unanimously agreed by the JV Partners, be established, owned and operated in accordance with Schedule 6.

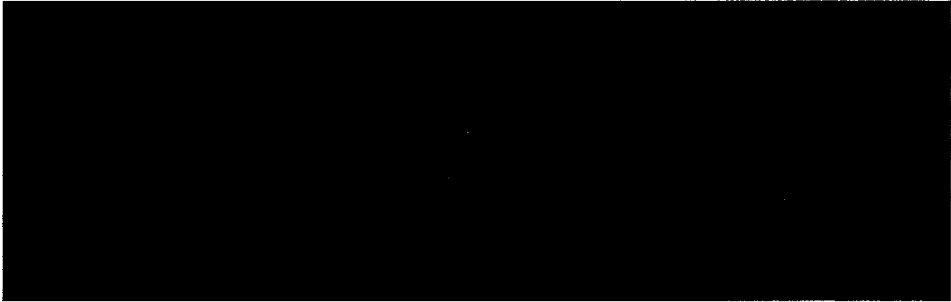
### **7.5 Financing the development of a Site or a Non-Council Site**

7.5.1 The Site Development Plan shall specify the envisaged funding requirements of the LLP and the relevant Development Subsidiary (if a Development Subsidiary is used) respectively and the requirements for drawdown of JV Partner Loans from time to time;

7.5.2 Subject to the Partnership Business Plan and the relevant Site Development Plan, it is intended that the funding requirements of the LLP and the relevant Development Subsidiary (if appropriate) shall be met as follows:

- (a) prior to that Site being transferred or leased to the LLP or the relevant Development Subsidiary (as the case may be) by the PSP and/or the Council providing the Initial Loans to the LLP, in each case in accordance with clause 7.6 to finance:

- (i) the preparation and approval of a Draft Indicative SDP and Draft Formal SDP; and

- (ii) subsequent to the approval of a Draft Indicative SDP by the LLP or the relevant Development Subsidiary, the satisfaction of Site Conditions for a Site.
- (b) following that Site being transferred or leased to the LLP or the relevant Development Subsidiary (as the case may be), as set out in the relevant Site Development Plan, which shall include:
  - (i) the Council providing the Council Loan to the LLP and the PSP providing the PSP Loan to the LLP, in accordance with clauses 7.7 and 7.8;
  - (ii) if appropriate:
    - A the Council providing such Additional Council Finance to the LLP or the relevant Development Subsidiary on terms as may be agreed by the LLP and the Council from time to time; and
    - B the PSP providing such Additional PSP Finance to the LLP or the relevant Development Subsidiary on terms as may be agreed by the LLP and the PSP from time to time;
  - (iii) a Third Party Funder providing Third Party Funding on arm's length commercial terms as may be agreed by the LLP from time to time and/or by the purchaser under a Forward Funding Agreement on arm's length commercial terms as may be agreed by the LLP from time to time;
  - (iv) where there is an Affordability Gap, though Third Party grant funding;
  - (v) 

7.5.3 Except as may otherwise be agreed unanimously by the JV Partners, where the JV Partners identify any requirement for Additional Council Finance, Additional PSP Finance and/or Third Party Funding in relation to a Site:

- (a) the LLP shall procure that such Additional Council Finance, Additional PSP Finance and/or Third Party Funding is obtained on the most commercially and financially advantageous terms obtainable by the LLP or relevant Development Subsidiary at the time of borrowing; and
- (b) the LLP shall not enter into such Additional Council Finance, Additional PSP Finance and/or Third Party Funding unless the terms and amount of any such funding have been unanimously approved by the JV Partners.

7.5.4 The JV Partners acknowledge and agree that they intend for the aggregate value of the Council Loan in relation to a particular Site to be matched by the aggregate value of the PSP Loan in respect of that Site, subject to and in accordance with the terms of this Agreement.

7.5.5 The parties agree that the provisions of clauses 7.5.1 to 7.5.4 shall apply with the necessary changes being made in relation to Non-Council Sites to reflect the relevant site conditions, funding conditions and other conditions whether set out in the Site Development Plan or otherwise in relation to the Non-Council Site;

## 7.6 Initial Council Loans and Initial PSP Loans

7.6.1 In relation to a Site that is proposed to be transferred or leased to the LLP or a Development Subsidiary, in advance of the transfer or lease of such Site to the LLP or a Development Subsidiary:

- (a) the parties acknowledge and agree that the PSP shall and the Council shall provide working capital to the LLP on an equal contributory basis, in accordance with the position set out in the Indicative Drawdown Profile set out in the Partnership Business Plan;
- (b) the JV Partners shall make available such funds at such times and in such amounts as may be set out in the Indicative Drawdown Profile; and
- (c) the PSP shall not be obliged to make funds available to the LLP in excess of the Initial PSP Loan Commitment and the Council shall not be obliged to make funds available to the LLP in excess of the Initial Council Loan Commitment (but, in either case, shall be entitled to do so at its election); and

7.6.2 In relation to an Initial Loan in connection with a particular Site:

- (a) the LLP shall be entitled to issue a written notice to the relevant JV Partner requiring that an Initial Loan be made by that JV Partner to the LLP in accordance with the Indicative Drawdown Profile (an **Initial Loan Drawdown Notice**);
- (b) if the Indicative Drawdown Profile states that both JV Partners shall contribute an amount of an Initial Loan at a certain time, then the LLP shall not issue an Initial Loan Drawdown Notice to a JV Partner unless it delivers an Initial Loan Drawdown Notice to both JV Partners on the same date in respect of the relevant amounts;
- (c) the JV Partner to whom an Initial Loan Drawdown Notice is delivered shall transfer to the LLP, in cleared funds, such amount as is stated in the relevant Initial Loan Drawdown Notice on or prior to the date stipulated in the Initial Loan Drawdown Notice (which date shall not be earlier than the date falling 10 Business Days after the date of receipt of the Initial Loan Drawdown Notice);
- (d) a JV Partner shall not be obliged to pay to the LLP any amount pursuant to this clause 7.6.2 insofar as such payment would result in the aggregate amount of all payments made by such JV Partner to the LLP pursuant to this clause 7.6.2 exceeding the Initial Loan Commitment of such JV Partner;
- (e) upon receipt of sums from a JV Partner pursuant to clause 7.6.2(c), the LLP shall immediately issue to that JV Partner such amount of Initial PSP Loan Notes or Initial Council Loan Notes (as applicable) as is equal to such sums;
- (f) interest will accrue on the Initial Loan Notes in accordance with the Initial PSP Loan Note Instrument or the Initial Council Loan Note Instrument (as applicable).

7.6.3 Subject to clause 22 (Default), each JV Partner acknowledges that a failure to comply with the terms of an Initial Loan Drawdown Notice issued in accordance with clause 7.6.3 may constitute a Default Event.

7.6.4 If, prior to the second anniversary of the Effective Date, either or both JV Partners make Initial Loans to the LLP in connection with the preparation of a Draft Indicative SDP, an Approved Indicative SDP and/or a Draft Formal SDP for the development of a Site (**SDP Costs**), and no Site Development Plan is approved prior to the second anniversary of the Effective Date in respect of that Site, then the JV Partner which has in aggregate contributed less in nominal principal value by way of Initial Loans towards the LLP's SDP Costs (the **first JV Partner**) shall pay to the other JV Partner (the **second JV Partner**) 50% of the difference between the aggregate value of the first JV Partner's Initial Loans and the aggregate value of the second

JV Partner's Initial Loans (in each case inclusive of accrued but unpaid interest and which were contributed to the LLP in relation to those SDP Costs). The balancing payment shall be made direct from the first JV Partner to the second JV Partner and upon being so made, an equivalent amount by nominal value of the second JV Partner's Initial Council Loan Notes (and interest thereon) shall be deemed repaid by the LLP to the second JV Partner.

- 7.6.5 The parties agree that the provisions of clauses 7.6.1 to 7.6.4 shall apply with the necessary changes being made in relation to Non-Council Sites, and clause 7.6.4 shall also apply so that the obligation falls away if either a Site Development Plan for either a Site or a Non-Council Site is approved by the second anniversary of the Effective Date.

## **7.7 JV Partner Loan Notes to be issued on date of the transfer of a Site or a Non-Council Site**

- 7.7.1 On the date of the transfer or grant of a Lease of a Site or a Non-Council Site to the LLP or a Development Subsidiary or a third party (as the LLP may direct) pursuant to the terms of the Option Agreement:

- (a) the Council shall loan an amount equivalent to the Price for that Site to the LLP;
- (b) the LLP shall issue to the Council such number of Council Loan Notes as is equal to:
  - (i) the aggregate amount of Initial Council Loan Notes issued to the Council in respect of that Site or Non-Council Site together with all interest that has accrued (but has not yet been paid) thereon up to the date of transfer or lease of the Site or Non-Council Site (**Council Initial Loan Capitalised Amount**); and
  - (ii) in the case of a Site, the amount of the loan pursuant to clause (a)7.7.1(a),  
and upon the issue by the LLP of an amount of Council Loan Notes equal to the Council Initial Loan Capitalised Amount, an equivalent amount by nominal value of Initial Council Loan Notes (and interest thereon) shall be deemed to have been repaid by the LLP; and
- (c) the PSP shall subscribe for and, upon receipt of the subscription monies from the PSP, the LLP shall issue to the PSP such number of PSP Loan Notes as is equal to the aggregate amount of Initial PSP Loan Notes issued to the PSP in respect of that Site or Non-Council Site together with all interest that has accrued (but has not yet been paid) thereon up to the date of such transfer or lease of the Site or Non-Council Site (**PSP Initial Loan Capitalised Amount**). Upon the issue by the LLP of an amount of PSP Loan Notes equal to the PSP Initial Loan Capitalised Amount, an equivalent amount by nominal value of Initial PSP Loan Notes (and interest thereon) shall be deemed to have been repaid by the LLP.

- 7.7.2 If the aggregate nominal value of Council Loan Notes issued pursuant to clauses 7.7.1(a) and 7.7.1(b) exceeds the aggregate nominal value of the PSP Loan Notes issued pursuant to clause 7.7.1(c), the amount of the excess shall be the **PSP Outstanding Loan Commitment**.

- 7.7.3 Interest will accrue on the Council Loan Notes and PSP Loan Notes in accordance with the Council Loan Note Instrument or PSP Loan Note Instrument (as applicable).

## **7.8 Further PSP Loan Note subscriptions where there is a PSP Outstanding Loan Commitment**

- 7.8.1 Except where clause 7.8.2 applies, where there is a PSP Outstanding Loan Commitment in respect of a Site or a Non-Council Site:
- (a) the LLP (acting by the Council or the Council's Representatives) shall be entitled to give a written notice to the PSP requiring that all or part of the PSP Outstanding Loan Commitment is paid by the PSP to the LLP, provided that such notice is consistent (both in respect of the amount of the required payment and the stipulated date for payment) with the Indicative Drawdown Profile (a **Loan Drawdown Notice**). For the avoidance of

doubt, a decision relating to the service of a Loan Drawdown Notice shall be deemed to be a PSP Conflict Matter;

- (b) following the service of a Loan Drawdown Notice, the PSP shall transfer to the LLP, in cleared funds, such amount as is stated in the relevant Loan Drawdown Notice on or prior to the date stipulated in the Loan Drawdown Notice (which date shall not be earlier than the date falling 10 Business Days after the date of receipt of the Loan Drawdown Notice);
- (c) the PSP shall not be obliged to pay to the LLP any amount pursuant to this clause 7.8.1 insofar as the payment would result in the aggregate amount of all payments made by the PSP to the LLP pursuant to this clause 7.8.1 exceeding the PSP Outstanding Loan Commitment; and
- (d) upon the LLP's receipt of funds from the PSP pursuant to clause 7.8.1(b), the LLP shall immediately issue to the PSP such amount of PSP Loan Notes as is equal in nominal value to the amount of those funds paid by the PSP to the LLP.

7.8.2 If a third party has issued a winding up petition in relation to the LLP or to the relevant Development Subsidiary which is not discharged within 10 Business Days of issue (a **Relevant Acceleration Event**) and at the time of issue the PSP Outstanding Loan Commitment has not been satisfied in full, then the following shall apply:

- (a) the PSP shall transfer to the LLP, in cleared funds, a sum equal to the PSP Outstanding Loan Commitment within 20 Business Days after the date of the Relevant Acceleration Event;
- (b) upon the LLP's receipt of funds from the PSP pursuant to clause 7.8.2(a), the LLP shall immediately issue to the PSP such amount of PSP Loan Notes as is equal in nominal value to the amount of those funds paid by the PSP to the LLP.

#### 7.9 **Currency of JV Partner Loan Notes**

The JV Partner Loans shall only be drawn down in pounds sterling.

#### 7.10 **Redemption of JV Partner Loan Notes**

7.10.1 Subject always to the terms of any security and/or priority granted to any Third Party Funder and/or the JV Partners, JV Partner Loan Notes shall be redeemed and repaid in accordance with:

- (a) the terms of the relevant JV Partner Loan Note Instrument; and
- (b) the provisions of this Agreement,

and where there is any discrepancy or conflict between the terms of this Agreement and the terms of any JV Partner Loan Note Instrument, the terms of this Agreement shall prevail.

7.10.2 Except as otherwise agreed unanimously in writing by the JV Partners and subject to clauses 7.10.5 to 7.10.6, JV Partner Loan Notes shall be redeemed and repaid to the JV Partners in the following order of priority:

- (a) first, the Initial Loans (as though they were one class of JV Partner Loan Notes);
- (b) second, the Council Loan and PSP Loan (as though they were one class of JV Partner Loan Notes),

provided that a JV Partner shall be entitled to receive that proportion of the amount set aside for repayment of the relevant class of JV Partner Loan Notes which the aggregate nominal

value of its issued and outstanding JV Partner Loan Notes of that class bears to the aggregate nominal value of all issued and outstanding JV Partner Loan Notes of that class, in each case on the date of repayment.

7.10.3 Where the JV Partners have unanimously agreed in writing that the LLP shall repay some or all of the JV Partner Loan Notes that have been issued in relation to a specific Site or Non-Council Site (and not any JV Partner Loan Notes that have been issued in relation to any other Site and/or Non-Council Site), each of the references in clause 7.10.2 to a class of JV Partner Loan Note shall be construed as a reference to the relevant class of JV Partner Loan Note insofar as they have been issued in relation to the relevant Site or Non-Council Site (as applicable).

7.10.4 Subject to clauses 7.10.5 and 7.10.6 the JV Partner Loan Notes shall be repaid in full at par (together with any accrued interest thereon up to but excluding the date of repayment) upon:

- (a) the date upon which a Termination Event occurs; or
- (b) the written agreement of the JV Partners that the JV Partner Loan Notes (or any class of them) shall be repaid (in which case the JV Partner Loan Notes in question shall be repaid on or by the date set out in that written agreement),

provided that such JV Partner Loan Notes shall be repaid in the order of priority and in the proportions set out in clause 7.10.2.

7.10.5 Where the Super Profit upon the sale or realisation of a Site is less than the outstanding amount of the JV Partner Loan Notes issued in relation to such Site:

- (a) the PSP Loan Notes relating to such Site and the Council Loan Notes relating to such Site but excluding the Council Loan Notes relating to the Price of such Site shall be repaid in full at par value; and
- (b) the balance remaining (**Super Profit Balance**) shall be used to repay such amount of the principal amount of such Council Loan Notes relating to the Price at par value as is equal to such Super Profit Balance; and
- (c) the balance of the principal amount of such Council Loan Notes relating to the Price of such Site, shall be written down to nil by the Council.

7.10.6 Where the Super Profit upon the sale or realisation of a Site are is greater than the outstanding amount of the JV Partner Loan Notes issued in relation to such Site:

- (a) the PSP Loan Notes relating to such Site and the Council Loan Notes relating to such Site but excluding the Council Loan Notes relating to the Price of such Site shall be repaid in full at par value; and
- (b) the Super Profit Balance shall be used to repay in full the outstanding principal amount of such Council Loan Notes relating to the Price at a premium so that the amount to be repaid is equal to such Super Profit Balance.

7.10.7 Where the Super Profit relates to the sale or realisation of a Non-Council Site, it shall be divided pro rata to the proportions in which the Development Costs of such a Non-Council Site have been funded by the JV Partners and the provisions in accordance with clause 12.5.

7.10.8 In the event of any conflict between the terms of clauses 7.10.5 to 7.10.7 and any other provisions in this Agreement the provisions of clauses 7.10.5 to 7.10.7 shall prevail.

## 7.11 Development Subsidiary Loan Notes

Following the establishment of a Development Subsidiary into which a Site is to be transferred or leased:

- 7.11.1 where the LLP issues JV Partner Loan Notes pursuant to clause 7.7 or clause 7.8, the LLP shall as soon as reasonably practicable thereafter procure that the Development Subsidiary shall issue to the LLP such number of Development Subsidiary Loan Notes as is equal in nominal value to the JV Partner Loan Notes so issued;
- 7.11.2 in consideration of the issue of the Development Subsidiary Loan Notes referred to above, the LLP shall make available to the Development Subsidiary:
  - (a) work in progress procured by the LLP in relation to the relevant Site by way of expending part or all of the Initial Loans for such Site including a licence to use the design and survey data produced in relation to such Site (referred to as the **Work in Progress**);
  - (b) any unexpended moneys forming part of the relevant JV Partner Loans that relate to the relevant Site;
  - (c) any other amounts held by the LLP to the extent that the adopted Site Development Plan for the relevant Site expressly states that such amounts shall be made available to the Development Subsidiary; and
  - (d) any other amounts held by the LLP as may be agreed by the JV Board from time to time.
- 7.11.3 The LLP shall procure that each Development Subsidiary shall establish and maintain a separate account in relation to each Site (a **Separate Site Account** and a reference to a Separate Site Account shall be to the Separate Site Account of the relevant Development Subsidiary) into which the proceeds of sale of the Site or income received in relation to the Site are paid immediately upon receipt.

## 7.12 Loan Note Security

- 7.12.1 The JV Partner Loan Notes, for such period as they remain outstanding, shall be secured by the LLP on equal terms by charging:
  - (a) to the Council, pursuant to the Council Security Agreement, all property, rights and assets of the LLP; and
  - (b) to the PSP, pursuant to the PSP Security Agreement, all property, rights and assets of the LLP.
- 7.12.2 The ranking of the debts and security granted by the LLP shall be regulated by the Deed of Priority and/or by any deeds replacing, supplementing or varying it.
- 7.12.3 For such period as they remain outstanding, the Development Subsidiary Loan Notes shall be secured by the Development Subsidiary which issued them by charging to the LLP pursuant to the Development Subsidiary Security Agreement, all property, rights and assets of that Development Subsidiary and by granting a legal mortgage in favour of the LLP over the relevant Site(s) in the Development Subsidiary.
- 7.12.4 The LLP shall procure that the ranking of the debts and security to be granted by a Development Subsidiary to which a Site has been transferred shall be regulated by a deed of subordination and priority to be agreed by the JV Partners and any Third Party Funder and reflecting the following priorities:
  - (a) first, any funding provided by a Third Party Funder;

(b) secondly, any Additional PSP Finance and/or Additional Council Finance (pari passu);  
and

(c) thirdly, the JV Partner Loan Notes.

## **8 PROGRESS MONITORING**

### **8.1 Progress and performance against each Partnership Business Plan and Site Development Plan**

Progress and performance against each Partnership Business Plan and Site Development Plan shall be reviewed at meetings of the JV Board.

### **8.2 Material failure to comply with a Business Plan**

If at any JV Board meeting either the Council Representatives or the PSP Representatives reasonably consider that there has been a material failure of the LLP or a Development Subsidiary to comply with the relevant Business Plan, then the JV Board (or the board of the Development Subsidiary, as applicable) shall reconvene no more than 10 Business Days later to determine whether there has been a breach of a Project Agreement and to discuss appropriate action to rectify such breach or failure and/or mitigate the effects of the breach or failure as far as possible.

## **9 ACCOUNTS AND OTHER FINANCIAL INFORMATION**

### **9.1 LLP's books of account**

The LLP shall keep proper books of account and make true and complete entries of all its dealings and transactions of and in relation to its Business.

### **9.2 Accounting Policies/Principles and Annual Accounts**

9.2.1 The LLP shall, in relation to its financial statements, adopt accounting policies and/or principles (**Accounting Policies/Principles**) and shall comply with the Act and the Regulations.

9.2.2 The LLP shall prepare the Annual Accounts for each Financial Year in accordance with the Companies Act. The Annual Accounts (together with a report by the Auditors) shall be:

(a) put to the JV Board for approval as soon as reasonably practicable following their preparation and, if approved, laid before a meeting of the JV Partners for consideration and if thought fit approved subject only to any approved variation; and

(b) distributed to the JV Partners as required by the Companies Act.

9.2.3 Following approval of the Annual Accounts by the JV Partners in accordance with clause 9.2.2(a), the JV Partners shall sign the Accounts and file them with the Registrar of Companies in accordance with the Companies Act.

### **9.3 JV Partners' entitlements to examine, receive and disclose information**

9.3.1 Except where clause 17 applies, JV Partners shall be entitled to examine the separate books, records and accounts to be kept by the LLP and any Development Subsidiary and to be supplied with all information, including monthly management accounts, operating statistics and other trading and financial information, in such form as such JV Partner may reasonably require, to keep it properly informed about the Business and affairs of the LLP and any Development Subsidiary and generally to protect its interests.

9.3.2 The LLP shall supply each of the JV Partners with the following:

- (a) the Annual Accounts as soon as practicable and at the latest by four months after the relevant Accounting Date;
- (b) Quarterly cash flow statements and cash flow forecasts for the LLP and its Development Subsidiaries as soon as reasonably practicable following the end of each Quarter but in any event at least 10 Business Days prior to the JV Board meetings to be held pursuant to clause 8.1; and
- (c) information reasonably required by each JV Partner to enable it or its shareholders to comply with its or their accounting obligations in accordance with the Companies Act.

**9.3.3 Notwithstanding the provisions of clause 28:**

- (a) the Council may disclose to its auditors information received from the LLP, any of its Development Subsidiaries or a Representative;
- (b) the PSP may disclose to its auditors information received from the LLP, any of the Development Subsidiaries or any one or more of its appointed Representatives; and
- (c) the LLP shall permit all records of the LLP to be examined and copied from time to time by the Council's auditors and their representatives and by the PSP's auditors and their representatives.

## **10 CAPITAL**

### **10.1 Capital Contributions**

- 10.1.1 Each JV Partner shall make a Capital Contribution to the LLP when required pursuant to this Agreement or the Business Plans.
- 10.1.2 When a JV Partner makes a Capital Contribution to the LLP, the LLP shall credit that JV Partner's capital account in an amount equal to that Capital Contribution.
- 10.1.3 A JV Partner shall not be required to provide any additional Capital Contribution to the LLP beyond the requirements of clause 10.1.1 unless otherwise unanimously agreed by the JV Partners and on the basis that any additional capital contribution is made simultaneously by each JV Partner in the same amounts and on the same terms.
- 10.1.4 No interest shall be payable on any Capital Contribution.
- 10.1.5 No JV Partner shall have the right to the return of its respective Capital Contribution except as otherwise provided under the terms of clause 24.

### **10.2 JV Partner liability limited**

- 10.2.1 Each JV Partner's liability as a member of the LLP shall be limited to the aggregate amount of that JV Partner's Capital Contribution provided subject to and in accordance with this clause 10.1.

## **11 CURRENT ACCOUNTS**

### **11.1 LLP to maintain separate current accounts**

The LLP shall maintain a separate current account in the name of, and hold the contents for, each JV Partner and over which the JV Partner shall have the relevant mandate (a **Current Account**) which shall be interest bearing and to which there shall be credited that JV Partner's share of the Net Profits (if any) which the JV Board agrees in accordance with clause 12.

## 11.2 Amounts credited to or debited from a JV Partner's Current Account

The only amounts which shall be credited to or debited from a JV Partner's Current Account shall be such amounts as the JV Board agrees in accordance with clause 12.

## 12 PROFITS AND LOSSES

### 12.1 Development Subsidiary profits

Unless otherwise unanimously agreed in writing by the JV Partners, receipts and profits received by any Development Subsidiary shall be dealt with by that Development Subsidiary in accordance with Schedule 6.

### 12.2 Determination of the LLP's profits and losses

12.2.1 Where the receipts and profits have been made by the LLP, the provisions of paragraph 3 of Schedule 6 shall apply but with the references to the Development Subsidiary being construed as references to the LLP and references to the LLP in paragraphs 3.1.4 and 3.1.6 of Schedule 6 being construed as references to the JV Partners.

12.2.2 The Net Profits or, if relevant, losses, of the LLP for a Financial Year and the Super Profits for Developments completed in that Financial Year (after making allowances for estimated future costs) shall be determined:

- (a) by the JV Board, acting in the best interests of the LLP, within four months of the Financial Year End of that Financial Year; and
- (b) by reference to the Annual Accounts for that Financial Year.

12.2.3 The Net Profits (if any) shall form a reserve of the LLP and shall only be divided and converted into a debt due to the JV Partners if and when the JV Board (acting on behalf of the JV Partners) has agreed to distribute those Net Profits among the JV Partners.

12.2.4 Losses of the LLP, as shown in any Annual Accounts, shall not be allocated to the JV Partners but shall be allocated to a loss reserve of the LLP.

### 12.3 Distributions of Net Profit

12.3.1 A distribution of any of the LLP's Net Profits available for distribution in relation to a given Financial Year as shown in the Annual Accounts (the **Available Net Profits**) shall require the approval of the JV Board within four months (or such longer period as the JV Partners unanimously agree) of the Financial Year End of that Financial Year. An **Approved Distribution** is a distribution which has received that approval within that time period) and the date on which that approval is given shall be the **Approval Date**). The JV Board shall not approve any distribution of Available Net Profits (to the extent proposed) if and to the extent that:

- (a) It is contrary to any distribution policy contained in a Business Plan;
- (b) there is insufficient cash available;
- (c) it would render the LLP insolvent;
- (d) the JV Board resolves that the LLP would be left with insufficient funds to meet any current or future contemplated obligations or contingencies;
- (e) it would materially adversely affect the ability of the LLP to comply with the Business Plans;

- (f) it would be a distribution in specie (unless the value of the asset(s) to be distributed has been approved by the JV Board); and
- (g) such distribution would be to a JV Partner who has committed a Default Event (provided that the provisions of this clause 12.3.1(g) shall not operate so that the relevant JV Partner loses its entitlement to such profit distribution). Where a JV Partner has committed a Default Event, its share of any Net Profit distribution shall be withheld until the earlier of:
  - (i) the remedy of the Default Event (if the Default Event is capable of remedy pursuant to this Agreement)); and
  - (ii) the waiver by the non-defaulting JV Partner of the Default Event,

at which time the LLP shall distribute the withheld amount as soon as reasonably practicable (and in any event within 10 Business Days of the remedy or waiver). If any amounts are withheld under this clause 12.3, the withheld share of Net Profit shall continue to accrue to the Current Account of the Defaulting JV Partner and shall not delay or otherwise affect distribution of Net Profits to the other JV Partners.

#### **12.4 Timing of an Approved Distribution and distribution of cash**

Subject to clause 12.3 and clause 12.5:

- 12.4.1 the LLP shall credit an Approved Distribution to the JV Partners' Current Accounts within 20 Business Days of the JV Board approving that Approved Distribution, divided between them in proportion to their Capital Contributions; and
- 12.4.2 the LLP shall pay to a JV Partner an amount equal to its share of an Approved Distribution within five Business Days of a notice from the JV Partner to the LLP requesting the same. Payments will be in cash, unless a distribution was expressly approved by the JV Board in specie. On payment being made the relevant JV Partner's Current Account shall be debited by the amount of the payment.

#### **12.5 Distributions of Super Profit**

Within 20 Business Days following approval by the JV Board or the board of the relevant Development Subsidiary of the final accounts relating to the Development of:

- 12.5.1 any Site the amount of all JV Partner Loan Notes relating to the relevant Site shall be repaid by the LLP or the relevant Development Subsidiary in accordance with clauses 7.10.5 and 7.10.6;
- 12.5.2 any Non-Council Site, the amount of the Super Profit shall be divided pro rata to the proportions in which the Development Costs of such a Non Council Site have been funded by the JV Partners and shall be paid by the LLP or the relevant Development Subsidiary into the Council's and the PSP's Current Accounts with the LLP.

#### **12.6 Intention of the JV Partners as regards profits generated by the joint venture**

Save to the extent expressly set out in this Agreement to the contrary, the JV Partners acknowledge and agree it is their intention over the lifetime of the joint venture established through the LLP that they shall share in the Net Profits generated by the joint venture equally via Approved Distributions of Available Net Profits.

## **12.7 Over-allocation and/or overpayment of Net Profits**

- 12.7.1 If there has been an over-allocation of Net Profits to a JV Partner or JV Partners pursuant to this clause 12, and the relevant amount has been credited to the relevant JV Partner's (or JV Partners') Current Account(s) pursuant to clause 12.4.1, but the relevant amount has not yet been paid to the relevant JV Partner(s) pursuant to clause 12.4.2, then the over-allocation shall be corrected by a debit being made to the relevant Current Account(s).
- 12.7.2 If there has been an over-allocation of Net Profits to a JV Partner or JV Partners pursuant to this clause 12 and the relevant amount has been paid to the relevant JV Partner(s) pursuant to clause 12.4.2, then the amount of such overpayment shall, if the JV Board so determines (acting pursuant to clause 17), be repaid in whole or part by the relevant JV Partner(s) within 10 Business Days of a written notice to repay being issued by the JV Board to the relevant JV Partner(s) (if in part and if there has been over payments of Net Profits to more than one JV Partner, each such JV Partner shall be liable to contribute such proportion of the repayment to be made pursuant to this clause 12.7 as is equal to the proportion of the total overpayment received by it).

## **13 MANAGEMENT AND CONTROL OF THE BUSINESS**

### **13.1 Delegation Policy**

Except where expressly stated otherwise in this Agreement and subject to clause 13.4, the decisions of the LLP shall be made in accordance with the Delegation Policy.

### **13.2 Delegation to the JV Board**

- 13.2.1 Without prejudice to clause 13.1 and save where otherwise expressly provided in this Agreement, the JV Partners hereby delegate the day to day management and control of the Business to the JV Board, who shall manage the LLP and its Business in accordance with the Business Plans.
- 13.2.2 The JV Partners and the LLP agree to maintain the JV Board for the duration of the LLP and agree to use their respective reasonable endeavours to procure that the JV Board shall operate in accordance with the provisions of this Agreement, the Business Plans and the Delegation Policy.

### **13.3 Delegation by the JV Board**

- 13.3.1 Subject to this Agreement, the JV Board may delegate any of its powers which are conferred on it under this Agreement:

- (a) to such person (whether a Representative or not) or committee;
- (b) by such means (including by power of attorney);
- (c) to such an extent;
- (d) in relation to such matters or territories; and
- (e) on such terms and conditions

as it thinks fit. If the JV Board so specifies, any such delegation may authorise further delegation of its powers by any person to whom they are delegated. Subject to the terms of any contractual obligations entered into by the LLP, the JV Board may revoke any delegation in whole or part, or alter its terms and conditions.

13.3.2 The provisions of this Agreement applicable to meetings and resolutions of the JV Board shall apply equally to meetings and proceedings of any committee appointed pursuant to clause 13.3.1 and for this purpose half of the members of such committee shall be nominated by the PSP Representatives and the other half shall be nominated by the Council Representatives.

13.3.3 If any matter of any committee meeting is not carried by reason of equal votes for or against the matter, the matter shall be referred to the JV Board to determine and the provisions of clause 15 shall apply.

**13.4 Resolution of ambiguity, uncertainty or inconsistency**

Where there is any ambiguity, uncertainty or inconsistency in relation to any delegated authority and/or who is to take any decision to be made by or on behalf of the LLP, the matter shall be referred by any JV Partner or any Representative in the first instance to the JV Board for determination. However, the Chair shall notify all Representatives of such referral forthwith on it being made and the Representatives shall then have five Business Days from, but not including, the date of receipt of such notice in which to give notice in writing to the LLP referring the matter to the JV Partners for determination instead. In the event that such notice is given by any Representative the matter shall be so referred to the JV Partners for determination rather than the JV Board.

**14 REPRESENTATIVES**

**14.1 Appointment of Representatives**

14.1.1 The JV Partners shall each be entitled to appoint four Representatives to the JV Board and each JV Partner shall procure that there shall always be two Representatives on the JV Board validly appointed by it.

14.1.2 The first Representatives shall be:

- (a) two Council officers appointed by the Council in accordance with its governance arrangements (Council Officer Representatives) and notified in writing to the PSP and to the LLP;
- (b) two Cabinet members appointed by the Leader of the Council in accordance with the Council's governance arrangements (Council Member Representatives) and notified in writing to the PSP and to the LLP;
- (c) [REDACTED] (PSP Representative);
- (d) [REDACTED] (PSP Representative);
- (e) [REDACTED] (PSP Representative); and
- (f) [REDACTED] (PSP Representative),

who shall each be appointed on the Effective Date.

14.1.3 Subject to clause 14.1.4, any appointment by a JV Partner of a Representative after the Effective Date shall be effected by notice in writing to the LLP signed by or on behalf of the relevant JV Partner and such notice, subject to any contrary intention expressed in the notice, shall:

- (a) state the name and post or office of the person being appointed; and
- (b) take effect when the notice is given to the LLP or on delivery to a meeting of the JV Board (whichever is earlier).

14.1.4 A person proposed as a Representative (including those proposed to be appointed as Representatives on the Effective Date) shall not be appointed as a Representative unless he has signed and given to the JV Board the letter of appointment in the form scheduled to this Agreement at Schedule 4 or such other terms as the JV Board may agree from time to time.

14.1.5 Wherever possible, the JV Partners shall use reasonable endeavours to ensure that their respective Representatives serve on the JV Board for at least 12 months in order to maintain continuity.

#### 14.2 Removal of Representatives

14.2.1 Subject to clause 14.1, a JV Partner shall be entitled to remove and replace the Representatives appointed by it. Any removal by a JV Partner of its Representative shall be effected by notice in writing to the LLP signed by or on behalf of the relevant JV Partner and, subject to any contrary intention expressed in the notice, shall take effect when the notice is given to the LLP or on delivery to a meeting of the JV Board (whichever is earlier).

14.2.2 Notwithstanding any other term of this Agreement, a JV Partner shall forthwith remove a Representative appointed by it by written notice to the LLP where:

- (a) the appointing JV Partner ceases to be a member of the LLP (save where a member of the Group of the appointing JV Partner becomes a JV Partner in place of the appointing JV Partner) and, for the avoidance of doubt, in such circumstances, the outgoing JV Partner shall remove all Representatives appointed by it and shall not be entitled to replace any Representative; or
- (b) the Representative exercises his voting rights in contravention of this Agreement (in which case the JV Partners shall co-operate with each other as appropriate to rectify any consequences of that Representative's actions or omissions); or
- (c) the Representative resigns from office of Representative by providing not less than 20 Business Days' written notice to the LLP; or
- (d) the Representative is convicted of any offence of fraud or dishonesty; or
- (e) in relation to a Council Representative, he ceases to be employed by the Council or ceases to be an elected member of the Council; or
- (f) in relation to a PSP Representative, he ceases to be employed by the PSP or any member of its Group; or
- (g) the Representative has been absent from meetings of the JV Board for three or more consecutive meetings (unless the JV Partners unanimously agree to allow the Representative to remain a Representative).

14.2.3 If a JV Partner removes a Representative appointed by it then such JV Partner shall procure that the Representative vacates office without any claim to the LLP for loss of office or otherwise relating to their removal and the removing JV Partner shall indemnify the LLP against all losses, liabilities and costs which the LLP (or any of its Development Subsidiaries) may incur arising out of, or in connection with, any claim by the vacating Representative for wrongful or unfair dismissal or redundancy or other loss arising out of their removal. This indemnity shall continue notwithstanding expiry or termination of this Agreement for any reason whatsoever or the winding up of the LLP.

14.2.4 If a JV Partner fails to remove a Representative appointed by it when required to do so in accordance with clause 14.2.2 (hereafter referred to for the purpose of this clause 14.2.4 only as the **Defaulting JV Partner**), the other JV Partner shall be entitled to give notice to

the LLP to remove the Representative on the Defaulting JV Partner's behalf but, for the avoidance of doubt, in such circumstances the Defaulting JV Partner and not the other JV Partner serving notice shall indemnify the LLP in accordance with clause 14.2.3.

#### **14.3 Alternates**

- 14.3.1 A Representative may appoint any other individual (whether or not a Representative) as his alternate for the purposes of one or more meetings of the JV Board, provided always that a member of the JV Board must personally attend at least one out of every three consecutive meetings of the JV Board.
- 14.3.2 Any notice appointing an alternate shall be in writing and shall take effect upon delivery to the LLP's registered office or production at the first such meeting of the JV Board at which the alternate attends.
- 14.3.3 An alternate may represent more than one Representative and a Representative may represent another Representative.

#### **14.4 Chair**

The JV Board shall have a Chair. The Chair shall be occupied by a Council Representative or a PSP Representative appointed by the Council or the PSP (respectively) on an annual rotating basis with the first Chair being appointed by the Council.

#### **14.5 Duties of Representatives; no entitlement to remuneration or expenses**

- 14.5.1 A Representative shall owe a duty to the LLP to act in the way he considers, in good faith, would be most likely to promote the success of the LLP for the benefit of the JV Partners as a whole and in furtherance of the JV Objectives, the Business Plans and this Agreement. Each JV Partner hereby agrees that it shall apprise each of its Representatives (and alternates) of that duty and to use its respective reasonable endeavours to procure that each Representative (and alternate) acts in accordance with that duty.
- 14.5.2 No Representative (or alternate) shall receive any remuneration or expenses reimbursement from the LLP or any Development Subsidiary. All remuneration and expenses shall be the responsibility of the appointing JV Partner.

### **15 JV BOARD MEETINGS AND RESOLUTIONS**

#### **15.1 Overriding provision regarding Conflict Matters**

The provisions of this clause 15 are subject to the provisions of clause 17 such that where there is a Conflict Matter to be considered at any meeting of the JV Board (or part thereof) and any inconsistency exists or may exist between the two clauses, the inconsistency or potential inconsistency shall be resolved in accordance with the provisions of clause 17.

#### **15.2 Frequency of JV Board meetings**

Unless the JV Board agrees otherwise, the JV Board shall hold at least one meeting every Quarter.

#### **15.3 Location of JV Board meetings**

Unless the JV Board otherwise agrees, meetings shall be held at the LLP's registered office. A Representative shall be taken to be present at a JV Board meeting if linked by telephone or by means of a video conferencing facility to the other Representatives also present at the meeting through which he or she can hear and be heard by the other Representatives.

#### **15.4 Notice of JV Board meetings**

##### **15.4.1 The Chair:**

- (a) may at any time; and
- (b) if requested by at least one Council Representative and one PSP Representative, shall within five Business Days of receiving such a request, call a JV Board meeting.

##### **15.4.2 A notice of a JV Board meeting shall:**

- (a) specify the time and place of the meeting;
- (b) be accompanied by an agenda of the business to be transacted at the meeting, together with a copy of all documents to be circulated or presented to the meeting; and
- (c) be given to Representatives at least 10 Business Days before the meeting.

##### **15.4.3 A shorter period of notice may be given with the written approval of at least one Council Representative and one PSP Representative.**

#### **15.5 Quorum**

##### **15.5.1 A meeting of the JV Board shall not transact any business unless a quorum is present at the start of the meeting. Subject to clause 17, the quorum for any meeting of the JV Board shall be one Council Representative and one PSP Representative, one of whom shall also be the Chair (or his alternate).**

##### **15.5.2 If a quorum is not present within 30 minutes from the start time of the meeting or if a quorum subsequently ceases to be present at any time during which business is being conducted at the meeting, the meeting shall be adjourned to be reconvened at the same place and time five clear Business Days later (or such other period as the PSP Representatives and the Council Representatives may unanimously decide).**

##### **15.5.3 If at such adjourned meeting the Representatives necessary to form a quorum pursuant to clause 15.5.1 are not present within half an hour from the time appointed for the adjourned meeting, then the quorum for such meeting shall consist of those Representatives present provided that at least one Council Representative and one PSP Representative are present and, subject to clause 17, entitled to vote at the meeting.**

##### **15.5.4 If at such adjourned meeting there is not at least one Council Representative and one PSP Representative present and entitled to vote, the provisions of clause 18 shall apply and the matters to be discussed at such meeting as set out in the agenda of the original JV Board meeting shall be deemed to be Deadlock Matters for the purpose of clause 18.**

#### **15.6 Conduct of business and voting**

##### **15.6.1 The JV Board shall not decide any matter at a meeting which does not appear in the agenda for that meeting unless otherwise agreed by the PSP Representatives and the Council Representatives.**

##### **15.6.2 The Chair shall not have a second or casting vote.**

##### **15.6.3 Subject to clause 17, at any quorate meeting of the JV Board:**

- (a) each Representative (or his alternate) is entitled to cast one vote on a resolution put to JV Board;
- (b) if a Representative appointed by a particular JV Partner is absent, the Representative appointed by that JV Partner who is present in person or by an alternate may cast the vote of the absent Representative appointed by that JV Partner provided that the maximum number of votes able to be cast by the Representative present in person or by an alternate shall not exceed the number of Representatives which that JV Partner may at that time appoint (whether or not that JV Partner has appointed all such Representatives).

15.6.4 Subject to clause 17, a resolution of the JV Board shall be passed by a majority vote in favour of the resolution and, with the exception of a written resolution effected in accordance with clause 15.7, shall only be valid where taken at a quorate meeting of the JV Board called, convened and held in accordance with this clause 15.

15.6.5 If such matter is not carried at the adjourned meeting by reason equal votes for and against the matter, the matter shall be referred to the JV Partners and clause 16 shall apply.

#### **15.7 Written resolutions**

A written resolution (which may be in counterparts) signed by all Representatives entitled to receive notice of and vote at a JV Board meeting at which the resolution would have been proposed, or to which each Representative has otherwise indicated its agreement in writing, shall be as valid as if it had been passed at a JV Board meeting duly convened and held.

#### **15.8 Minutes**

15.8.1 The Representatives present at a JV Board meeting may regulate the taking of minutes at that meeting.

15.8.2 Draft minutes of a JV Board meeting shall be:

- (a) prepared and sent to each Representative within five Business Days after the meeting to which they relate; and
- (b) if thought fit, approved at the next JV Board meeting.

15.8.3 Approved minutes shall be sent to each Representative within five Business Days after the meeting of the JV Board at which they are approved.

15.8.4 For the avoidance of doubt, written resolutions of the JV Board passed pursuant to clause 15.7 shall not be subject to the foregoing provisions of this clause 15.8.

### **16 JV PARTNERS' MEETINGS AND RESOLUTIONS**

#### **16.1 Overriding provision regarding Conflict Matters**

The provisions of this clause 16 are subject to the provisions of clause 17 such that where there is a Conflict Matter to be considered at any meeting of the JV Partners (or part thereof) and any inconsistency exists or may exist between the two clauses, the inconsistency or potential inconsistency shall be resolved in favour of the provisions of clause 17.

#### **16.2 Frequency of JV Partners' meetings**

Unless the JV Partners unanimously agree otherwise, the JV Partners shall hold at least one meeting every Quarter.

### **16.3 Location of JV Partners' meetings**

Unless the JV Partners unanimously agree otherwise, meetings shall be held at the LLP's registered office. A JV Partner shall be taken to be present at a JV Partners' meeting if linked by telephone or by means of a video conferencing facility to the other JV Partners also present at the meeting through which it can hear and be heard by the other JV Partners.

### **16.4 Notice of JV Partners' meetings**

#### **16.4.1 The Chair:**

- (a) may at any time; and
- (b) if requested by at least one JV Partner, shall within 10 Business Days of receiving such a request, call a JV Partners' meeting.

#### **16.4.2 A notice of a JV Partners' meeting shall:**

- (a) specify the time and place of the meeting;
- (b) be accompanied by an agenda of the business to be transacted at the meeting, together with a copy of all documents to be circulated or presented to the meeting; and
- (c) be given to the JV Partners at least 20 Business Days before the meeting.

#### **16.4.3 A shorter period of notice may be given with the written approval of all JV Partners.**

### **16.5 Quorum**

16.5.1 A meeting of the JV Partners shall not transact any business unless a quorum is present at the start of the meeting. Subject to clause 17, the quorum for any meeting of the JV Partners shall be all JV Partners (represented by a duly authorised representative(s)).

16.5.2 If a quorum is not present within 30 minutes from the start time of the meeting or if a quorum subsequently ceases to be present at any time during which business is being conducted at the meeting, the meeting shall be adjourned to be reconvened at the same place and time five clear Business Days later (or such other period as the JV Partners may unanimously decide).

16.5.3 If at such adjourned meeting a quorum is not present, then the provisions of clause 18 shall apply and the matters to be discussed at such meeting as set out in the agenda of the original JV Partners' meeting shall be deemed to be Deadlock Matters for the purpose of clause 18.

### **16.6 Conduct of business and voting**

16.6.1 The JV Partners shall not decide any matter at a meeting of the JV Partners which does not appear in the agenda for that meeting unless otherwise agreed unanimously by the JV Partners.

16.6.2 Subject to clause 17, at any quorate meeting of the JV Partners, each JV Partner present and entitled to vote shall have one vote each on any resolution tabled at the meeting.

16.6.3 Subject to clause 17, a resolution of the JV partners shall be passed only by a vote in favour of the resolution and, with the exception of a written resolution effected in

accordance with clause 16.7, shall only be valid where taken at a quorate meeting of the JV Partners called, convened and held in accordance with this clause 16.

16.6.4 If a matter submitted to a duly convened meeting of the JV Partners is not carried at that meeting, then without prejudice to the ability to consider any other business put to the JV Partners at such meeting, the meeting shall (on the request of any JV Partner) be adjourned for 10 Business Days and then reconvened.

16.6.5 If such matter is not carried at the adjourned meeting, the provisions of clause 18 shall apply in relation to that matter.

#### 16.7 Written resolutions

A written resolution (which may be in counterparts) signed by all JV Partners entitled to receive notice of and vote at a JV Partner meeting at which the resolution would have been proposed, or to which each JV Partner has otherwise indicated its agreement in writing, shall be as valid as if it had been passed at a JV Partner meeting duly convened and held.

#### 16.8 Minutes

16.8.1 The JV Partners present at a meeting may regulate the taking of minutes at that meeting.

16.8.2 Draft minutes of a JV Partners' meeting shall be:

(a) prepared and sent to each JV Partner within five Business Days after the meeting to which they relate; and

(b) if thought fit, approved at the next JV Partners' meeting.

16.8.3 Approved minutes shall be sent to each JV Partner within five Business Days after the meeting of the JV Partners at which they are approved.

16.8.4 For the avoidance of doubt, written resolutions of the JV Partners passed pursuant to clause 16.7 shall not be subject to the foregoing provisions of this clause 16.8.

#### 16.9 Authorised representatives

16.9.1 A JV Partner may:

(a) by resolution of its board of directors or other governing body or board or committee of the JV Partner (as applicable); or

(b) by any authority executed as a deed or under hand of any officer or officers duly authorised by the JV Partner,

authorise such person(s) as that JV Partner shall agree to act as its representative(s) at any JV Partners' Meeting (or adjournment thereof).

16.9.2 Any person so authorised shall be entitled to exercise the same rights on behalf of that JV Partner as the JV Partner would be entitled to exercise at such meeting (provided that all such authorised persons shall be in agreement as to how such rights shall be exercised on behalf of the JV Partner), and that JV Partner shall for the purposes of this Agreement be treated as present in person at any JV Partners' meeting if a person so authorised is present at such meeting.

16.9.3 The number of persons authorised by a JV Partner in accordance with clause 16.9.1 to act on its behalf at a JV Partners' meeting (or adjournment thereof) shall be limited to two. If at any JV Partners' meeting (or adjournment thereof) any JV Partner is present by more than two duly authorised representatives, the first two of such representatives to arrive at

the JV Partners' meeting shall be the duly authorised representatives of that JV Partner for the purpose of that meeting and each other such representative shall not be entitled to participate in any way at the meeting.

## **17 MANAGING CONFLICTS OF INTEREST**

### **17.1 Council Conflict Matters**

Where there is a Council Conflict Matter to be considered by the JV Partners at a JV Partners' meeting and/or by the JV Board at a JV Board meeting, the Council (in the case of a JV Partners' meeting) and the Council Representatives (in the case of a JV Board meeting) shall be entitled to receive notice of, attend (whether in person or represented by an alternate or duly authorised person(s)) and speak at the relevant meeting at which the Council Conflict Matter is to be considered, but shall not be entitled to count in the relevant quorum or vote on the Council Conflict Matter (whether the vote is taken at that meeting or otherwise), and the PSP Representatives and/or the PSP (as applicable) shall have full authority on behalf of the LLP (but acting bona fide to promote the LLP) to consider, negotiate, litigate and/or settle the matter giving rise to the Council Conflict Matter in the name and at the expense of the LLP without the further authority of the Council Representatives or the Council.

### **17.2 PSP Conflict Matters**

Where there is a PSP Conflict Matter to be considered by the JV Partners at a JV Partners' meeting and/or by the JV Board at a JV Board meeting, the PSP (in the case of a JV Partners' meeting) and the PSP Representatives (in the case of a JV Board meeting) shall be entitled to receive notice of, attend (whether in person or represented by an alternate or duly authorised person(s)) and speak at the relevant meeting at which the PSP Conflict Matter is to be considered, but shall not be entitled to count in the relevant quorum or vote on the PSP Conflict Matter (whether the vote is taken at that meeting or otherwise), and the Council Representatives and/or the Council (as applicable) shall have full authority on behalf of the LLP (but acting bona fide to promote the LLP) to consider, negotiate, litigate and/or settle the matter giving rise to the PSP Conflict Matter in the name and at the expense of the LLP without the further authority of the PSP Representatives or the PSP.

## **18 DEADLOCK**

### **18.1 What constitutes a Deadlock Matter**

18.1.1 Subject to clause 18.1.2, a matter shall constitute a **Deadlock Matter** if:

- (a) the JV Partners by reason of disagreement between themselves are unable to arrive at a unanimous decision on:
  - (i) any matter requiring their approval and consideration within 20 Business Days after the date on which the matter was first presented to them at a quorate JV Partners' meeting or by way of a written resolution;
  - (ii) any decision to approve or adopt the Partnership Business Plan in accordance with clauses 2.6 or 6.1;
  - (iii) any decision required to approve or adopt or amend or vary and/or replace any Site Development Plan in accordance with clause 6 and any decision required to approve or adopt any Draft Indicative SDP, Approved Indicative SDP or Draft Formal SDP relating to Phase 1 of Birkenhead Commercial District in accordance with clauses 2.6 or 6;
  - (iv) any decision required to approve or adopt any Draft Indicative SDP, Approved Indicative SDP or Draft Formal SDP in accordance with clause 6 which does not relate to Phase 1 of Birkenhead Commercial District, but only where such Draft Indicative SDP, Approved Indicative SDP or Draft Formal

SDP has failed to be approved or adopted by either the JV Board on two consecutive occasions or by the JV Partners on two consecutive occasions;

- (b) this Agreement expressly provides that such matter shall constitute (or shall be deemed to constitute) a Deadlock Matter.

18.1.2 The following shall not constitute Deadlock Matters:

- (a) any decision to vary the terms of this Agreement;
- (b) any act or omission proposed to be done or not done (as the case may be) by or on behalf of the LLP (or a Development Subsidiary) which would (if done or not done, as appropriate) be unlawful according to the letter or spirit of the law;
- (c) any decision on whether to approve the acquisition of an Further Site in principle in accordance with clause 6.3.2;
- (d) any decision on whether to approve the acquisition of a Non-Council Site in principle in accordance with clause 6.4.2;
- (e) any decision in relation to an Indicative Drawdown Profile (including any variation or amendment to the same);
- (f) any decision to revise, replace, remove or add to the Council's Objectives and/or the LLP's Objectives; and
- (g) any other matter which this Agreement expressly provides may not constitute a Deadlock Matter.

18.2 **Escalation of Deadlock Matter**

- 18.2.1 As soon as reasonably practicable but in any event within five Business Days following the expiry of the 20 Business Day period referred to in clause 18.1.1, either JV Partner may give notice to the other in writing (a **Deadlock Notice**) referring to the Deadlock Matter.
- 18.2.2 Within five Business Days of the other JV Partner receiving the Deadlock Notice, the PSP shall nominate by written notice to the LLP a senior officer who has the authority of the PSP to resolve the Deadlock Matter on behalf of the PSP (the **PSP Senior Officer**) and the Council shall nominate by written notice to the LLP the then current Chief Executive or a senior officer of the Council who has the authority of the Council to resolve the Deadlock Matter on behalf of the Council (the **Council Senior Officer**) (together the **Senior Officers**).
- 18.2.3 Within 10 Business Days following the nomination of the PSP Senior Officer or the Council Senior Officer (whichever is the later) the PSP Senior Officer shall give to the Council Senior Officer a memorandum setting out the PSP's position on the Deadlock Matter and the reasons for adopting such position and the Council Senior Officer shall give to the PSP Senior Officer a memorandum setting out the Council's position on the Deadlock Matter and the reasons for adopting such position. The PSP and the Council shall procure that the PSP Senior Officer and the Council Senior Officer consider each the other's memorandum. The PSP Senior Officer and the Council Senior Officer shall use reasonable endeavours to resolve such Deadlock Matter within 20 Business Days of receipt of the last memorandum given in accordance with this clause.
- 18.2.4 If the Senior Officers agree on how to resolve the Deadlock Matter within 20 Business Days of receipt of the last memorandum to be given in accordance with clause 18.2.3, they shall jointly draft and sign a statement setting out the terms of resolution which shall forthwith be given on the JV Board. The JV Board shall procure that such resolution is fully and promptly carried into effect.

- 18.2.5 If the Senior Officers do not agree on how to resolve the Deadlock Matter within 20 Business Days of receipt of the last memorandum to be given in accordance with clause 18.2.3 (**Senior Officers' Resolution Period**) or if either the Council Senior Officer or the PSP Senior Officer fails to give a memorandum in accordance with clause 18.2.3 then the provisions of clauses 18.3 and/or 18.4 shall apply.

### 18.3 Mediation

- 18.3.1 Subject to clause 18.5, if the matter in dispute is reasonably capable of being determined by a suitably qualified mediator (**Mediator**) in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Procedure, then the JV Partners shall refer the Deadlock Matter to the Mediator within 15 Business Days of (i) the expiry of the Senior Officers Resolution Period; or (ii) the latest date by which the Council Senior Officer or the PSP Senior Officer should have given a memorandum in accordance with clause 18.2.3 (as applicable) (the **Mediator Appointment Period**). In the event of a failure to agree (both JV Partners acting reasonably) as to whether the matter is reasonably capable of being determined by a Mediator within the Mediator Appointment Period, the provisions of clause 18.4 shall apply. If the JV Partners agree that the matter is reasonably capable of determination by a Mediator, the identity of the Mediator will be agreed by the JV Partners in writing. If the JV Partners cannot agree on the identity of the Mediator, either JV Partner may request that the CEDR shall decide upon the appointment of the Mediator, following consultation with the JV Partners.
- 18.3.2 Within 10 Business Days following the appointment of the Mediator, each JV Partner shall give to the Mediator a memorandum setting out its position on the Deadlock Matter and the reasons for adopting such position. The Mediator shall then conduct the mediation in accordance with the CEDR Model Procedure with a view to resolving such Deadlock Matter as soon as reasonably practicable and in any event within 20 Business Days (or such longer period as the JV Partners may determine) of receipt of the last memorandum to be given in accordance with this clause.
- 18.3.3 If the mediation results in resolution of the Deadlock Matter, the JV Partners shall jointly draft and sign a statement setting out the terms of resolution which shall forthwith be given on the JV Board. The JV Board shall procure that such resolution is fully and promptly carried into effect.
- 18.3.4 If the Mediator is unable to resolve the Deadlock Matter within 20 Business Days period referred to in clause 18.3.2 (or such longer period as may have been agreed) (**Mediation Resolution Period**) then the provisions of clause 18.4 shall apply.
- 18.3.5 Each JV Partner shall bear its own costs in relation to the reference to the Mediator. The Mediator's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Mediator) shall be borne by the JV Partners equally or in such other proportions as the Mediator shall direct.
- 18.3.6 All matters concerning the process and result of the mediation shall be kept confidential among the parties and the Mediator.

### 18.4 Expert determination

- 18.4.1 Subject to clause 18.5, if the matter in dispute is reasonably capable of being determined by a suitably qualified independent Expert, then the JV Partners shall refer the Deadlock Matter to an Expert to determine within 15 Business Days of the expiry of the Mediation Resolution Period; or if the matter was not reasonably capable of being determined by a Mediator, of (i) the Senior Officers' Resolution Period or (ii) the latest date by which the Council Senior Officer or PSP Senior Officer should have given a memorandum in accordance with clause 18.2.3 (as applicable) (the **Expert Appointment Period**). In the event of a failure to agree (both JV Partners acting reasonably) as to whether the matter is reasonably capable of being determined by a suitably qualified independent Expert

within the Expert Appointment Period, the provisions of clause 18.6 shall apply. The identity of the Expert will be agreed by the JV Partners in writing.

- 18.4.2 If the JV Partners are unable to agree on the identity of the Expert or the terms of his appointment within the Expert Appointment Period, either JV Partner shall then be entitled to request the CEDR to appoint an Expert of repute with experience in the subject matter of the specific dispute and for the CEDR to agree with the Expert the terms of his appointment, and the Expert so appointed shall be the Expert. Following his appointment:
- (a) the Expert shall be required to prepare a written decision and give notice (including a copy) of the decision to the JV Partners within a maximum of two months of the matter being referred to the Expert;
  - (b) if the Expert dies or becomes unwilling or incapable of acting, or does not give the decision within the time required by this clause 18.4.2 then:
    - (i) either JV Partner may apply to CEDR to discharge the Expert and to appoint a replacement Expert with the required expertise; and
    - (ii) this clause 18.4.2 applies in relation to the new Expert as if he were the first Expert appointed;
  - (c) the Council and the PSP are entitled to make submissions to the Expert and shall provide (or use reasonable endeavours to procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision;
  - (d) to the extent not provided for by this clause 18.4.2, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination;
  - (e) the Council and the PSP shall with reasonable promptness supply each other with all information and give each other reasonable access to all documentation and personnel during normal business hours as the other party reasonably requires to make a submission under this clause 18.4.2(c);
  - (f) the Expert shall have due regard to the provisions of this Agreement and shall act as an expert and not as an arbitrator;
  - (g) the Expert shall determine and resolve the Deadlock Matter which may include any issue involving the interpretation of any provision of this Agreement, his jurisdiction to determine the matters and issues referred to him or his terms of reference.
- 18.4.3 The Expert's written decision on the matters referred to him shall, in the absence of manifest error or fraud, be final and binding upon the Council, the PSP, the JV Partners and the LLP without appeal and those parties shall implement such decision in relation to the LLP and its Business as soon as reasonably practicable after such decision is made known to the JV Partners and the LLP by the Expert.
- 18.4.4 Each JV Partner shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the JV Partners equally or in such other proportions as the Expert shall direct.
- 18.4.5 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.

## 18.5 Deadlock parameters

The Parties agree that the following matters shall not be capable of Expert determination pursuant to clause 18.4.1:

- 18.5.1 a Deadlock Matter arising in relation to the approval, amendment, variation and/or replacement of a Partnership Business Plan, and/or a Draft Indicative SDP, and/or an Approved Indicative SDP, and/or a Draft Formal SDP and/or a Site Development Plan;
- 18.5.2 a decision as to whether a Deadlock Matter is capable of Expert determination pursuant to clause 18.4.1; and
- 18.5.3 any matter which cannot be objectively determined and any matter which, even if it could be objectively determined, is in the reasonable opinion of the JV Partners so important that they do not want to be bound by an Expert's determination of it,

provided that nothing in this clause 18.5 shall prejudice the JV Partners' discretion to determine other Deadlock Matters as unsuitable for determination by an Expert under clause 18.4.1.

## 18.6 Deadlock Event

Subject to the foregoing provisions of this clause 18, if:

- 18.6.1 the Deadlock Matter is one to which clause 18.4 applies but the JV Partners agree is not by its nature suitable for decision by an Expert; or
- 18.6.2 the Deadlock Matter is one to which clause 18.4 applies but the JV Partners are unable to reach agreement (acting reasonably) as to whether the Deadlock Matter is reasonably capable of resolution by an Expert during the period set out in clause 18.4.1;
- 18.6.3 the Deadlock Matter is a matter set out in clause 18.5 to which clause 18.4 does not apply; or
- 18.6.4 if three consecutive Deadlock Matters arise in relation to the approval, adoption variation and/or replacement of a Site Development Plan,

then a Deadlock Event shall be deemed to have arisen and the provisions of clause 23 shall apply. If, however, the Deadlock Matter relates to the approval or adoption of a Draft Indicative SDP, an Approved Indicative SDP or a Draft Formal SDP (other than in relation Phase 1 of Birkenhead Commercial District) and the matter is not resolved in accordance with this clause 18, it shall not be a Deadlock Event, and instead the LLP shall seek to bring forward either alternative proposals for the same Site or proposals for alternative Sites.

## 18.7 Relationship between Deadlock Matters and Default Events

If a Default Event occurs while the procedures referred to in this clause 18 are in process, the procedures in clause 22 (*Default*) may be invoked, in which event any procedure under this clause 18 shall be terminated with effect from the date of service or deemed service (as the case may be) of a Default Notice being given in accordance with clause 22.3.

## 18.8 Artificially Deadlocked Matter

- 18.8.1 In this clause 18 an **Artificially Deadlocked Matter** shall be a Deadlock Matter caused by any JV Partner, deliberately and without good reason, voting against or failing to consent to an issue or proposal (except where it is a Conflict Matter) in any case where the approval of the same is required to enable the LLP (or the relevant Development Subsidiary) to carry on the Business and its activities properly and efficiently and which does not cause that JV Partner to incur any additional liabilities, or diminish or otherwise

materially adversely affect that JV Partner's interests in the LLP (or in the relevant Development Subsidiary) and the Business.

- 18.8.2 In no circumstances shall any JV Partner create or permit to subsist, or insofar as it is able to influence the same, permit to be created or subsist, an Artificially Deadlocked Matter. Notwithstanding the foregoing provisions of this clause 18, if an Artificially Deadlocked Matter shall arise, it shall not constitute a Deadlock Matter.

## **19 RESTRICTIONS ON ACTIVITIES OF THE JV PARTNERS**

### **19.1 Compliance by PSP's Group members**

- 19.1.1 Subject to clause 19.1.2, the PSP agrees to procure the compliance by all members of its Group with clause 19.2 as if each such Group member were the PSP.
- 19.1.2 Nothing in this clause 19 shall restrict any member of the PSP's Group from continuing any development or any investment activities in respect of any land interest held or acquired by that member of the PSP's Group on or before the date of this Agreement.

### **19.2 Actions or omissions leading to serious disrepute or continuous material adverse publicity**

Each JV Partner shall use reasonable endeavours to procure (so far as it is able) that it, its contractors, sub-contractors, agents and/or representatives shall not knowingly do or knowingly omit to do anything which:

- 19.2.1 brings the standing of the LLP and/or any of the JV Partners (or any members of their Group) into serious disrepute; or
- 19.2.2 attracts continuous material adverse publicity to the LLP and/or any of the JV Partners (or any members of their Group);

and which has a serious detrimental effect on the Business or relevant JV Partner's business (or in the case of the Council its activities) and where a reasonable person would consider the act or omission which caused such consequence to be the sole reason as to why such serious disrepute or material adverse publicity has occurred, save that a JV Partner shall not be in breach of this clause 19.2 in circumstances where the relevant JV Partner (or its sub-contractor, agent and/or representative) asserts a claim against the LLP or the other JV Partner (or any member of its Group), provided that such claim is not frivolous or vexatious.

### **19.3 PSP not to compete with the LLP**

The PSP shall not, until the earlier of termination of this Agreement or 24 months following the date on which the PSP is no longer a JV Partner (provided that in the latter circumstance that the reason for the PSP ceasing to be JV Partner is not due to a Council Default Event resulting in the winding up of the LLP), act in a manner, engage in or carry on or be interested in (whether alone or jointly with others, or whether as principal, agent, shareholder or otherwise and whether for its own benefit or that of others) any person or business which is or may compete with the Business without the written consent of the LLP (acting by the Council or the Council's Representatives (as applicable)), and for the avoidance of doubt the decision whether to give such consent shall be deemed to be a PSP Conflict Matter).

### **19.4 Competing Property**

- 19.4.1 During the term of this Agreement, if the PSP deals with any person other than in connection with the Business (an **Offeror**) to acquire an interest in a property or site (or part of a property) which is within the administrative boundaries of the Council and which is either identified in a Partnership Business Plan or which is adjacent to a property or site identified in the Partnership Business Plan and it is capable of being developed within the same use class as any Site which is set out in the Business Plans (a **Competing Property**), then the PSP shall:

- (a) forthwith notify the LLP of its dealings or intended dealings with the Offeror;
- (b) use all reasonable endeavours to procure the Offeror to offer to the LLP the right to acquire the interest in the Competing Property on the same terms (or on terms (including as to consideration) no less favourable to the LLP); and
- (c) the LLP must decide within 30 Business Days of the offer (or within such period as is set out in the offer) whether it wishes to acquire such interest and shall notify the PSP,

provided that this clause 19.4.1 shall not apply where the PSP was negotiating to acquire an interest in such Competing Property (as evidenced by the PSP's contemporaneous records) prior to the date of this Agreement.

- 19.4.2 Provided that the PSP has complied with clause 19.4.1, if the LLP decides not to acquire an interest in the Competing Property or fails to notify the PSP within the period set out in clause 19.4.1 above then the PSP shall be entitled to acquire the interest in the Competing Property and shall not for the purposes of clause 19.3 be considered to be in breach of that provision provided that the Competing Property is acquired by the PSP (or member of its Group) on terms (including as to consideration) no more favourable than those offered to the LLP under clause 19.4.1 (including, but not limited to, in relation to price).

## **20 JV PARTNER AND LLP OBLIGATIONS**

### **20.1 Obligations of the JV Partners**

Each JV Partner undertakes to each of the other JV Partners and the LLP that, in its capacity as a JV Partner, it shall exercise its powers (so far as is reasonably practicable) so as to procure that:

- 20.1.1 it at all times carries out its duties as a JV Partner observing reasonable standards of efficiency, economy and integrity;
- 20.1.2 it shall exercise all voting rights and other powers of control available to it in relation to the LLP so as to procure (insofar as it is lawfully able by the exercise of such rights and powers) that the LLP and each Development Subsidiary complies with the provisions of the Project Agreements to which the LLP and/or each Development Subsidiary is a party;
- 20.1.3 it notifies the LLP and the JV Board immediately on becoming aware of any matter which it considers (acting reasonably) is likely to materially affect the LLP, any Development Subsidiary and/or its Business (or the business of any Development Subsidiary) or any arrangement or proposed arrangement between the LLP or any Development Subsidiary and any of the JV Partners, or any person connected with any of the JV Partners;
- 20.1.4 each Representative it appoints shall, at all times conduct himself or herself in a proper and reasonable manner and in accordance with his or her duty in clause 14.5 in respect of the LLP and each Development Subsidiary;
- 20.1.5 it at all times acts in good faith towards and co-operate with each other and the LLP and each Development Subsidiary in connection with the Project Agreements and this Agreement generally and the performance of its respective obligations under all such documents;
- 20.1.6 it acts in a manner consistent with the Project Agreements;
- 20.1.7 it shall account to the LLP for any profit derived from a business office or appointment accepted by it or its Representative or the use of the LLP's (or a Development Subsidiary's) name or property of the LLP or a Development Subsidiary which is, in each instance, in breach of this Agreement; and

- 20.1.8 it shall (together with the other JV Partner and the LLP), use reasonable endeavours to seek and obtain grant funding from Third Parties to fill any Affordability Gap, including from the bodies responsible for managing the allocation of the Liverpool City Region Single Investment Fund and other Liverpool City Region funds, European Structural and Investment Funds, European Regional Development Funds.

## 20.2 Obligations of the LLP

- 20.2.1 The LLP undertakes to each of the JV Partners (and each of the JV Partners shall procure so far as they are reasonably able) to exercise its power (as far as is reasonably practicable) so as to procure that it:
- (a) enforces the terms of the Project Agreements to which the LLP is a party from time to time;
  - (b) maintains true and accurate accounts of all transactions in accordance with the Act and makes available both draft and final copies of such accounts to the JV Partners on reasonable request and in any event in accordance with the Act;
  - (c) maintains adequate insurance (with a reputable insurer) against risks as the JV Board shall determine appropriate from time to time including third party liability insurance and otherwise in accordance with clause 31
  - (d) shall provide quarterly reporting to the JV Partners on both the progress of every Site and Non-Council Site including reports on the actual Development Costs expended or incurred compared with those budgeted in the Site Development Plan;
  - (e) shall provide quarterly financial reporting to the JV Partners on the LLP including a profit and loss account, balance sheet, cash flow report, budgeted and actual expenditure and 12 month forecasts;
  - (f) shall provide up to date financial information to the JV Partners including the quarterly profit and loss account, balance sheet, cash flow reports, budgeted and live actual expenditure in relation to each Site and Non-Council Site or either of them by email upon reasonable request;
  - (g) shall provide any other information about the Business to a JV Partner as that JV Partner may reasonably request from time to time;
  - (h) opens a current account (and any other accounts as the LLP shall require to carry out the Business) in its name with the Bank and that any transactions carried out by the LLP are carried out through one of these accounts and that all accounts set up by the LLP are interest bearing;
  - (i) takes appropriate action (including pursuing legal proceedings) in the event of negligence or material misconduct on the part of any contractors, advisors or agents of the LLP;
  - (j) subject to the approval of the Business Plans in accordance with this Agreement, adopts the Business Plans and updates the Partnership Business Plan at least annually and manages the Business strictly in accordance with such Business Plans;
  - (k) complies with the Act, the Regulations (to the extent that the Regulations apply to the LLP and to the extent that they have not been legitimately excluded in this Agreement), the Companies Act and all other applicable laws, regulations and requirements of any competent jurisdiction or authority affecting the LLP, its Business and the content of the Business Plans;

- (l) procure works, equipment, goods and services in accordance with the principles of fair and open competition, value for money, non-discrimination, best value and best practice and with reference to public sector accountability and in accordance with the Procurement Strategy;
- (m) documents its decision-making process and maintains appropriate audit trails for decisions made;
- (n) acts in a manner that promotes the Business of the LLP and acts at all times in good faith towards the JV Partners;
- (o) does not enter into any transaction at an undervalue without the approval of the JV Board;
- (p) to the extent that it requires any approval, consent or licence for the carrying on of its Business in the places and in the manner in which it is from time to time carried on or proposed to be carried on, uses reasonable endeavours to obtain and maintain the same in full force and effect;
- (q) it shall (together with the JV Partners) use reasonable endeavours to seek and obtain grant funding from Third Parties to fill any Affordability Gap, including from the bodies responsible for managing the allocation of the Liverpool City Region Single Investment Fund and other Liverpool City Region funds, European Structural and Investment Funds, European Regional Development Funds; and
- (r) procures that each Development Subsidiary (if any):
  - (i) complies with the terms of Schedule 6; and
  - (ii) complies with the provisions of this clause 20.2.1 (save for clause 20.2.1(j)) mutatis mutandis as if references to the LLP were references to the Development Subsidiary; references to the JV Board were references to the board of the Development Subsidiary; references to the Business were references to the business of the Development Subsidiary; references to the Business Plans were references to the Business Plans insofar as the same relate to the business of the Development Subsidiary; and
  - (iii) manages its business strictly in accordance with the Business Plans that are approved and adopted by the LLP pursuant to the terms of this Agreement (insofar as the same relate to the business of the Development Subsidiary).

20.2.2 No payment shall be made by the LLP (or of any member of the JV Group) and no cheque or payment instruction of the LLP (or of any member of the JV Group) shall be signed other than in accordance with the mandates (general or specific) authorised by the JV Board from time to time and in accordance with the Procurement Strategy and the Delegation Policy.

20.2.3 The LLP shall and shall procure that each member of the JV Group shall conduct its Business and affairs in a proper and efficient manner and for its own benefit and in accordance with:

- (a) the terms of this Agreement;
- (b) the Delegation Policy, the Procurement Strategy and the Social Impact Plan (except to the extent that the same contradicts the terms of the main body of this Agreement) and the Site Social Impact Plans; and
- (c) the relevant Objectives (as set by each Site Development Plan).

- 20.2.4 Ahead of undertaking any procurement of a building contractor in relation to any Development the LLP shall prepare a draft Social Impact Plan. The Chair shall within 10 Business Days of the date of completion of the draft Social Impact Plan convene a meeting of the JV Board to consider and if thought fit, approve the draft Social Impact Plan as the Social Impact Plan of the LLP. The Social Impact Plan may be varied modified or amended from time to time with the approval of the JV Board. [REDACTED]

- 20.2.5 Ahead of undertaking any Site specific procurement of a building contractor, the LLP shall prepare a draft Site Social Impact Plan.

- 20.2.6 The LLP shall (and each of the JV Partners shall procure so far as they are reasonably able that the LLP shall) at all times exercise its powers and shall comply with, and with its obligations within, the Business Plans (for the avoidance of doubt including any development conditions outlined or detailed planning obligations contained in them) in all respects (except to the extent that the same contradicts the terms of the main body of this Agreement).

## 21 TRANSFER OF SHARES

### 21.1 General prohibition on transfers

- 21.1.1 A JV Partner shall not sell, assign, transfer, exchange, pledge, encumber or otherwise dispose (collectively **transfer**) of all or any part of its Share to or in favour of an Unsuitable Person. For these purposes an **Unsuitable Person** means:

- (a) any person who would or may be in breach of Article 38 (Selection and qualitative assessment of candidates) of Directive 2014/23/EU or Regulation 38 of the Concession Contracts Regulations 2016 and/or could not accurately warrant the veracity of the statements set out in the Statement of Good Standing;
- (b) any person whose activities, in the reasonable opinion of the JV Partner other than the JV Partner proposing the transfer, pose or could pose a threat to national security.

- 21.1.2 Subject to clause 21.1.1, a JV Partner shall not transfer all or any part of its Shares to or in favour of any person unless:

- (a) the other JV Partner has provided its prior written consent to the transfer (such consent not to be unreasonably withheld) and that consent may be unconditional or subject to any terms or conditions. If any terms or conditions are attached to such consent, any Share so transferred shall be held subject to those terms or conditions, to the extent such terms or conditions are not performed prior to the transfer; or
- (b) the transfer is permitted pursuant to clause 21.2.

### 21.2 Permitted transfers

- 21.2.1 Subject to clause 21.1.1, the Council may at any time transfer the whole (but not part only) of its Share to a Public Sector Body, a subsidiary undertaking of the Council or a subsidiary undertaking of a Public Sector Body in circumstances where the proposed transfer is due to a genuine reorganisation of the duties, remit or activities of the Council provided that:

- (a) prior to any such transfer taking place, the Council shall inform the other JV Partner in writing of such proposed transfer; and

- (b) prior to any such transfer taking place, the Council shall procure that the transferee shall execute and deliver a Deed of Adherence to the PSP and the LLP.

21.2.2 Subject to clause 21.1.1, the PSP may at any time transfer all (but not part only) of its Share in the LLP to another member of its Group resident in the United Kingdom for the purposes of UK taxation provided that prior to any such transfer taking place:

- (a) the PSP has informed the Council in writing of such proposed transfer;
- (b) the transferee has executed and delivered a Deed of Adherence to the Council and the LLP;
- (c) the transfer is to a person with sufficient financial covenant strength to have satisfied the requirements set out in the SQ phase for the procurement of the PSP and/or the transferee's obligations are guaranteed by the PSP Guarantor or an equivalent guarantor of equivalent sufficient financial covenant in the same way as the original transferor (in the reasonable opinion of the Council);
- (d) the outgoing PSP has executed a deed confirming that (without prejudice to any other right or remedy of the Parties under this Agreement) if at any time after the transfer the first or any subsequent transferee of the PSP's Share undergoes a Change of Control (such that it ceases to be a member of the Original PSP's Group), the transferee is required to (and, where still existing in law the Original PSP shall procure that the transferee shall), transfer all of the Share held by it:
  - (i) to a member of the Original PSP's Group being resident in the United Kingdom for the purposes of United Kingdom taxation; or
  - (ii) where there is no such entity existing in law, to such other Third Party as the Council may (in its absolute discretion) direct, provided that if the Council directs the PSP's Share to a Third Party outside the Original PSP's Group, the transferor shall receive the Share Value for the PSP's Share.

### 21.3 Compulsory Transfer

The provisions of clause 22.3 (Consequences of an Event of Default) shall apply to a JV Partner which has suffered or committed a Default Event and both JV Partners shall be deemed to have agreed to the transfer of the Defaulting JV Partner's Share.

### 21.4 Indemnity

Each JV Partner agrees and undertakes that it (or in the case of a limited liability partnership its members) shall remain resident in the United Kingdom for the purposes of UK taxation and to indemnify and keep all other JV Partners indemnified for and against any breach of this undertaking.

## 22 DEFAULT

### 22.1 Council Default Events

Save as expressly agreed otherwise by the JV Partners, each of the following events shall be a Council Default Event:

- 22.1.1 where the Council commits a Material Breach which, if capable of remedy, is not remedied within 20 Business Days of a notice to remedy being given to the Council; and/or

- 22.1.2 where the Council fails to advance a JV Partner Loan or Additional Council Finance in cleared funds by the date it is obliged to advance such funds and fails to remedy such breach within 20 Business Days of a notice to remedy being given to the Council; and/or
- 22.1.3 a breach by the Council of clause 21 (Transfer of Shares); and/or
- 22.1.4 steps are taken to commence the process of winding-up the Council without statutory successors taking over the functions relevant to this Agreement; and/or
- 22.1.5 a breach by the Council of clause 19.2 and, following the service upon the Council of written notice from the PSP informing the Council that it is in breach of clause 19.2, the Council fails to remedy the matter, event or circumstance which has caused such serious disrepute or material adverse publicity (save where such publicity is a consequence of its compliance with its obligations under this Agreement or any Project Agreement) (as the case may be) within 20 Business Days of the date of service of such notice; and/or



## 22.2 PSP Default Events

Save as expressly agreed otherwise by the JV Partners, each of the following events shall be deemed to be a **PSP Default Event**:

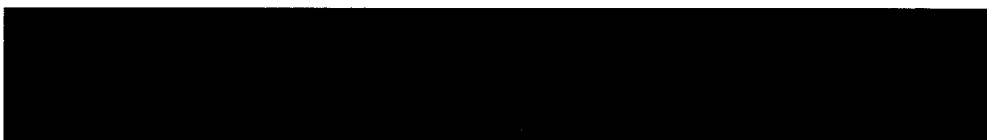
- 22.2.1 where the PSP or the PSP Guarantor commits a Material Breach, which if capable of remedy, is not remedied within 20 Business Days of a notice to remedy being given to the PSP; and/or
- 22.2.2 where the PSP fails to advance a JV Partner Loan or Additional PSP Finance in cleared funds by the date it is obliged to advance such funds and fails to remedy such breach within 20 Business Days of a notice to remedy being given to the PSP; and/or
- 22.2.3 a breach by the PSP of clause 21 (Transfer of Shares); and/or
- 22.2.4 save to the extent permitted in accordance with clause 21.2, a Change of Control of the PSP whereby the Change of Control results in the PSP no longer being under the control of a public limited company; and/or
- 22.2.5 where any of the following occurs in relation to the PSP and/or the PSP Guarantor:

- (a) a resolution being passed (or a meeting being convened, or a written resolution being circulated), or an order being made, for the purpose of its winding up or order being made for a provisional liquidator to be appointed;
- (b) an order being made, by the Registrar of Companies to strike off the entity in question under section 1000 of the Companies Act;
- (c) any notice of intention to appoint an administration is given in respect of the PSP or the PSP Guarantor, an administrative receiver, receiver, administrator, liquidator or provisional liquidator or similar officer being appointed over the whole or part of its assets and/or undertaking;
- (d) a floating charge crystallising and the holder of such floating charge successfully taking steps to enforce such security;
- (e) it being unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (f) there being an unsatisfied judgment or order of any court or tribunal, or award of any arbitrator, outstanding against it;
- (g) a distress, distraint, charging order, attachment, execution or other process being levied against any of its assets and remaining undischarged;
- (h) a meeting of its creditors, or any class of them, being held or summoned or a proposal being made for a moratorium, composition or arrangement in relation to any of its debts, or for a voluntary arrangement under Part 1 of the Insolvency Act 1986; and/or
- (i) an event or step analogous to any of the above occurring in any jurisdiction; and/or

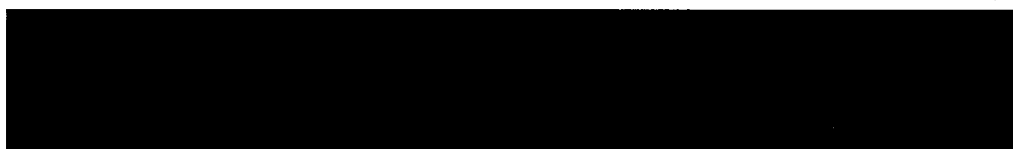
22.2.6 the PSP or the PSP Guarantor is no longer resident in the United Kingdom for the purposes of taxation; and/or

22.2.7 the PSP or the PSP Guarantor is in material breach of the terms of any Finance Document or of any Supply Chain Contract; and/or

22.2.8

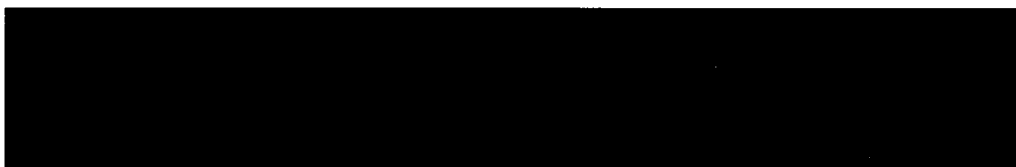


22.2.9



### 22.3 Consequence of a Default Event

22.3.1



22.3.2

A JV Partner which has suffered or committed a Default Event (the **Defaulting JV Partner**) shall notify the other JV Partner (the **Non-Defaulting JV Partner**) in writing as soon as practicable after becoming aware that a Default Event has occurred. Where a Non-Defaulting JV Partner becomes aware that a Default Event has occurred (which has

not been remedied or waived by it) and it has not received notification from the Defaulting JV Partner, the Non-Defaulting Partner shall give notice in writing to the Defaulting JV Partner (a **Default Notice**).

22.3.3 If a Default Notice has been given, then:

- (a) (where the Defaulting JV Partner is the PSP) the Council (or its nominee) shall have the option to acquire (or to procure a replacement partner to acquire) the PSP's Share (in which case the PSP hereby agrees to transfer the PSP's Share to such person) at the Share Value less 10% (and at any time when the Share Value is negative, the Share Value shall be deemed to be nil) and clause 22.3.5 shall apply; or
- (b) (where the Defaulting JV Partner is the Council) the PSP shall have the option to acquire (or procure a replacement partner to acquire) the Council's Share (in which case the Council hereby agrees to transfer the Council's Share to the PSP or such replacement partner) at the Share Value less 10% (and at any time when the Share Value is negative, the Share Value shall be deemed to be nil) and clause 22.3.5 shall apply; or
- (c) where the relevant Non-Defaulting JV Partner does not opt to exercise its rights under clause 22.3.3(a) or clause 22.3.3(b) above (as applicable) within 10 Business Days following service of a Default Notice and/or where such Share acquisition is not effected within 20 Business Days following service of a Default Notice then (save where the Non-Defaulting JV Partner confirms that such Default Event is waived by it in writing within such time period) a Termination Event shall be deemed to have occurred and the provisions of clause 23 shall automatically take effect.

22.3.4 In the case of a transfer of the PSP's Share pursuant to clause 22.3.3(a), the Council shall have the authority, on behalf of the LLP prior to such transfer taking place, to give notice taking effect immediately prior to such transfer to terminate the Development Management Agreement and any Supply Chain Contracts provided always that:

- (a) Supply Chain Contracts which have been entered into by the LLP or a Development Subsidiary in respect of which works have commenced shall not be capable of determination pursuant to this clause 22.3.4 but shall terminate with immediate effect at the completion of all obligations under such contracts; and
- (b) Supply Chain Contracts which have been entered into by the LLP or a Development Subsidiary and pursuant to which a contractor is providing works and/or services which are required in order to realise sales proceeds in relation to a development shall not be capable of determination pursuant to this clause 22.3.4 until such time as such sales proceeds have been realised in relation to any developments in respect of which works and/or services have commenced.

22.3.5 Where this clause 22.3.5 applies, within the 10 Business Day period following the date of service of the relevant Default Notice, the Non-Defaulting JV Partner may exercise its option to purchase the Defaulting JV Partner's Share subject to and in accordance with clause 22.3.3. Such option shall be validly exercised by the service of written notice to that effect by the Non-Defaulting JV Partner upon the Defaulting JV Partner. Following the service of such a notice within the applicable time period, the completion of the transfer of the Defaulting JV Partner's Share shall take place at the registered office of the LLP or such other address as may be agreed by the JV Partners within 10 Business Days after the date of service of the option notice or, where the Share Value has not been ascertained within such 10 Business Day period, within 10 Business Days of the determination of the Share Value, in accordance with clause 22.3.6.

22.3.6 On completion of a transfer of the Defaulting JV Partner's Share in accordance with this clause 22:

- (a) the transferee that is acquiring the Defaulting JV Partner's Share (being the Non-Defaulting Partner or its nominee) shall pay the relevant price for the Share (determined in accordance with clause 22.3.3) by telegraphic transfer to a bank account designated by the Defaulting JV Partner; and
- (b) the JV Partners shall execute, deliver and do all such deeds, documents, acts and things as may be necessary in such form as the transferee (being the Non-Defaulting Partner or its nominee) may reasonably request in order to transfer and assign to such transferee the Defaulting JV Partner's Share with full title guarantee and free from any option, lien, charge, equity or other encumbrance and together with all rights and liabilities attaching to the Defaulting JV Partner's Share at the date of service of the option notice in accordance with clause 22.3.5; and
- (c) the Non-Defaulting JV Partner (in circumstances where it is the transferee) shall or shall procure that the transferee (in circumstances where its nominee is the transferee) shall indemnify the Defaulting JV Partner against all liabilities of the LLP arising from the date of the completion of the transfer of the Defaulting JV Partner's Share, save for those arising out of the gross negligence, misconduct, bad faith, recklessness, fraud, default or breach of this Agreement by the Defaulting JV Partner; and
- (d) as security for the performance of the obligations of the JV Partners under this clause, each JV Partner hereby irrevocably appoints the other JV Partner as his attorney to execute, deliver and do all such deeds, documents, acts and things to the extent required in order for the appointing JV Partner to fully comply with its obligations pursuant to this clause 22.3.6.

## 22.4 Disenfranchisement

22.4.1 For the purpose of this clause, the **Disenfranchisement Period** is the period running:

- (a) from the earlier of:
  - (i) the date a notice to remedy is given to a JV Partner; and
  - (ii) the date a Default Notice is given to the Defaulting JV Partner,
- (b) until the earlier of:
  - (i) the relevant event being remedied;
  - (ii) the relevant event being waived by the Non-Defaulting JV Partner; and
  - (iii) the LLP being wound up or the Defaulting JV Partner transferring its Share to the Non-Defaulting JV Partner or its nominee in accordance with clause 22.3.3.

22.4.2 For the duration of the Disenfranchisement Period:

- (a) if the relevant event is in relation to the Council, each matter to be considered by the JV Board and/or at a JV Partners' meeting (whichever is or are appropriate) (including in each instance where such matters are to be determined by way of a written resolution) shall be deemed a Council Conflict Matter and the provisions of clause 17.1 shall apply; or

- (b) if the relevant event is in relation to the PSP, each matter to be considered by the JV Board and/or at a JV Partners' meeting (whichever is or are appropriate) (including in each instance where such matters are to be determined by way of a written resolution) shall be deemed a PSP Conflict Matter and the provisions of clause 17.2 shall apply.

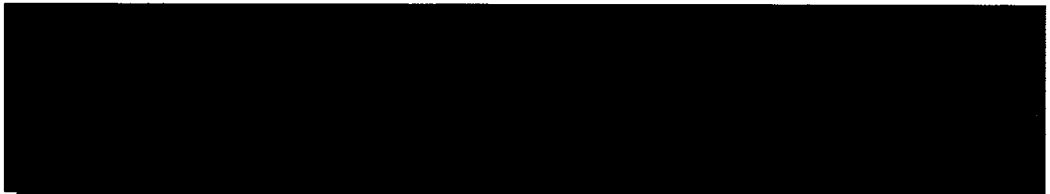
## **23 DURATION AND TERMINATION**

### **23.1 Events leading to a winding up of the LLP**

The LLP shall be wound up in accordance with clause 24 and this Agreement shall terminate following the occurrence of any of the following events (each a **Termination Event**):

- 23.1.1 on a Deadlock Event occurring pursuant to clause 18.6;
- 23.1.2 save to the extent permitted in accordance with clause 21.2, a Change of Control of the PSP where such Change of Control materially adversely effects the assets, liabilities, financial results or operations, financial condition, business or prospects of the Council provided that:
  - (a) if, following the Change of Control, the PSP remains under the control of a quoted public limited company this shall not constitute a Default Event and shall be permitted under clause 21.2; or
  - (b) if the Council directs the PSP's Share to a Third Party outside the Original PSP's Group, the transferor shall receive the Share Value for the PSP's Share.
- 23.1.3 a Termination Event shall be deemed to have occurred in accordance with clause 22.3.1 or clause 22.3.3(c);
- 23.1.4 the insolvency, dissolution or liquidation of the LLP (other than for the purposes of an amalgamation or reconstruction);
- 23.1.5 the written agreement of the JV Partners to voluntarily wind up the LLP;
- 23.1.6 if required by Regulation 44 of the Concession Contracts Regulations 2016, namely if this Agreement is modified and that modification would have required a new concession contract award procedure;
- 23.1.7 the service of a notice by the LLP on the JV Partners following any change in the law as a result of which the continuation of the LLP becomes unlawful or materially in contravention of the guidance of any regulatory authority or body or any government department;
- 23.1.8 the service of a notice by a JV Partner on the other JV Partner following any change in the law as a result of which the continuation of the LLP becomes unlawful;
- 23.1.9 the tenth anniversary of the Effective Date unless otherwise agreed by the JV Partners in accordance with clause 23.2, where upon the LLP shall terminate upon the fifteenth anniversary of the Effective Date;

23.1.10



**23.2 Option to continue the LLP**

If the LLP would otherwise terminate pursuant to clause 23.1.9, if the JV Partners both elect to continue the LLP, such election must be made not less than one year prior to the tenth anniversary of the Effective Date, whereupon the Business shall be continued for a period of five years starting from the tenth anniversary of the Effective Date and expiring on the fifteenth anniversary of the Effective Date

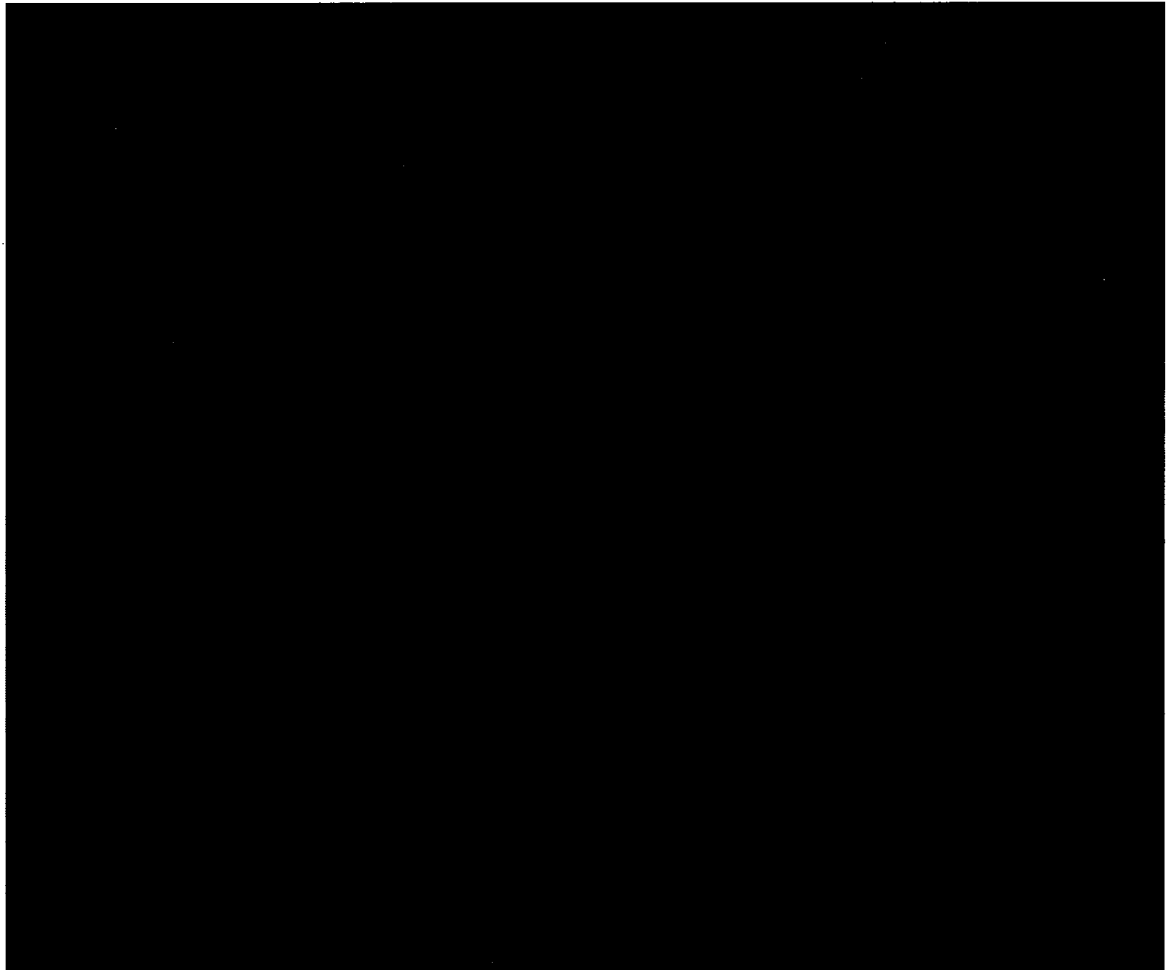
**23.3 Accrued rights and duties; provisions surviving expiry and/or termination**

23.3.1 The expiry or termination of this Agreement and/or the winding up of the LLP (in each case howsoever arising) shall be without prejudice to the rights and duties of any Party accrued prior to such expiry, termination and/or winding up.

23.3.2 The clauses in this Agreement which expressly or impliedly have effect after expiry and/or termination of this Agreement and/or winding up of the LLP (in each case howsoever arising) including clause 21.4 (Indemnity), clause 22 (Default), clause 28 (Confidentiality), clause 29 (Freedom of Information), and any liability under any indemnity and/or guarantee shall continue to be enforceable notwithstanding such expiry, termination or winding up.

**24 WINDING UP OF THE LLP**

**24.1**



## 24.2 Other Obligations and actions following a Termination Event

24.2.1 On the occurrence of a Termination Event the LLP and the JV Partners shall procure, and shall do all such acts and execute all such documents as may be necessary to ensure, that the winding up procedure set out in this clause 24 is followed.

24.2.2 With effect from the date of the Termination Event and subject to the Insolvency Act 1986:

- (a) no further activities or operations of the LLP shall be conducted and no contracts shall be entered into by it, except as required to wind down the Business in accordance with this clause 24;
- (b) either JV Partner shall have the authority, on behalf of the LLP, to give notice to terminate the Development Management Agreement and any Supply Chain Contracts in accordance with their terms provided always that:
  - (i) Supply Chain Contracts which have been entered into by the LLP or a Development Subsidiary in respect of which works have commenced shall not be capable of determination pursuant to this clause 24.2.2 but shall terminate with immediate effect at the completion of such works; and/or
  - (ii) Supply Chain Contracts which have been entered into by the LLP or a Development Subsidiary and pursuant to which a contractor is providing works and/or services which are required in order to realise sales proceeds in relation to a development, shall not be capable of determination pursuant to this clause 24 until such time as such sales proceeds have been realised in relation to any developments in respect of which works and/or services have commenced.
- (c) the provisions of clause 6 of the Option Agreement shall apply including the obligations on the part of the LLP in clause 6.2 of the Option Agreement which shall continue in force notwithstanding termination of the Option Agreement.
- (d) for the avoidance of doubt, the entire legal and beneficial interest in any:
  - (i) property or land owned by the Council and are not the subject of the Option Agreement; and
  - (ii) any Sites which have not been transferred or have not been leased to the LLP or a Development Subsidiary or a nominated third party pursuant to the Option Agreement,shall remain with the Council and, in the case of 24.2.2(d)(ii), the obligations on the part of the LLP in clause 6.2 of the Option Agreement shall continue in force notwithstanding termination of the Option Agreement;
- (e) if agreed between the JV Partners, the JV Partners shall use reasonable endeavours to exercise their powers to ensure that each Development Subsidiary shall be wound up prior to the winding up of the LLP;
- (f) in relation to a Site (but not for the avoidance of doubt any Non-Council Site), provided that no Supply Chain Contract has been entered into by the LLP or a Development Subsidiary in respect of such Site, the Council shall be entitled (within the 20 Business Days following the date of the occurrence of the Termination Event) to give notice in writing to the LLP of the Council's intention to acquire the LLP's or the relevant Development Subsidiary's (as applicable) interest in such Site (together with any Intellectual Property acquired by or licenced to the LLP (including any Relevant Intellectual Property relating to such Site)) and on the later of the date that is 10 Business Days after (i) receipt of such a notice given to the LLP in accordance

with this clause 24.2.2(f) and (ii) receipt of the Valuation Report the LLP or the relevant Development Subsidiary (as applicable) shall transfer (or shall procure the transfer of) the relevant Site(s) and Intellectual Property and Relevant intellectual Property to the Council in consideration for the Valuation Price and the provisions of Schedule 11 shall apply to such transfer;

- (g) in relation to any Intellectual Property (including any Relevant Intellectual Property) for a Site which has not been transferred or lease to the LLP or to a Development Subsidiary, (but not for the avoidance of doubt any Non-Council Site), the Council shall be entitled (within the 20 Business Days following the date of the occurrence of the Termination Event) to give notice in writing to the LLP of the Council's intention to acquire the LLP's interest in such the Intellectual Property held by or licenced to the LLP in relation to the specified Site and on the later of the date that is 10 Business Days after (i) receipt of such a notice given to the LLP in accordance with this clause 24.2.2(g) and (ii) receipt of the Valuation Report by the LLP or the relevant Development Subsidiary (as applicable) shall transfer (or shall procure the transfer of) the Intellectual Property relating to the relevant Site(s) to the Council in consideration for either:
  - (i) where a Termination Event has arisen from a Council Default Event, the higher of the value of such Intellectual Property as set out in the Valuation Report and the Development Costs associated with generating such Intellectual Property (unless the clause 24.1 applies, in which case no further payment shall be due from the Council to the LLP for such intellectual property rights); or
  - (ii) where a Termination Event has arisen from a PSP Default Event or where it has not arisen from a Default Event, the Development Costs associated with generating such Intellectual Property,

such amount being payable by the Council to the LLP upon completion of the transfer of such Intellectual Property.

- (h) the JV Partners shall use reasonable and commercially prudent endeavours to procure the termination of all other agreements and contracts to which the LLP is party (including any other Project Agreements).

24.2.3 Where the Council either exercises its option to acquire any Site(s) together with any Intellectual Property relating to such Site(s) pursuant to clause 24.2.2(f), or any Intellectual Property relating to any Site(s) pursuant to clause 24.2.2(g), the LLP shall (subject to the Council complying with the obligations on the part of the Council contained in clause 24.2.2(g):

- (a) promptly assign to the Council the benefit of all such Intellectual Property and, where appropriate, provide copies of all the same;
- (b) to the extent the LLP is lawfully able, to assign the benefit of all other intellectual property vesting in or licenced to the LLP and, where appropriate, provide copies of all the same;
- (c) use reasonable endeavour to ensure that agree that the Council shall be able to exercise rights of subrogation and step into any Project Agreements with the professional team in the place of the LLP; and then
- (d) a Winding Up Practitioner shall be appointed in accordance with clause 24.3, the Partnership Assets shall be distributed in accordance with clause 24.4.

24.2.4 If an option has been exercised over a Site pursuant to the Option Agreement prior to the occurrence of a Termination Event and (i) the Council has not made an election pursuant to the provisions of clause 24.2.2(f) and (ii) work has commenced under any Supply

Chain Contracts entered into by the LLP or a Development Subsidiary, the parties shall ensure the continuation of the LLP until practical completion of the development of that Site.

#### **24.3 Appointment of a Winding Up Practitioner**

24.3.1 A Winding Up Practitioner shall be appointed within 10 Business Days after the date upon which all of the works to be carried out pursuant to the terms of the Supply Chain Contracts referred to at clause 24.2.2(b) have reached the expiry of the defects liability period in such Supply Chain Contracts, and such Winding Up Practitioner shall be instructed to wind up the LLP and its Business (and each of the Development Subsidiaries and their respective businesses) in an efficient manner and in accordance with this clause 24.3 and thereafter, to ensure that the Partnership Assets shall be distributed in accordance with clause 24.4. A Winding Up Practitioner shall not be appointed in any other circumstances save with the prior written consent of both JV Partners (acting in their absolute discretion). The Winding Up Practitioner shall, within 10 Business Days of his appointment, appoint a Valuer and instruct him to carry out an assessment of the saleability of the property and land owned by the LLP and each Development Subsidiary, produce a valuation of each such site, such valuation to be on a market value basis, assuming a willing purchaser and willing vendor in accordance with the principles of the prevailing edition of the RICS Valuation and Standards Manual (Red Book) or the then equivalent (the **Valuation Price**), and accompanying written report (the **Valuation Report**), and to provide a copy of the Valuation Report to the Winding Up Practitioner and the JV Partners within 20 Business Days after the Valuer's appointment.

24.3.2 Save where the Council has notified the LLP of its intention to acquire a Site owned by the LLP or a Development Subsidiary in accordance with clause 24.2.2(f), the Winding Up Practitioner shall hereby be instructed to solicit offers on behalf of the LLP and the relevant Development Subsidiary for the acquisition of all of the properties and land owned by the LLP and each Development Subsidiary for, in each case, a price no less than the relevant Valuation Price. In circumstances where the Council has not legally acquired a Site from the LLP or Development Subsidiary within 20 Business Days of the date of service of a notice given pursuant to clause 24.2.2(f) that it intends to acquire such Site, the Winding Up Practitioner shall be instructed to solicit offers on behalf of the LLP and the relevant Development Subsidiary for the acquisition of all or any of those sites for, in each case, a price no less than the relevant Valuation Price, and the Council shall no longer be entitled to purchase such Site at the Valuation Price (save in circumstances where the Council makes an offer for the relevant Site which the Winding Up Practitioner accepts, acting in the best interests of the LLP and the relevant Development Subsidiary pursuant to clause 24.3.3).

24.3.3 If the Winding Up Practitioner receives offers to purchase all or any of the properties and land owned by the LLP or a Development Subsidiary equal to or greater than the Valuation Price of the property or land in question, the Winding Up Practitioner (acting on behalf of the LLP and the relevant Development Subsidiary) shall hereby have the authority of the JV Partners to accept any such offer as it, acting in the best interests of the LLP and the relevant Development Subsidiary, shall deem appropriate and, for the purposes of this clause 24.3.3, each of the JV Partners irrevocably appoint and constitute the Winding Up Practitioner as its lawful attorney to execute on its behalf (and in its name) any transfer purporting to transfer the property or land, if required. The Winding Up Practitioner may only transfer the property or land for less than the Valuation Price with the prior written consent of both JV Partners.

#### **24.4 Distribution of Partnership Assets**

24.4.1 The JV Partners shall exercise all voting rights and other powers of control available to them in relation to the LLP to procure (to the extent that they are able by the exercise of such rights and powers) that, save as otherwise agreed in writing by the JV Partners and subject to the Act, the Companies Act and the Insolvency Act 1986 and the terms of any Third Party Funding and terms of any Additional Council Finance and Additional PSP

Finance, procure that, the Partnership Assets shall be distributed by the Winding Up Practitioner in accordance with this clause 24.4.1. Subject always to (i) the repayment by the LLP of any JV Partner Loans (and any accrued interest thereon) being made to the JV Partners (at each relevant stage of priority set out in (a) to (h) below); and (ii) the provisions of Schedule 8, the Partnership Assets shall be distributed in the following descending order of priority:

- (a) (subject to any priority arrangement) in paying any holders of a fixed charge (including the JV Partners in their capacity as fixed charge holders) over any Partnership Assets;
- (b) in paying the expenses of the winding up;
- (c) in paying any preferential creditors of the LLP;
- (d) (subject to any priority arrangement) in paying any holders of a floating charge (including the JV Partners in their capacity as floating charge holders) over any Partnership Assets;
- (e) to the extent unsecured, in repaying any Third Party Funding, Additional Council Finance and Additional PSP Finance, together with any unpaid interest accrued thereon (if any) to the date of repayment and otherwise in accordance with the terms of the Third Party Funding, Additional Council Finance and Additional PSP Finance;
- (f) (where justified and validated) recompensing other unsecured creditors (including any JV Partner who is an unsecured creditor) of the LLP (pro rata to the amount of the LLP's liability);
- (g) to repay the JV Partners' respective Capital Contributions (pro rata);
- (h) in making any payment to JV Partners, subject to clause 22.3.1, pursuant to Schedule 8.

24.4.2 If after (or when as appropriate) paying the debts and liabilities of the LLP in accordance with clause 24.4.1 there are no assets, or insufficient assets, of the LLP to repay to each JV Partner:

- (a) the whole of any unsecured or secured loans made to the LLP (including the JV Partner Loans);
- (b) the whole of their respective Capital Contributions;
- (c) the amounts standing to the credit of their Current Accounts; and/or
- (d) any payments to JV Partners pursuant to Schedule 8,

the LLP shall not be liable for the shortfall and there shall be paid to the JV Partners only the amount of those remaining assets (if any).

#### 24.5 No contribution on liquidation

For the purposes of section 74 Insolvency Act 1986 as it is applied to limited liability partnerships under the Act, no JV Partner is liable to contribute any amount to the assets of the LLP on liquidation to cover any of the matters set out in that section.

## **25 LLP PROPERTY**

### **25.1 LLP property**

25.1.1 All property (including land and buildings) held, created, occupied or employed by the LLP for the purposes of carrying on the Business and all property which has been paid for by the LLP or transferred to the LLP or any Development Subsidiary by any JV Partner or has otherwise accrued to the LLP, is owned by the LLP or such Development Subsidiary absolutely and the JV Partners shall have no individual rights in that property other than those rights under the Project Agreements and then by their entitlement to such capital distributions as may be due to them under this Agreement or following liquidation of the LLP.

25.1.2 Where it is necessary for property used for the purposes of the LLP to be held on behalf of the LLP by one or more JV Partners, the JV Partners concerned shall, at the LLP's request and in the manner specified by the LLP, document the LLP's interest in that property by executing a declaration of trust or similar acknowledgement.

### **25.2 Intellectual Property**

25.2.1 Any Intellectual Property created or discovered by a person while a JV Partner or employed by a JV Partner which is connected with or in any way affects or relates to the Business or is capable of being used or adopted for use by the LLP (**Relevant Intellectual Property**), shall be disclosed to the LLP immediately and shall belong to and be the absolute property of the LLP.

25.2.2 To the extent that the legal title in any Relevant Intellectual Property fails to vest in the LLP, the relevant JV Partners agree to hold such rights on trust for the LLP. Each JV Partner further agrees to use its reasonable endeavours to do all such acts and execute all such documents as may be reasonably required of it by the LLP (the LLP paying any reasonable expenses incurred by doing so) in order to vest the legal title in the LLP.

25.2.3 If requested by the LLP (and at its expense), each JV Partner shall give all necessary assistance to the LLP to enable it to enforce its Intellectual Property rights against third parties and apply for registration of the rights, where appropriate throughout the world, for the full term of those rights.

## **26 WARRANTIES**

### **26.1 PSP and LLP warranties**

Each of the PSP and the LLP severally warrants to each of the other Parties at the date of their execution or adherence to this Agreement that:

26.1.1 it is duly incorporated under the law of England and Wales and has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Agreements to which it is a party;

26.1.2 each Project Agreement to which it is a party constitutes, or shall when executed constitute legal, binding and enforceable obligations on it;

26.1.3 it has taken all necessary action to authorise the execution of and the performance of its obligations under the Project Agreements (and in the case of a Project Agreement to be executed after the Effective Date shall take all necessary action to authorise the execution of that Project Agreement);

26.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or is pending or threatened against them or any of their assets which will or might have a material adverse effect on their ability to perform their obligations under the Project Agreements;

26.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Project Agreements; and

26.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of their knowledge, are threatened) for its winding-up or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, administrator or similar officer in relation to any of its or its Group's assets or revenue.

## **26.2 Council warranties**

The Council warrants to each of the other Parties at the date of its execution or adherence to this Agreement that:

26.2.1 it has the legal capacity, power and authority to become a party to and perform its obligations under the Project Agreements to which it is a party;

26.2.2 each Project Agreement to which it is a party constitutes, or will when executed constitute, legal, binding and enforceable obligations on it; and

26.2.3 it has taken all necessary action to authorise the execution of and the performance of its obligations under the Project Agreements to which it is a party (and, in the case of such a Project Agreement to be executed after the Effective Date, shall take all necessary action to authorise the execution of that Project Agreement).

## **27 UNDERTAKING OF THE LLP**

To the extent to which it is able to do so by law, the LLP undertakes with each of the JV Partners that it shall comply with each of the provisions of this Agreement. Each undertaking by the LLP in respect of each provision of this Agreement shall be construed as a separate undertaking and if any of the undertakings is unlawful or unenforceable, the remaining undertakings shall continue to bind the LLP.

## **28 CONFIDENTIAL INFORMATION**

### **28.1 Duty of confidentiality**

During the Confidentiality Term, the Receiving Party (as defined in clause 28.4) shall:

28.1.1 keep Confidential Information (as defined in clause 28.4) confidential;

28.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party (as defined in clause 28.4) or in accordance with clauses 28.2 and 28.3; and

28.1.3 not use Confidential Information for any purpose other than the performance of its obligations under this Agreement and the other Project Agreements.

### **28.2 Permitted disclosure**

28.2.1 During the Confidentiality Term, the Receiving Party may disclose Confidential Information to its employees, contractors, sub-contractors, agents and advisers (and those of its Group) under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Agreement or any other Project Agreement and may disclose Confidential Information to its funders, prospective funders, prospective JV Partners of the LLP or prospective purchasers of its assets under conditions of confidentiality. In each case the permitted recipient of such Confidential Information shall be known as a Recipient.

28.2.2 The Receiving Party shall so far as practicable procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient were a Party to this Agreement.

**28.3 Circumstances in which obligations regarding confidentiality do not apply**

The obligations contained in clause 28.1 shall not apply to any Confidential Information which:

28.3.1 is at the Effective Date in, or at any time after the Effective Date comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;

28.3.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party and not subject to any obligations of confidentiality before disclosure by the Disclosing Party to the Receiving Party;

28.3.3 subsequently comes lawfully into the possession of the Receiving Party from a third party and not subject to any obligations of confidentiality; or

28.3.4 is required by Law or a regulatory authority or body or any Government Department or by the Project Agreements to be disclosed.

**28.4 Definitions**

28.4.1 For the purposes of this clause 28:

(a) **Confidential Information** means all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one Party (the **Disclosing Party**) to another Party (**Receiving Party**) whether before or after the Effective Date including any information relating to the Disclosing Party's, operations, processes, plans or intentions, know-how, design rights, trade secrets, market opportunities and business affairs; and

(b) **Confidentiality Term** means the term of this Agreement and for an additional period of 36 months after the termination or expiry of this Agreement for any reason whatsoever, provided that in circumstances where a JV Partner transfers its Share to a third party or the other JV Partner in accordance with this Agreement (**Transferring Party**), the Confidentiality Term shall end, insofar as it relates to the Transferring Party, on the date 36 months after the date of such transfer (and for the avoidance of doubt a Party that is not the Transferring Party shall be under no obligation pursuant to the terms of this clause 28 in respect of the Confidential Information of the Transferring Party after the expiry of such period).

**29 FREEDOM OF INFORMATION**

**29.1 Council subject to FOIA and the EIR**

The Parties acknowledge that the Council is subject to the requirements of the FOIA and the EIR and the LLP shall facilitate the Council's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 29.1 to 29.3 (inclusive).

**29.2 Obligations following receipt of a Request for Information**

29.2.1 Where the Council receives a Request for Information in relation to Information that the LLP is holding on its behalf the Council shall transfer to the LLP such Request for Information that it receives as soon as practicable and in any event within five Business Days of receiving a Request for Information and the LLP shall:

- (a) provide the Council with a copy of all such Information in the form that the Council reasonably requires for the purposes of complying with FOIA as soon as reasonably practicable and shall use reasonable endeavours to provide such information within 10 Business Days (or such other period as the Council may acting reasonably specify) after the Council's request; and
- (b) provide all necessary assistance as reasonably requested by the Council in connection with any such Information, to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or section 5 of the EIR as applicable.

29.2.2 Following notification under clause 29.2.1 and up until such time as the LLP has provided the Council with all the Information specified in clause 29.2.1(b), the LLP and any JV Partner may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining in its absolute discretion:

- (a) whether the Information is exempt from disclosure under the FOIA or the EIR as applicable; and/or
- (b) whether the Information is to be disclosed in response to a Request for Information,

and in no event shall the LLP respond directly or allow its subcontractors to reply directly to a Request for Information unless expressly authorised to do so by the Council.

29.2.3 The LLP shall transfer to the Council any Request for Information received by the LLP as soon as practicable and in any event within five Business Days of receiving it.

29.2.4 The LLP acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information.

### **29.3 Council's power to disclose Information**

The LLP acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 and the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (together the **Codes**), under the FOIA or the EIR as appropriate, disclose Information concerning the LLP or the Business:

29.3.1 in certain circumstances without consulting with the LLP, or

29.3.2 following consultation with the LLP and having taken its views into account,

provided always that where clause 29.3.1 applies, the Council shall, in accordance with the recommendations of the Codes, draw this to the attention of the LLP prior to any disclosure.

### **29.4 LLP to retain all Information held on behalf of the Council**

The LLP shall ensure that all Information held on behalf of the Council is retained for disclosure for at least six years from the date it is required and shall permit the Council to inspect such Information as requested from time to time.

## **30 DATA PROTECTION**

### **30.1 Compliance with Data Protection Legislation.**

30.1.1 Each Party shall (and shall procure that any of their respective personnel shall) insofar as it relates to the performance of their respective obligations under this Agreement:

- (a) adhere to all applicable provisions of the Data Protection Legislation and, without limiting the foregoing, shall ensure that the provision of Personal Data to the other Party is in compliance with the Data Protection Legislation;
- (b) each ensure that it only shares Personal Data with the other Party to the extent necessary in connection with their respective duties, responsibilities and obligations under this Agreement, and that neither Party shall transfer any Personal Data to the other Party that is irrelevant or excessive with regards to the purposes of the Agreement;
- (c) each maintain a comprehensive register of all Personal Data processed pursuant to this Agreement in order to ensure compliance with Data Protection Legislation;
- (d) each ensure that any Personal Data is accurate at the time it is provided to the other Party and will be updated thereafter as necessary from time to time;
- (e) comply with any notification requirements under Data Protection Legislation; and
- (f) to the extent applicable, duly observe all their obligations under Data Protection Legislation which arise in connection with this Agreement.

30.1.2 Notwithstanding the general obligation in clause 30.1.1, in respect of the Parties' rights and obligations under this Agreement, the Parties acknowledge and agree that they are Data Controllers in respect of the Personal Data they hold for the purposes of the Agreement.

30.1.3 Each Party shall notify the other of the name and contact details of that Party's designated Data Protection Officer (as that term is understood by reference to the Data Protection Legislation). Each Party shall promptly inform the other of any change in its Data Protection Officer.

## 30.2 Subject access requests

30.2.1 Where a Party (the "**Recipient Party**") receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data:

- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Recipient Party to help it respond to the request or correspondence, at the Recipient Party's cost; or
- (b) where the request or correspondence is directed to the other Party and/or relates to the other Party's Processing of the Personal Data, the Recipient Party will:
  - (i) promptly, and in any event within three Business Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
  - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

### **30.3 Data security**

- 30.3.1 Each Party shall only provide Personal Data to the other Party by using secure methods as agreed between the Parties.
- 30.3.2 The Parties agree to promptly notify the other party and the Data Protection Officer upon awareness of any Data Security Breach and shall:
- (a) do all such things as reasonably necessary to assist the other party in mitigating the effects of the Data Security Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party and the Data Protection Officer to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by law.

### **30.4 Data co-operation and indemnity**

- 30.4.1 Without limiting any other provision of this clause 30, each of the Parties shall, on request, provide such information and assistance as is reasonably requested by the other Parties to assist the other Parties in complying with the Data Protection Legislation in respect of the Personal Data shared in accordance with this Agreement.
- 30.4.2 Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other (the "Indemnified Party") against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Indemnifying Party's non-compliance with the Data Protection Legislation. The Indemnified Party shall use its reasonable endeavours to mitigate the amount of any claim under the indemnity in this clause 30.4.2.
- 30.4.3 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

## **31 INSURANCE**

### **31.1 LLP to take out insurance**

The LLP shall take out and maintain with reputable insurers all insurances agreed to be appropriate by the JV Board in accordance with clause 20.2.1(c) and otherwise as required to be maintained by law and such other prudent insurances against such risks as are normally insured against by businesses carrying on activities similar to those of the LLP (including, but not limited to, an appropriate level of third party liability insurance) and (without prejudice to the generality of the foregoing) shall insure its assets of an insurable nature for their full replacement or reinstatement value.

### **31.2 LLP to comply with Project Agreements**

The LLP shall comply with its obligations under the Project Agreements in respect of insurance.

## **32 RELATIONSHIPS WITH GROUPS**

### **32.1 Contracts**

Each JV Partner shall procure that any contracts between members of its Group and the LLP and/or members of another Party's Group shall be made on an arm's length commercial basis and on terms that are not unfairly prejudicial to the interests of any other Party. Each JV Partner undertakes to the other to use its reasonable endeavours (insofar as it is able by the exercise of its rights and powers) to ensure that such terms are negotiated and settled in good faith and that, subject to such terms, any orders placed or works undertaken are fulfilled in a prompt and efficient manner.

### **32.2 Claims**

Each of the JV Partners undertake that, if the LLP shall have or may have any claim against a JV Partner, (hereafter referred to for the purpose of this clause 32.2 only as the **First JV Partner**), the First JV Partner shall procure (insofar as it is able by the exercise of its rights and powers) that its Representatives shall not do anything to prevent or hinder the assertion or enforcement of any such claim by the LLP or the other JV Partners as agent for the LLP against the First JV Partner (but without prejudice to any right of the First JV Partner to dispute or defend such claim).

## **33 OBLIGATIONS OF GROUP MEMBERS**

Each Party undertakes with the other that (so far as it is legally able) it shall exercise all voting rights and powers, direct and indirect, available to it in relation to its Group Members and to the LLP (and its subsidiary undertakings) so as to ensure the complete and punctual fulfilment, observance and performance by it of the provisions of this Agreement and generally that full effect is given thereto.

## **34 ANNOUNCEMENTS**

No Party shall make nor send after the Effective Date any announcement, communication or circular relating to the subject matter of this Agreement unless such Party has first obtained the other Parties' written consent to the form and text of such announcement, such consent not to be unreasonably withheld. However, the foregoing does not apply to an announcement, communication or circular required by Law or by the rules of any stock exchange or by any governmental authority, in which event the Party required to make or send such announcement, communication or circular shall, where practicable, first consult with the other Parties as to the content of such announcement.

## **35 NOTICES AND COMMUNICATIONS**

### **35.1 Method of delivery**

Any notice or other communication pursuant to, or in connection with, this Agreement shall be in writing and delivered personally, or sent by pre-paid first class post (air mail if overseas), to the Party due to receive such notice at its registered office from time to time (or to such other address as may from time to time have been notified in writing to the other Parties in accordance with this clause 35).

### **35.2 When delivery occurs**

35.2.1 Subject to clause 35.2.2, any notice or other communication shall be deemed to have been given:

- (a) if delivered personally, when left at the address referred to in clause 35;
- (b) if sent by pre-paid first class post (other than air mail), two days after posting it;
- (c) if sent by air mail, six days after posting it;

- (d) by fax one hour after despatch provided that a successful transmission receipt is received by the sender; and

35.2.2 If a notice is given or deemed given at a time or on a date which is not a Business Day, it shall be deemed to have been given on the next Business Day.

**35.3 JV Partner receiving notice or other communication intended for the LLP**

35.3.1 Subject to clause 35.3.2 where a JV Partner receives a notice or other communication (whether from any other Party or any third party) which was intended for the LLP it shall forward such communication to the LLP as soon as reasonably practicable.

35.3.2 Where the LLP's registered address is that of a JV Partner and that JV Partner receives any notice or communication (whether from any other Party or any third party) addressed to the LLP, that JV Partner shall provide the other JV Partner and the LLP with a copy of such communication as soon as reasonably practicable.

**36 INVALIDITY AND SEVERANCE**

If any provision of this Agreement is held to be unenforceable or illegal, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall remain unaffected. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be unenforceable or void.

**37 WAIVER**

**37.1 No waiver**

The failure by a Party to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies such Party may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

**37.2 Rights and remedies additional not exclusive**

The Parties' rights and remedies contained in this Agreement are in addition to, and not exclusive of, any other rights or remedies available at law.

**38 THIRD PARTY RIGHTS**

Save where expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act. No Party may declare itself as a trustee of the rights under this Agreement for the benefit of any third party save as expressly provided in this Agreement.

**39 COSTS**

Each of the Parties shall pay its own costs in relation to the negotiation, preparation, execution and implementation of this Agreement and of each document referred to in this Agreement. The costs of and incidental to the incorporation and establishment of the LLP shall be borne and paid by the LLP.

## **40 ENTIRE AGREEMENT**

### **40.1 Entire agreement**

This Agreement and the Project Agreements set out the entire agreement and understanding between the Parties. Accordingly this Agreement and the Project Agreements supersede and extinguishes all previous agreements, arrangements and/or understandings (whether written or oral) between the parties relating to such subject matter save insofar as a third party may have rights under any of them. It is agreed that:

- 40.1.1 no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of any other Party or any of its Connected Persons which is not expressly set out or referred to in this Agreement;
- 40.1.2 all terms and conditions which are implied under the Sale of Goods Act 1979 in a contract of sale of goods to which that Act applies are expressly excluded from the sale and purchase under this Agreement, save that this clause 40.1.2 shall not exclude any liability under section 12 of that Act;
- 40.1.3 a Party may claim in contract for breach of Warranty under this Agreement but shall have no claim or remedy in respect of any misrepresentation (whether negligent or otherwise, and whether made before or in this Agreement) or any untrue statement made by any other Party or any of its Connected Persons;
- 40.1.4 this clause 40 shall not exclude any liability or remedy for fraud or fraudulent misrepresentation by a Party or any of its Connected Persons; and
- 40.1.5 save as expressly set out in this Agreement or in any other agreement or document referred to in this Agreement, no Party or Connected Person shall owe any duty of care to any other Party or any of its Connected Persons.

### **40.2 Resolution of contradiction between terms**

- 40.2.1 Where there is any contradiction between the terms of this Agreement and any other Project Agreement and/or any other document referred to in this Agreement, the terms of this Agreement shall take precedence.
- 40.2.2 Without prejudice to clause 40.2.1, where there is any contradiction between any of the following documents referred to in this Agreement, they shall be interpreted in the following descending order of priority:
  - (a) Delegation Policy;
  - (b) Procurement Strategy;
  - (c) Partnership Business Plan; and
  - (d) Site Development Plan.

## **41 AMENDMENTS**

This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each of the Parties provided that the amendment of any provision of this Agreement solely affecting any of the respective rights or obligations of the JV Partners or either of them as between them shall not require the agreement of the LLP.

## **42 FURTHER ASSURANCE**

Each Party shall:

42.1.1 execute any document and do anything; and

42.1.2 use reasonable endeavours to procure that any third party (where necessary) executes any deed or document and does anything,

in each case reasonably necessary to implement the terms of this Agreement.

#### **43 SUCCESSORS AND ASSIGNS**

Except as otherwise specified in this Agreement, the provisions of this Agreement shall be binding on and ensure to the benefit of the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

#### **44 GOVERNING LAW AND JURISDICTION**

##### **44.1 Governing law**

This Agreement shall be governed by and construed in accordance with English law.

##### **44.2 Jurisdiction**

Save in respect of disputes finally determined pursuant to clause 18, each Party hereby submits to the exclusive jurisdiction of the English courts to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement and each Party irrevocably waives any objection which it may have to the Courts of England being nominated as the forum to hear and determine any such proceedings and to settle any such disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

#### **45 COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts, each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

**EXECUTED AND DELIVERED AS A DEED** by the Parties on the date which first appears in this Agreement.

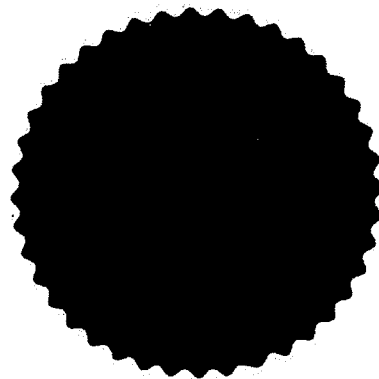
Executed as a deed by affixing  
the Common Seal of  
**WIRRAL BOROUGH COUNCIL**

in the presence of

Signature *CSB Hughes*

Signature *P. McCourt*

Seal:



*CSB Hughes - Authorised Officer*

*P. McCourt*

Executed as a deed by  
**MUSE DEVELOPMENTS LIMITED**  
acting by two directors

Signature of Director

Name of Director

*D. Hughes*

Signature of Director

Name of Director

*ME Crompton*  
*ME Crompton*

Executed as a deed by  
**WIRRAL GROWTH COMPANY LLP**  
acting by acting by duly authorised  
representatives of its JV Partners

*CSB Hughes*  
Duly authorised for and on behalf of  
**Wirral Borough Council (JV Partner)**

*[Signature]*  
Duly authorised for and on behalf of  
**Muse Developments Limited (JV Partner)**

## SCHEDULE 1 – TEMPLATE PARTNERSHIP BUSINESS PLAN

- 1 The requirements for an acceptable Partnership Business Plan include the following based on a three year projection.

| REF. | CONTENT   |
|------|---|
| 1    | Defined words   |
| 2    | Partnership Objectives                                      |
| 2.1  | Objectives  |
| 2.2  | Council's Strategic Regeneration Objectives                 |
| 2.3  | LLP Objectives  |
| 2.4  | Priority and minimum number of objectives to be met         |
| 2.5  | Role and activities of the LLP                              |
| 3    | Approach to Partnering                                      |
| 3.1  | Partnering principles                                       |
| 3.2  | Continuous improvement                                      |
| 3.3  | Local engagement and consultation                           |
| 3.4  | Communications Strategy                                     |
| 3.5  | Collaboration to provide local economic and social benefits |
| 4    | Short term (0-5 year) development opportunities             |
| 4.1  | Short term development opportunities overview               |
| 4.2  | Appraisal of developments and phasing                       |
| 5    | Medium term (5-10 year) development opportunities           |
| 6    | Long term (10-15 year) development opportunities            |
| 7    | Site Development Plans                                      |
| 7.1  | Overview  |
| 7.2  | Draft Indicative SDPs                                       |
| 7.3  | Adopted Site Development Plans                              |
| 8    | Development strategy  |
| 8.1  | Planning and environmental issues                           |
| 8.2  | Third party land  |

|      |  |
|------|--|
| 8.3  | Valuation of Sites   |
| 8.4  | Design strategy  |
| 8.5  | Construction strategy  |
| 9    | Supply Chain Management  |
| 9.1  | Value for money  |
| 9.2  | Parent company guarantees and performance bonds  |
| 10   | Resourcing of the LLP  |
| 10.1 | Structure and required management support  |
| 10.2 | What the PSP will provide  |
| 10.3 | Responsibility for delivery of Partnership Business Plan   |
| 10.4 | Responsibility for day-to-day management   |
| 11   | Developing the Business  |
| 12   | Financial appraisal for the LLP  |
| 12.1 | Budget   |
| 12.2 | Sensitivity analysis   |
| 12.3 | Taxation assumptions   |
| 12.4 | Indicative Drawdown Profile  |
| 12.5 | <p>In relation to Sites, identifying which are likely to require a cross subsidy from the Third Party grants, Net Profits or from the Council in order to satisfy the Viability Test, along with the reasons why a subsidy is likely to be required and the best estimated amount of the Affordability Gap.</p> <p>In relation to Non-Council Sites, identifying which are likely to require a cross subsidy from the Third Party grants, Net Profits or equally from the both JV Partners to satisfy any viability test devised by the JV Partners for Non-Council Sites, along with the reasons why a subsidy is likely to be required and the best estimated amount of the subsidiary required.</p> |
| 13   | Risk appraisal   |
| 14   | Policies and procedures of the LLP   |
| 15   | Distribution Policy  |
| 16   | The Milestone Date for each of the Milestones in paragraphs 2, 4 and 5 of Schedule 12  |
| 17   | Social impact targets  |

## **SCHEDULE 2 – CONTENTS OF SITE DEVELOPMENT PLANS**

### **Section 1: Site Development Plans relating to Sites and Non-Council Sites**

#### **Part A: Draft Indicative SDPs and Approved Indicative SDPs**

A Draft Indicative SDP / Approved Indicative SDP shall include such of the following as are appropriate for the relevant Site / Non-Council Site:

- 1 an overview of the relevant market (e.g. residential, industrial, commercial) in the context of the proposals for the Site or Non-Council Site (including market rents or value, comparable recent deals, analysis of supply and demand, trend analysis);
- 2 a location plan and outline scheme drawings to RIBA Stage 2 (where possible and if appropriate);
- 3 a review of existing site and/or building survey reports;
- 4 an initial development appraisal to include:
  - 4.1 the areas of each element of each building;
  - 4.2 the rent assumed or achieved;
  - 4.3 the yield of each building;
  - 4.4 the gross capital value and the net capital value of each building;
  - 4.5 the acquisition costs for the relevant Site or Non-Council Site;
  - 4.6 void costs, rates and service charges (if appropriate);
  - 4.7 the LLP's or the Development Subsidiary's anticipated Development Costs (but with the necessary changes being made to the definition of Development Costs to reflect that such costs are reasonably anticipated to be expended or incurred by the LLP or relevant Development Subsidiary (as the case maybe)), all supported by a quantity surveyor's report;
- 5 relevant title information and the results of title due diligence (and in respect of a Site, the title to each Site is to be deduced in accordance with clause 9 of the Option Agreement);
- 6 a risk management and mitigation strategy plan including an assessment of the risks of achieving funding commitment and settling and satisfying the Viability Condition;
- 7 a strategy, which includes any planning and environmental considerations (including details of planning permissions obtained and/or planning applications to be submitted), masterplan, delivery programme and proposals on infrastructure works, phasing, sales and marketing;
- 8 a budget with fee estimates for each professional consultant and technical study foreseen for satisfaction of all Site Conditions (in the case of Site) or the relevant conditions precedent to the acquisition and development (in the case of a Non-Council Site);
- 9 an overall budget in respect of the costs of preparing, up to adoption of, the Site Development Plan;
- 10 a development programme to include pre-construction, construction and post-construction activities;
- 11 proposals for procuring works and services for the site development in accordance with the Procurement Strategy;
- 12 the Market Value of the Site or the price to be paid for the Non-Council Site;

- 13 consideration and appraisal of the likelihood of the LLP's Return being met;
- 14 proposals for the financing of development of the Site or the Non-Council Site, including:
  - 14.1 (in the case of a Site) whether it is appropriate for forward funding or sale, and whether any Third Party grants, Net Profits or a Council subsidy is likely to be required for the Development to bridge the Affordability Gap in order to satisfy the Viability Test; and
  - 14.2 (in the case of a Non-Council Site) whether any equal joint subsidy is likely to be required for the Development to satisfy the relevant viability test;
- 15 proposals on how the project will be structured, including:
  - 15.1 whether the Site or Non-Council Site will be transferred or leased to the LLP, a Development Subsidiary or to a nominated third party;
  - 15.2 in the case of a Site or Non-Council Site which is to be leased, outline lease terms including the anticipated rent;
  - 15.3 in the case of a Site, the point in time that the Site should be transferred or leased to the LLP or the Development Subsidiary or nominated third party (subject to satisfying the Viability Conditions and the Viability Test);
  - 15.4 the proposed exit from the Development e.g. grant of a head lease, residential plot sales, commercial unit sales, sale of the Development Subsidiary; and
- 16 proposals as to the form of construction documents (i.e. building contract, consultant's appointments etc.) to be used

#### **Part B: Draft Formal SDPs and Site Development Plans**

A Draft Formal SDP / Site Development Plan shall include: those elements set out in the relevant Approved Indicative SDP which still relevant, updated as necessary or as appropriate; a copy of the full planning permission for the development of the Site or Non-Council Site; a copy of any relevant Planning Agreement; copies of any other statutory consents and/or approvals required to commence development of the Site or a Non-Council Site; a detailed development appraisal with a summary report to demonstrate whether the project is viable (which, in the case of a Site, shall take into account the relevant provisions of the Option Agreement in relation to that Site) which shall include:

- 1 in the case of a Site, an update as to the Market Value of the Site and the Price to be paid for the Site on the same basis as appraised at Draft Indicative SDP/Approved Indicative SDP stage and in the case of a Non-Council Site, an update as the price to be paid for the Non-Council Site on the same basis as appraised at Draft Indicative SDP/Approved Indicative SDP stage;
- 2 a final agreed construction price (to be a fixed price contract unless otherwise agreed by the LLP);
- 3 final agreed project team costs and the Development Management Fee;
- 4 final gross and net building areas of each element of each building;
- 5 other costs (e.g. section 106 agreements, claw back by grant providers, etc.) together with details of the funding terms available in relation to the carrying out of development works on the Site or Non-Council Site (including whether the Site or Non-Council Site is appropriate for Third Party Funding and/or a forward funding agreement);
- 6 an overall budget in respect of the costs of preparing, up to adoption of, the Site Development Plan;
- 7 an updated development appraisal to include the anticipated Development Costs (but with the necessary changes being made to the definition of Development Costs to reflect that such costs are

reasonably anticipated to be expended or incurred by the LLP or relevant Development Subsidiary (as the case maybe));

- 8 any amendments to the Approved Indicative SDP that may significantly affect the development profit or overall internal rate of return;
- 9 an update on how the project will be structured, including:
  - 9.1 whether the Site or Non-Council Site will be transferred or leased to the LLP, a Development Subsidiary or to a nominated third party;
  - 9.2 whether a Development Subsidiary will be used;
  - 9.3 in the case of a Site, the point in time that the Site should be transferred or leased to the LLP or the Development Subsidiary or nominated third party (subject to satisfying the Viability Condition and the Viability Test);
  - 9.4 the proposed exit from the Development e.g. grant of a head lease, residential plot sales, commercial unit sales, sale of the Development Subsidiary;
- 10 fully co-ordinated architectural, structural, landscape and building services designs to RIBA Stage E as a minimum
- 11 appraisal of the likelihood of the LLP's Return being met; and
- 12 the form of construction documents to be used.

### SCHEDULE 3 – DELEGATION POLICY

| MATTER   | JV PARTNERS   | JV BOARD  | DEVELOPMENT MANAGER                           |
|--|---|---|---|
| <b>CORPORATE MATTERS</b>   |   |   |   |
| Amendments to the Delegation policy  | Approval  | Recommendation  |   |
| Delegation of JV Board's responsibility to Development Manager   |   | Approval  |   |
| Amendment to any document in the Agreed Form on behalf of the LLP  | Approval  | Recommendation  |   |
| Approval, amendment, variation or adoption of each Business Plan,  | Approval in accordance with clause 6.2.6  | Approval in accordance with clause 6.2.12                                     | Creation and implementation of Business Plans |
| Approval, amendment, variation or adoption of, Accounting Policies/Principles and/or Procurement Strategy (and any amendments/variations to any of the foregoing)                                      | Approval  | Recommendation  |   |
| Alteration in the nature/scope of the Business, closing down/commencing any new business which is not ancillary or otherwise incidental to the Business of the LLP                                     | Approval  | Recommendation  |   |
| Taking any action outside the parameters of the Business Plans   | Approval  | Recommendation  |   |
| Taking any action which constitutes a variation to the costs set out in the budget section of the adopted Site Development Plans   |   | Subject to with clause 6.2.12 approval up to £50,000 of expenditure           | Up to £20,000 per item of expenditure         |
| Acquiring, disposing or agreeing to acquire or dispose of any asset of the LLP, any interest in any asset of the LLP (including the exercise of an option) or any other land or buildings              | Approval if not set out in Business Plans   | Approval if set out in Business Plans   | Recommendation                                |
| Declaring or paying any distribution in respect of profits, assets or reserves of the LLP or in any other way reducing the reserves of the LLP   |   | Approval  |   |
| Forming any Development Subsidiary or other LLP subsidiary, acquiring shares in any other company (subscription or transfer) or other similar interest in another entity including a limited liability | Approval if outside the contemplation of the relevant Site Development Plan or Partnership Business | Approval if within the contemplation of the relevant Site Development Plan or |   |

| <b>MATTER</b>  | <b>JV PARTNERS</b>  | <b>JV BOARD</b>           | <b>DEVELOPMENT<br/>MANAGER</b> |
|--|---|---------------------------|--------------------------------|
| partnership, entering into joint ventures or partnerships or profit sharing arrangements   | Plan  | Partnership Business Plan |                                |
| Alteration of authorised or issued partnership capital, or classification thereof, allotment of partnership capital or securities, granting options or rights to subscribe to the LLP issuing loan capital of the LLP  | Approval  | Recommendation            |                                |
| Admitting new JV Partners and/or appointing persons as additional Representatives of the LLP, save where such Representatives are Council Representatives and/or PSP Representatives appointed in accordance with this Agreement   | Approval (in accordance with the provisions of the Agreement) | Recommendation            |                                |
| Approval of statutory accounts and appointment of auditors   | Approval  | Recommendation            |                                |
| Changing accounting and reporting policies of the LLP  | Approval  | Recommendation            |                                |
| Granting or entering into any licence agreement or arrangement concerning the trading names of the LLP or partnership and goodwill attached thereto  | Approval  | Recommendation            |                                |
| Making any variation to any of this Agreement, or to any of the Project Agreements   | Approval  | Recommendation            |                                |
| Waiving or delaying the rights of the LLP and/or those of the LLP to be exercised by the LLP under any Project Agreement   | Approval  | Recommendation            |                                |
| Capitalising, repaying or otherwise distributing any amount standing to the credit, or any reserve, of the LLP   |   | Approval                  |                                |
| Making any petition or passing any resolution to wind up the LLP or making any application for an administration or winding up order or any order having similar effect in relation to the LLP or giving notice of intention to appoint an administrator or file a notice of appointment of an administrator | Approval  |                           |                                |
| Changing the name of the LLP   | Approval  | Recommendation            |                                |
| Change in status of the LLP  | Approval  | Recommendation            |                                |

| MATTER  | JV PARTNERS  | JV BOARD   | DEVELOPMENT MANAGER  |
|---|--|--|--|
| The engagement of (and terms of engagement) of any individual person as consultant (excluding for such purposes any firm/professional advisers)                                   |  | Approval   | Implementation where negotiated within the Development Management Agreement services |
| The engagement of (and terms of engagement) of any member of the professional team and professional advisers)   |  | Approval   | Implementation where negotiated within the Development Management Agreement services |
| Making any loan or advance or giving credit (other than trade credit in the ordinary course)  | Approval   | Recommendation   |  |
| <b>OPERATIONAL MATTERS</b>  |  |  |  |
| Any disposal by the LLP of any legal and/or equitable interest in a site or any part of any site  | Approval if outside the contemplation of the relevant Site Development Plan or Partnership Business Plan   | Approval if within the contemplation of the relevant Site Development Plan or Partnership Business Plan  |  |
| Arrangements for future land identification and transfer of such land to the LLP and criteria for future project selection (i.e. outside the provisions of the Option Agreements) | Approval   | Recommendation   |  |
| Contracting and/or entering into a commitment to contract expenditure within the parameters of activity (as set out in the budget) contemplated by relevant Site Development Plan | Approval if in excess of the budget in the relevant Site Development Plan for the relevant stage (as identified in the relevant Site Development Plan and its budget). | Approval if not in excess of the budget in the relevant Site Development Plan for the relevant stage (as identified in the relevant Site Development Plan and its budget). | Recommendation   |
| Negotiating and agreeing the terms of any material contracts to be entered into by the LLP on behalf of the LLP   |  | Approval   | Recommendation   |
| Approval of detailed design   |  | Approval   | Recommendation   |

| MATTER  | JV PARTNERS  | JV BOARD   | DEVELOPMENT MANAGER   |
|---|--|--|---|
| Submission of any planning application (or appeals) (and material variation and s106 heads of terms)                        |  | Approval   |   |
| Agreeing or carrying out the sale or letting of any part of any site.   |  | Approval if outside the limits contained in the Business Plans                                   | Approval if inside the limits contained in the Business Plans                 |
| Entering into deeds (easements, wayleave, consents or other impact on title)  |  | Approval if impact on value  | Approval if no impact on value  |
| Changing the Resource Plan  | Approval of significant variations to budget above 20% of any individual budget item |  |   |
| Approving the terms of the Development Manager (including amendments to those terms) or changing the Development Manager    |  | Approval   |   |
| Termination of or variation to secondment arrangements  |  | Approval   | Recommendation  |
| Entry into confidentiality agreements   |  | Approval   | Recommendation  |
| Amendments to contracts   |  | Approval if impact on value or liabilities of parties under this Agreement                       | Approval if no impact on value or liabilities of parties under this Agreement |
| Appointment of asset valuers and Auditors and approval of valuations  |  | Approval   | Implementation and recommendation   |
| Giving a guarantee, suretyship or indemnity to secure the liabilities of any person or assume the obligations of any person | Approval   | Recommendation   |   |
| Write down of LLP asset value   | Approval   | Recommendation   |   |
| Writing off debts   | Approval if £25,000 or over per debt or £50,000 p.a. or over in aggregate            | Approval if between £5,000 and £24,999 per debt or between £10,000 and £49,999 p.a. in aggregate | Approval if under £5,000 per debt or under £10,000 p.a. in aggregate          |
| Making any agreement with any revenue authorities or any other taxing   |  | Approval   |   |

| <b>MATTER</b>   | <b>JV PARTNERS</b>  | <b>JV BOARD</b>  | <b>DEVELOPMENT<br/>MANAGER</b>                              |
|---|---|--|---|
| authority or making a claim, disclaimer, election or consent of a material nature for tax purposes in relation to the LLP, its/ their business, assets or undertakings.   |   |  |   |
| Commencing any claim, proceedings or other litigation brought by or settling or defending any claim, proceedings or other litigation brought against the LLP, except in relation to debt collection in the ordinary course of the business of the LLP |   | Approval   |   |
| Entering into any transactions or arrangements of any nature with Connected Persons to JV Partners or which are not in the ordinary and normal course of business of the LLP and/or which are not on an arm's length basis                            | Approval  | Recommendation   |   |
| Approval to procurement other than in accordance with the Procurement Strategy  |   | Approval   | Recommendation  |
| Terminating any agreements which are material to the Business   | Approval  |  |   |
| Disposing of a substantial part of the LLP Business and/or partnership assets (i.e. comprising in excess of 5% of the total assets of the LLP from time to time)  | Approval  | Recommendation   |   |
| Making any announcements or releases of whatever nature in relation to the LLP Business   |   | Approval if outside of day to day operation of the Business                    | Approval if within the day to day operation of the Business |
| <b>FINANCE MATTERS</b>  |   |  |   |
| Requests for drawdown of Initial PSP Loan, PSP Loan, Additional PSP Finance and/or Initial Council Loan, or Additional Council Finance  | Approval if outside Indicative Drawdown Profile and the terms of this Agreement | Approval if within Indicative Drawdown Profile and the terms of this Agreement |   |
| Approving the repayment of any loan notes issued by the LLP   |   | Approval   | Recommendation  |
| Entering into (or agreeing to enter into) any borrowing arrangement on behalf of the LLP and giving any security in respect of any such borrowing (including creating any encumbrance over the whole or any part of the                               | Approval  | Recommendation   |   |

| <b>MATTER</b>  | <b>JV PARTNERS</b>  | <b>JV BOARD</b>   | <b>DEVELOPMENT<br/>MANAGER</b>   |
|--|---|---|--|
| undertaking or assets of the LLP or over any capital of the LLP)   |   |   |  |
| Approval of any Third Party Funding and/or Additional Capital Contributions                              | Approval  | Recommendation  |  |
| <b>GENERAL MATTERS</b>   |   |   |  |
| Any other matters not covered in this Delegation Policy  | Approval if outside the scope of services set out in the Development Management Agreement and outside the contemplation of the relevant, adopted Site Development Plan or Partnership Business Plan (as applicable) | Approval if outside the scope of services set out in the Development Management Agreement but within the contemplation of the relevant adopted Site Development Plan or Partnership Business Plan (as applicable) | Approval if within the scope of services set out in the Development Management Agreement |
| Any matters equivalent to those set out in this Delegation Policy that apply to a Development Subsidiary | Approval if and to the extent so set out above in relation to the LLP   | Approval if and to the extent so set out above in relation to the LLP   | Approval if and to the extent so set out above in relation to the LLP                    |
| The making of any political or charitable donation   | Approval  |   |  |

**Notes:**

- The thresholds and categories identified in this Schedule are intended to be aggregate where such matters relate to one item or a series of connected or linked items of expenditure or activity.
- If anything in this Schedule conflicts with any other provision of the Agreement, then the provisions of the Agreement (save for this Schedule) shall prevail to the exclusion of this Schedule.

#### SCHEDULE 4 - LETTER OF APPOINTMENT OF A REPRESENTATIVE

[Date]

Dear [            ],

##### **WIRRAL GROWTH COMPANY LLP (the LLP)**

- 1        This letter contains the terms which we have discussed and agreed for your appointment as a PSP Representative on the JV Board of the LLP (and for your appointment as a PSP representative on the JV Boards of the Development Subsidiaries (if relevant)). Your appointment is made pursuant to and is subject to the terms and conditions set out in the partnership agreement dated on or around the date hereof and made between, amongst others (i) Wirral Borough Council (ii) Muse Development Limited and (iii) Wirral Growth Company LLP (the **JV Partners**) (**Partnership Agreement**). Save where expressly given another meaning in this letter, the defined terms in this letter shall bear the meanings given to them in the Partnership Agreement.
- 2        You will not be entitled to any fees, remuneration or expenses reimbursement from the LLP.
- 3        You will act in good faith, to promote the LLP and act in the best interests of the LLP, in accordance with clause 14.5 of the Partnership Agreement (and, in your capacity as a representative on the JV Board of a Development Subsidiary (if relevant), to act in good faith to promote such Development Subsidiary and act in its best interests). You will be expected to attend the JV Board meetings of the LLP and (if relevant) JV Board meetings of its Development Subsidiaries. You will receive details of all such meetings in advance.
- 4        You will not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the LLP or any of its subsidiaries and any limited liability partnership in which the LLP and/or any of its subsidiaries holds an interest from time to time (together the LLP's Subsidiaries) or of any dealings, transactions, or affairs of the LLP or of any of the LLP's Subsidiaries or any client, customer or supplier of the LLP or any of the LLP's Subsidiaries which comes to your knowledge during the course of this appointment and will comply with the provisions of clause 28 (Confidential Information) and clause 29 (Freedom of Information) of the Partnership Agreement as if they applied to you. You will, however, be entitled to disclose such information to the JV Partner appointing you and to any party to whom the JV Partner appointing you is entitled to disclose information in accordance with the terms of the Partnership Agreement.
- 5        The appointment as a Representative of the LLP and as a representative on the JV Boards of any Development Subsidiary will simultaneously automatically cease:
  - 5.1       in the event that you resign as a Representative (by the service of a written notice upon the LLP); or
  - 5.2       upon the lodgement or delivery of a notice from a JV Partner(s) removing you from the office of Representative in accordance with the terms of the Partnership Agreement.
- 6        Without limitation to the paragraphs above, in signing this letter, you acknowledge that your office is subject to the terms of and you will comply with the Partnership Agreement. You acknowledge that your appointment may be determined as permitted under the terms of the Partnership Agreement. You acknowledge that upon cessation or determination (however arising) such termination you will vacate office in relation to the LLP and the LLP's Subsidiaries forthwith without raising any claim whatsoever against the LLP (or any of the LLP's Subsidiaries or the JV Partners) in relation to your vacation of office or removal from office.
- 7        On the cessation or determination of your appointment (howsoever arising), you agree that you will promptly return to the Chair of the LLP JV Board all papers and property of the LLP and/or of the LLP's Subsidiaries which are in your possession or under your control.

8 Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at our next JV Board meeting.

Yours sincerely

.....  
Signatory, duly authorised  
for and on behalf of [ ]

I agree to and acknowledge the terms and conditions set out above relating to my appointment as Representative of [ ].

Signed

Dated

## SCHEDULE 5 – PROCUREMENT STRATEGY

### Part 1- General

#### 1 Introduction

- 1.1 This strategy (the **Procurement Strategy**) applies to the procurement of goods, services or works by the LLP or any subsidiary or any other party undertaking such activity for and on behalf of the LLP (together referred to as the **JV Group** and any such references in this Procurement Strategy shall be construed as applying to the whole JV Group or a single entity as the context requires).
- 1.2 This Part 1 applies to all procurements, Part 2 applies only to the procurement of goods and/or services and Part 3 applies to the procurement of works. Where a procurement includes a combination of works and services and/or goods, then either Part 2 or Part 3 shall be applied dependent on what is the predominant subject matter of the procurement. Part 4 relates to procurement from the PSP's Group. Part 5 relates to consultants appointed prior to the Effective Date.
- 1.3 Any person appointed to carry out procurement activity for and on behalf of the JV Group (a **Manager**) in relation to any agreement for goods, works or services must always comply with this Procurement Strategy and the delegation policy set out in Schedule 3.

#### 2 Procurement objectives

- 2.1 The following procurement objectives (**Procurement Objectives**) have been set to support the JV Objectives:
- 2.1.1 to secure value for money in relation to the procurement of goods, works and/or services by the JV Group (as detailed in paragraph 3 below);
  - 2.1.2 that all procurement activity carried out by the JV Group enables small and medium sized enterprises (**SMEs**) to have a chance of securing new business with the JV Group;
  - 2.1.3 to have a particular emphasis on creation of job opportunities for those persons furthest away from work including those with health conditions and/or disabilities (as set out in the Wirral Growth Plan, which sets out the Council's aspirations for growth for the Wirral);
  - 2.1.4 to attract new contractors to the Wirral to widen the supply chain available and increase employment opportunities in the Wirral;
  - 2.1.5 that effective procurement leads to innovation in the JV Group's supply chain by encouraging new and diverse contractors to work with the JV Group;
  - 2.1.6 that sustainable procurement is embedded into the procurement cycle in order to achieve environmental, social and economic benefits consistent with the JV Objectives;
  - 2.1.7 to take into account social value considerations in relation to apprenticeships, training and work experience programmes related to construction and development and wider benefits to the Wirral through its procurement activity (as detailed in paragraph 4 below);
  - 2.1.8 to embody procurement best practice and to view sustainable procurement as integral to this approach (as detailed in paragraph 5 below);
  - 2.1.9 to ensure fairness and equality of opportunity in the treatment of all contractors (including, but not limited to, the use of the evaluation criteria set out in paragraph 2 of Part 2 or Part 3 (as applicable) of this Procurement Strategy);

- 2.1.10 to continuously improve the procurement procedures of the JV Group (as detailed in paragraph 5 below);
- 2.1.11 that all decisions in relation to the procurement are approved in accordance with paragraph 7 below;
- 2.1.12 that all extensions and variations to contracts procured under this Procurement Strategy are extended or varied (as the case may be) only in accordance with paragraph 8 below;
- 2.1.13 to ensure that the JV Group has a sound rationale for the selection of all of its contractors (including but not limited to the use of the evaluation criteria set out in paragraph 2 of Part 2 or Part 3 (as applicable) of this Procurement Strategy);
- 2.1.14 to use the most appropriate route to procurement in accordance with Part 2 or Part 3 (as applicable) of this Procurement Strategy; and
- 2.1.15 to ensure that specifications are sufficiently robust without negating the contractor's expertise of innovation in delivery (as detailed in paragraph 1 of Part 2 and Part 3 respectively).

### **3 Value for money**

- 3.1 The JV Group will seek to achieve value for money through the procurement process by ensuring that the procurement of goods, works and/or services are made not just on the basis of the lowest price but by also taking into account other factors such as quality (albeit that as far as possible, any quality requirements will be included within the specification) relevant environmental performance and the whole-life cost of purchases.

### **4 Sustainability, equality and diversity**

- 4.1 The JV Group will strive to embody procurement best practice (wherever possible) and view sustainable procurement as integral to this approach. To that end, the JV Group will in connection with the procurement of works at a Site by tender, develop tender documents that include a draft Site Social Impact Plan which adheres to the Social Impact Plan in relation to the relevant Site to enable contractors to meet the wider environmental and social objectives for projects for goods, works and services (wherever relevant) including (without limitation) the creation of job opportunities to be performed within the Wirral for those residents furthest away from work including those with health conditions and/or disabilities (as set out in the Wirral Growth Plan).

### **5 Best practice and continuous improvement**

- 5.1 One of the key roles and responsibilities of the Manager is to utilise best practice and continuously improve the JV Group's procurement procedures. To that end, it is vital that staff engaged in procurement activity on behalf of the JV Group follow the procedure as set out in this Procurement Strategy. The Manager will undertake regular reviews of procured activity in order to identify areas where improvements in procured activity can be made and highlight areas of best practice as a learning tool for the JV Group.

### **6 Public procurement**

- 6.1 Where public grant funding or the use of the Council's funds as development finance or gap funding or otherwise is required to deliver all or part of a particular contract, the Manager will select the most appropriate route to procurement, in accordance with Part 2 or Part 3 (as applicable) of this Procurement Strategy and, if applicable, the EU Procurement Rules.

### **7 Approvals**

- 7.1 All procurement activity (including the selection of the relevant procurement route under this policy and the award of any contract) shall be approved by the relevant authorised decision maker in

accordance with the terms of the delegation policy set out in Schedule 3. The Council may reject the appointment of a contractor appointed by the JV Group where:

- 7.1.1 the contract cannot reasonably be regarded representing best value (as determined by the LLP's appointed quantity surveyor or cost consultant following an open book review); or
  - 7.1.2 any person would or may be in breach of Article 38 (Selection and qualitative assessment of candidates) of Directive 2014/23/EU or Regulation 38 of the Concession Contracts Regulations 2016.
- 8 The Council may reject any extensions or variations to appointed providers where:
- 8.1 the contract cannot reasonably be regarded representing best value (as determined by the LLP's appointed quantity surveyor or cost consultant following an open book review); or
  - 8.2 any person would or may be in breach of Article 38 (Selection and qualitative assessment of candidates) of Directive 2014/23/EU or Regulation 38 of the Concession Contracts Regulations 2016.

## **Part 2 - Applicable to all procurement other than construction works**

### **1 Developing specifications**

- 1.1 It is important when the JV Group is procuring goods or services that the specifications are written in such a way as to be sufficiently robust, whilst not being so explicit that the information provided negates a contractor's expertise and stifles their innovation in delivery.
- 1.2 The JV Group will ensure that the specifications it draws up will:
  - 1.2.1 state the requirements clearly, concisely, logically and unambiguously, including any requirements for quality, performance and aesthetics;
  - 1.2.2 contain enough information for potential contractors to decide and provide unqualified costs and pricing information for the goods or services they will offer;
  - 1.2.3 be consistent with the terms of the evaluation criteria and methodology (as detailed in paragraph 2 below);
  - 1.2.4 contain only the essential features or characteristics of the requirement and are, where appropriate, output based;
  - 1.2.5 provide equal opportunities to all contractors to offer a product or service that satisfies the needs of the JV Group;
  - 1.2.6 not over-specify requirements or contain features which directly or indirectly discriminate in favour or against any contractor, product, process or source;
  - 1.2.7 where appropriate contain proposed terms and conditions; and
  - 1.2.8 ensure compliance with the JV Group's legal obligations.
- 1.3 It is acknowledged by the JV Group that notwithstanding paragraph 1.2 above that in certain circumstances it may be appropriate to name products and/or manufacturers and/or suppliers to establish a benchmark for quality, performance, output and aesthetics however all contractors will be able to offer an alternative that is satisfactory to the JV Group.

## **2 Evaluation criteria**

- 2.1 The price component shall never be less than 60% of the total evaluation score, except where this has been agreed in advance as a matter reserved to the JV Board.
- 2.2 All bidders must be notified of the evaluation criteria used to select the winning bid and undisclosed evaluation criteria shall not be used to evaluate bids under any circumstances. The evaluation criteria for any appointment will be as follows (unless otherwise determined by the Manager, acting on the instruction of the JV Group):
  - 2.2.1 bids will be evaluated on a price/ non-price assessment based weightings of 60% price and 40% non-price except where otherwise agreed in advance by the JV Board.
  - 2.2.2 price evaluation will be based on the fee submitted together with an assessment of hourly rates and disbursements.
- 2.3 Non-price evaluation needs to reference:
  - 2.3.1 the CV's of staff who are proposed to provide goods or to undertake the services together with a resource plan;
  - 2.3.2 experience of similar commissions and a clear demonstration how such experience will be applied for the benefit of the JV Group;
  - 2.3.3 response to the quality questions set out in the tender documentation;
  - 2.3.4 delivery proposal setting out their suitability and 'added value' in undertaking the services;
  - 2.3.5 references from a minimum of three previous clients;
  - 2.3.6 innovation contained within proposed services;
  - 2.3.7 any modifications to any proposed terms and conditions;
  - 2.3.8 deliverability of proposed services; and
  - 2.3.9 the social impact of the work to be undertaken.

## **3 Supplies and services up to and including £100,000 (or such other amount as the JV Partners may agree from time to time)**

- 3.1 For individual contracts (or series of connected contracts) with a value up to and including £100,000 (or such other amount as the JV Partners may agree from time to time) the route of procurement shall be seeking written quotations in accordance with paragraph 6 below.

## **4 Supplies and services between £100,000 (or such other amount as the JV Partners may agree from time to time) and £180,000 (or such other amount as the JV Partners may agree from time to time)**

- 4.1 For individual contracts (or series of connected contracts) with a value between £100,000 (or such other amount as the JV Partners may agree from time to time) and £180,000 (or such other amount as the JV Partners may agree from time to time), there are two routes to procure, exercised at the option of the Manager (taking into account the Procurement Objectives) as follows:
  - 4.1.1 subject to paragraph 4.2 below, seeking written quotations in accordance with paragraph 6 below; or
  - 4.1.2 a formal tender process in accordance with paragraph 7 below.

- 4.2 Seeking written quotations will only be permitted on the following grounds:
- 4.2.1 for reasons of urgency and where for the purposes of expediency the relevant authorised decision maker in accordance with the delegation policy set out in Schedule 3 has agreed in writing to the use of written quotations;
  - 4.2.2 where specialist knowledge or skills are required for a specific procurement; or
  - 4.2.3 where the Manager is of the view that following the competitive procurement route cannot be reasonably expected to achieve any commercial benefit for the JV Group (in terms of price and/or quality), for example because the services are within the skills and competency of the PSP's supply chain and the member of the PSP's supply chain can provide the quality of services required within the required timescale.
- 4.3 The Manager shall be required to document in writing the reasons for relying on the provisions of paragraph 4.2 having regard to the terms of this Procurement Strategy and, where it is proposed to use a member of the PSP's supply chain why that would represent best value for the LLP.
- 5 Supplies and services above £180,000 (or such other amount as the JV Partners may agree from time to time)**
- 5.1 For individual contracts (or series of connected contracts) with a value above £180,000 (or such other amount as the JV Partners may agree from time to time), the procurement process shall be pursuant to a formal, appropriately advertised, tender process in accordance with paragraph 7 below.
- 6 Procurement by way of written quotation**
- 6.1 Subject to paragraph 6.2, the methodology for the appointment of contracts under the written quotation process will be as follows:
- 6.1.1 agree parameters and pre-selection criteria for the potential appointment, to include, without limitation:
    - (a) sufficiently robust financial standing;
    - (b) necessary expertise, capability and capacity to undertake the services;
    - (c) necessary health and safety procedures in place; and
    - (d) a relevant demonstrable track record;
  - 6.1.2 where the contract value is greater than £50,000 (or such other amount as the JV Partners may agree from time to time) and the opportunity is openly advertised, advertise the opportunity in appropriate trade press, the Council's own procurement web pages, the Chest portal, Contracts Finder and notify the Chamber of Commerce and request written quotations based upon the relevant specification referred to in paragraph 1 from a minimum of (subject to availability in the market):
    - (a) three independent contractors where the contract value is up to £100,000 (or such other amount as the JV Partners may agree from time to time); or
    - (b) five independent contractors where the contract value is greater than £100,000 (or such other amount as the JV Partners may agree from time to time),
 who satisfy the criteria specified in paragraph 6.1.1;
  - 6.1.3 reserve the right to request that a bidder clarify or modify a quotation and reserve the right to withdraw from the procurement entirely without incurring costs;

6.1.4 agree list of bidders (being a minimum of (subject to availability in the market) two where the contract value is up to £100,000 (or such other amount as the JV Partners may agree from time to time) and being a minimum of three where the contract value is greater than £100,000 (or such other amount as the JV Partners may agree from time to time), in each case where reasonably practicable) for interview, based on the selection criteria. This process will be driven by the Manager as part of its project manager services under the Development Management Agreement; and

6.1.5 select the bidder with the highest aggregate score against the selection criteria.

6.2 The methodology set out above at paragraph 6.1 may in certain circumstances be varied but only by prior written agreement by the relevant authorised decision maker in accordance with the terms of the delegation policy set out in Schedule 3.

6.3 The Council may reject the appointment of a contractor appointed by the JV Group where the contract cannot reasonably be regarded representing best value or where any person would or may be in breach of Article 38 (Selection and qualitative assessment of candidates) of Directive 2014/23/EU or Regulation 38 of the Concession Contracts Regulations 2016.

## **7 Procurement by way of formal tender process**

7.1 Subject to paragraph 7.2, the methodology for the appointment of contracts under the formal tender process which shall be fully auditable and will be as follows:

7.1.1 set parameters and pre-selection criteria for the PQQ/SQ stage, to include, without limitation:

- (a) sufficiently robust financial standing;
- (b) necessary expertise, capability and capacity to undertake the services;
- (c) necessary health and safety procedures in place; and
- (d) a relevant demonstrative track record;

advertise the opportunity in appropriate trade press, the Council's own procurement web pages, the Chest portal, Contracts Finder and notify the Chamber of Commerce to ensure (as far as possible and subject to availability in the market) that at least four contractors of suitable quality will respond to the tender, subject to availability in the market.

7.1.2 issue a form of PQQ/SQ via a suitable mechanism;

7.1.3 prepare the specification for services in accordance with paragraph 1, tender documents and selection criteria;

7.1.4 down-select to a minimum of three bidders (where reasonably practicable and subject to the availability in the market) based on the pre-selection criteria set out in the tender documentation;

7.1.5 issue tender documents via a suitable mechanism;

7.1.6 agree shortlist for interview (being a minimum of three where reasonably practicable and subject to availability in the market), based on selection criteria. This process will be driven by the Manager as part of its project manager services under the Development Management Agreement;

7.1.7 conduct post tender interviews to (without limitation) clarify the proposed key personnel, scope of services, deliverables and pricing model;

- 7.1.8 following interviews, reserve the right to require the two bids offering best value (as determined under the stated evaluation criteria) to submit a best and final offer tender;
  - 7.1.9 reserve the right to request that a bidder clarify or modify a final tender and reserve the right to withdraw from the procurement entirely without incurring costs;
  - 7.1.10 appoint the best value offer (as determined under the evaluation criteria set out in paragraph 2); and
  - 7.1.11 offer feedback to the unsuccessful shortlisted bidders,
- and the LLP's and the Council's Procurement Officer shall have the right to attend procurement meetings and be consulted in the procurement process.
- 7.2 The methodology set out above at paragraph 7.1 may in certain circumstances be varied but only by prior written agreement by the relevant authorised decision maker in accordance with the terms of the delegation policy set out in Schedule 3.
  - 7.3 The Council may reject the appointment of a contractor appointed by the JV Group where any person would or may be in breach of Article 38 (Selection and qualitative assessment of candidates) of Directive 2014/23/EU or Regulation 38 of the Concession Contracts Regulations 2016.

### **Part 3 - Applicable only to procurement of construction works**

#### **1 Developing specifications**

- 1.1 It is important when the JV Group is procuring construction works (whether or not including design of those works) that the specifications, quality standards and/or performance requirements are written in such a way as to be sufficiently robust, whilst not being so explicit that the information provided negates a contractor's expertise and stifles their innovation in delivery within the context of the selected contracting structure for the relevant works (the Requirements).
- 1.2 The JV Group will ensure that the Requirements it draws up will:
  - 1.2.1 state the technical requirements clearly, concisely, logically and unambiguously, including any requirements for quality performance and aesthetics;
  - 1.2.2 contain enough information for potential contractors to decide and provide unqualified costs and pricing information for the construction works they will offer, which will include but not be limited to the proposed form of construction contract, collateral warranties and required forms of performance security;
  - 1.2.3 be consistent with the terms of the evaluation criteria and methodology (as detailed in paragraph 2 below);
  - 1.2.4 provide equal opportunities to all contractors to offer a solution that satisfies the needs of the JV Group;
  - 1.2.5 contain requirements at a level of detail as is reasonably appropriate to the selected contracting strategy for those works (including as appropriate any terms and conditions of contract and ancillary documents) and will not contain features which directly or indirectly discriminate in favour of or against any contractor, product or source; and
  - 1.2.6 ensure compliance with the JV Group's legal obligations.
- 1.3 It is acknowledged by the JV Group that notwithstanding paragraph 1.2 above that in certain circumstances it may be appropriate to name products and/or manufacturers and/or suppliers to

establish a benchmark for quality, performance, output and aesthetics however all contractors will be able to offer an alternative that is satisfactory to the JV Group.

## **2 Evaluation criteria**

- 2.1 Prior to the commencement of the tender process the Development Manager and cost consultant will prepare the information to be provided as the basis for tenders (the **Tender Information Pack**), including a draft evaluation criteria. Full instruction regarding the pricing of the tender shall be included within this information. The draft tender information shall be provided to the JV Board for approval prior to seeking tenders from the shortlisted tenderers.
- 2.2 Following approval of the Tender Information Pack by the JV Board, the Tender Information Pack will be sent to the shortlisted tenderers for the main contractor role. The instructions that form part of the Tender Information Pack will clearly state the deadline for receipt of tender returns.
- 2.3 The price component shall never be less than 60% of the total evaluation score, except where this has been agreed in advance as a matter reserved to the JV Board.
- 2.4 All bidders must be notified of the evaluation criteria used to select the winning bid and undisclosed evaluation criteria shall not be used to evaluate bids under any circumstances. The evaluation criteria for any appointment will be as follows (unless otherwise determined by the Manager, acting on the instruction of the JV Group):
  - 2.4.1 bids will be evaluated on a price/ non-price assessment based upon weightings of 60% price and 40% non-price except where this has been otherwise agreed in advance by the JV Board;
  - 2.4.2 where lump sum, percentage based and/or cost share threshold prices are to be submitted as appropriate to the selected contracting strategy, price evaluation will be based on the lump sum, percentage and/or threshold prices submitted; and
  - 2.4.3 otherwise, price evaluation shall be based on a qualitative assessment of the bidder's delivery proposals for cost management, capability and relevant experience of cost management including a clear demonstration of how that capability and experience will be applied for the benefit of the JV Group.
- 2.5 Non-price evaluation needs to reference the following:
  - 2.5.1 experience of similar commissions and a clear demonstration how such experience will be applied for the benefit of the JV Group;
  - 2.5.2 response to the quality questions set out in the tender documentation;
  - 2.5.3 delivery proposal setting out their suitability and 'added value' in undertaking the works;
  - 2.5.4 references from a minimum of three previous clients;
  - 2.5.5 innovation contained within proposed works;
  - 2.5.6 any proposed modifications to any proposed terms and conditions;
  - 2.5.7 deliverability of proposed works;
  - 2.5.8 the social impact of the Development; and
  - 2.5.9 the response in relation to the Site Social Impact Plan.

### **3 Form of contract for main contractor**

- 3.1 The main contractor will be procured on a lump sum design and build arrangement using such form of contract as the JV Group (acting by the JV Board) may consider appropriate in all the relevant circumstances. The main contractor will be required to seek to allocate risk to the party most capable of dealing with it to reduce or eliminate risk and will accommodate the residual risk into the fixed price.
- 3.2 Where the main contractor is appointed on a two stage design and building procurement, the main contractor will be procured, in the first instance, on a pre-construction services agreement approved by the JV Group that:
- 3.2.1 contain a provision that provides that the JV Group is under no obligation to enter into the main building contract with the main contractor;
  - 3.2.2 fixes the main contractor's rates of overhead and profit; and
  - 3.2.3 (in relation to an open book negotiation only) contain obligations that facilitate the procurement of sub-contractors and suppliers in the manner set out in this Procurement Strategy.

### **4 Procurement of all works below £500,000**

- 4.1 Where the Council is the intended purchaser and / or end user of the Site, the procurement provisions in Part 2 shall apply. In all other cases, all works below £500,000 shall be procured by way of written quotations in accordance with the provisions of this paragraph 4.
- 4.2 The methodology for the appointment of contracts under the written quotation will be as follows:
- 4.2.1 set parameters and pre-selection criteria for a PQQ/SQ stage, to include, without limitation:
    - (a) sufficiently robust financial standing;
    - (b) necessary expertise, capability and capacity to undertake the works (including, where and insofar as relevant, design of the works or relevant part thereof);
    - (c) satisfactory health and safety record, as judged against health and safety records of contractors generally appointed on projects of a similar size, scope nature and complexity;
    - (d) a relevant demonstrable track record;
    - (e) has had no formal legal proceedings issued against it in relation to the provision of works similar to the current works being procured in the period of eighteen (18) months prior to the date of proposal;
    - (f) has had no convictions for criminal offences including (but not limited to) bribery, corruption, conspiracy, tourism, fraud or money laundering nor been the subject of a binding legal decision that found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved); and
    - (g) has sufficient available resource (including experienced supervisors) to be able to perform the works in accordance with any proposed programme for the same;
  - 4.2.2 advertise the opportunity in appropriate trade press, the Council's own procurement web pages, Contracts Finder and notify the Wirral Chamber of Commerce to ensure (as far as

possible and subject to availability in the market) that at least three contractors of suitable quality will respond to the tender;

4.2.3 reserve the right to request that a bidder clarify or modify a quotation and reserve the right to withdraw from the procurement entirely without incurring costs;

4.2.4 select the bidder with the highest aggregate score against the selection criteria.

4.3 The methodology set out above at paragraph 4.2 may in certain circumstances be varied but only by prior written agreement by the relevant authorised decision maker in accordance with the terms of the delegation policy set out in Schedule 3.

4.4 The Council may reject the appointment of a contractor appointed by the JV Group where any person would or may be in breach of Article 38 (Selection and qualitative assessment of candidates) of Directive 2014/23/EU or Regulation 38 of the Concession Contracts Regulations 2016.

## **5 Procurement of all works above £500,000**

5.1 Where the Council is the intended purchaser and / or end user of the Site, the procurement provisions in Part 2 shall apply. In all other cases, all works above £500,000 shall be procured by way of the formal tender process set out in this paragraph 5, which shall be fully auditable.

5.2 Subject to paragraph 5.3, the methodology for the appointment of contracts under the formal tender process will be as follows:

5.2.1 set parameters and pre-selection criteria for a PQQ/SQ stage, to include, without limitation:

- (a) sufficiently robust financial standing;
- (b) necessary expertise, capability and capacity to undertake the works (including, where and insofar as relevant, design of the works or relevant part thereof);
- (c) satisfactory health and safety record, as judged against health and safety records of contractors generally appointed on projects of a similar size, scope nature and complexity;
- (d) a relevant demonstrable track record;
- (e) has had no formal legal proceedings issued against it in relation to the provision of works similar to the current works being procured in the period of eighteen (18) months prior to the date of proposal;
- (f) has had no convictions for criminal offences including (but not limited to) bribery, corruption, conspiracy, terrorism, fraud or money laundering nor been the subject of a binding legal decision that found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved); and
- (g) has sufficient available resource (including experienced supervisors) to be able to perform the works in accordance with any proposed programme for the same;

5.2.2 advertise the opportunity in appropriate trade press, the Council's own procurement web pages, Contracts Finder and notify the Wirral Chamber of Commerce to ensure (as far as possible and subject to availability in the market) that at least four contractors of suitable quality will respond to the tender.

5.2.3 issue a form of PQQ/SQ via a suitable mechanism;

- 5.2.4 prepare the works requirements specification in accordance with paragraph 1, tender documents and selection criteria;
- 5.2.5 down-select to a minimum of three bidders (where reasonably practicable) based on the pre- selection criteria set out in the tender documentation;
- 5.2.6 issue tender documents via a suitable mechanism;
- 5.2.7 agree shortlist for interview (being a minimum of three where reasonably practicable), based on selection criteria. This process will be driven by the Development Manager as part of its project manager services under the Development Management Agreement;
- 5.2.8 conduct post tender interviews to (without limitation) clarify the proposed key personnel, scope of works, deliverables and pricing model;
- 5.2.9 following interviews, reserve the right to require the two bids offering best value (as determined under the stated evaluation criteria) to submit a best and final offer tender;
- 5.2.10 reserve the right to request that a bidder clarify or modify a final tender and reserve the right to withdraw from the procurement entirely without incurring costs;
- 5.2.11 appoint the best value offer (as determined under the evaluation criteria at paragraph 2); and
- 5.2.12 offer feedback to the unsuccessful bidders,

and the LLP's and the Council's Procurement Officer shall have the right to attend procurement meetings and to be consulted in the procurement process.

- 5.3 The methodology set out above at paragraph 5.2 may in certain circumstances be varied but only by prior written agreement by the relevant authorised decision maker in accordance with the terms of the delegation policy set out in Schedule 3.
- 5.4 The Council may reject the appointment of a contractor appointed by the JV Group where any person would or may be in breach of Article 38 (Selection and qualitative assessment of candidates) of Directive 2014/23/EU or Regulation 38 of the Concession Contracts Regulations 2016.

## **6 Short-listed tenderers assessment**

- 6.1 During the pre-contract stage for each site, the main contractors selected for the shortlist will be required to provide advice on risk, programme, procurement and construction. This will be provided via workshops arranged during the pre-contract period.
- 6.2 The shortlisted tenderers for the main contractor role will be required to tender for the project on a fixed price lump sum basis. It is anticipated that the tender process will be undertaken when project designs are sufficiently developed for the relevant project, indicatively being a minimum of either RIBA stage 3 or RIBA stage 4 (as reasonably determined by the JV Group) (though this will be subject to review on a project by project basis having regard to the technical complexity of the site to ensure that the optimal risk transfer for the JV Group is achieved).

Following their receipt on or by the relevant date, all tenders which are received prior to the main contract being let will be opened at a tender opening meeting, thereby engendering an open and transparent selection process. The LLP's and the Council's Procurement Officer shall be consulted on the procurement process and shall be permitted to attend such tender opening meetings, which shall be arranged by the LLP's quantity surveyor for an appropriate date, time and location. The time, date and location (and all other appropriate details) of each tender opening meeting shall be notified to the Council's Procurement Officer at least two Business Days in advance of such meeting.

- 6.3 The tenders will be evaluated by the Development Manager and cost consultant in accordance with the agreed evaluation criteria.
- 6.4 A Tender Review Report will be prepared by the Development Manager and the cost consultant setting out:
  - 6.4.1 the process followed;
  - 6.4.2 the evaluation criteria used;
  - 6.4.3 key aspects of the tenders received (including preliminaries and overheads and profits); and
  - 6.4.4 the identity of the proposed main contractor.
- 6.5 The Tender Review Report will be provided to the JV Board who shall review its contents and, if satisfied, authorise the selection of the proposed main contractor. The Development Manager will at all times act in accordance with Delegation Policy.
- 6.6 In the event that an open book negotiated fixed price procurement route has been selected by the LLP the following provisions of this paragraph 6.6 shall apply:
  - 6.6.1 preliminaries costs will be provided on a transparent and auditable open book basis, with a full breakdown provided for all costs claimed. Where preliminaries costs include sub-contracted elements, e.g. scaffolding, then these elements will be procured in accordance with the sub-contracts and suppliers methodology set out below;
  - 6.6.2 overheads and profit will be included in the Contract Sum to fund the head office and other costs incurred by the main contractor that are not otherwise recovered through the works packages or preliminaries costs, and to contribute to the main contractor's business profit. This percentage is not to fund risk, which will be dealt with in the Contract Sum by way of inclusion of specific risk allowances – in the works package costs, or in a separately costed risk register – in addition to the main contractor's declared contingency to cover general contracting risks;
  - 6.6.3 following selection of the main contractor, the procurement of sub-contractors and suppliers shall commence in accordance with the process set out in paragraph 7 below.

## **7 Sub-contractors and suppliers**

- 7.1 The provisions of this paragraph 7 shall only apply in the event that an open book negotiated fixed price procurement route has been selected by the LLP.
- 7.2 The main contractor will procure sub-contractors and suppliers from list of such organisations appearing as approved contractors on the main contractor's own supply chain database (so far as possible and subject to availability in the market) satisfying the criteria in paragraph 7.4 of this Part 3 below (acting reasonably) on a competitively tendered, open-book, works package basis such that all lump sum Contract Sums will (unless otherwise agreed between the Council, the JV Group and the main contractor) be based upon 80% of all works package costs by value having been tendered or otherwise market tested prior to the building contract being let to the main contractor by the JV Group.
- 7.3 In relation to paragraph 7.2 of this Part 3, there will be a minimum of four tenderers invited to submit tenders or market testing for each package, unless there are fewer than four suitable companies able to tender.
- 7.4 The successful main contractor will pre-qualify all potential sub-contractors and suppliers as part of its obligation under this Procurement Strategy to agree an approved list of the same with the LLP to ensure that they:

- 7.4.1 are of sufficiently robust financial standing
- 7.4.2 have the necessary expertise, capability and capacity to undertake the works
- 7.4.3 have all necessary health and safety procedures in place and an appropriate health and safety track record
- 7.4.4 have a relevant demonstrable track record
- 7.4.5 comply with the required commercial requirements of the JV Group and the main contractor in relation to insurance provision and warranties
- 7.4.6 can comply with the social value and community benefits targets required by the JV Group through firm commitment from suppliers to local employment and training opportunities and to the use of a local supply chain
- 7.5 The successful main contractor will procure all sub-contract and supplier costs will be net of all discounts, rebates, subsidies and the like.
- 7.6 The successful main contractor will procure all sub-contractors and suppliers under domestic contract arrangements.
- 7.7 The main contractor will provide for each works package a Package Tender Report to provide:
  - 7.7.1 an explanation and demonstration of the procurement process followed
  - 7.7.2 (where required by the JV Group), a build up to the sub-contract works costs which will be based on the sub-contract tender returns, including using reasonable endeavours to obtain from any sub-contractor such a build up as part of its tender return
  - 7.7.3 an explanation, where necessary, of the reasons why any of the sub-contract tender returns were not considered appropriate
  - 7.7.4 (where required by the JV Group) a build up to any other costs associated with the particular works package, including using reasonable endeavours to obtain from any sub-contractor or supplier an explanation of the overhead and profit levels included in the sub-contract works costs and other matters such as attendances, risk allowances, inflation for fixed price adjustment etc.
  - 7.7.5 details of the reasons for the selection of a proposed subcontractor.

Part 4-

1

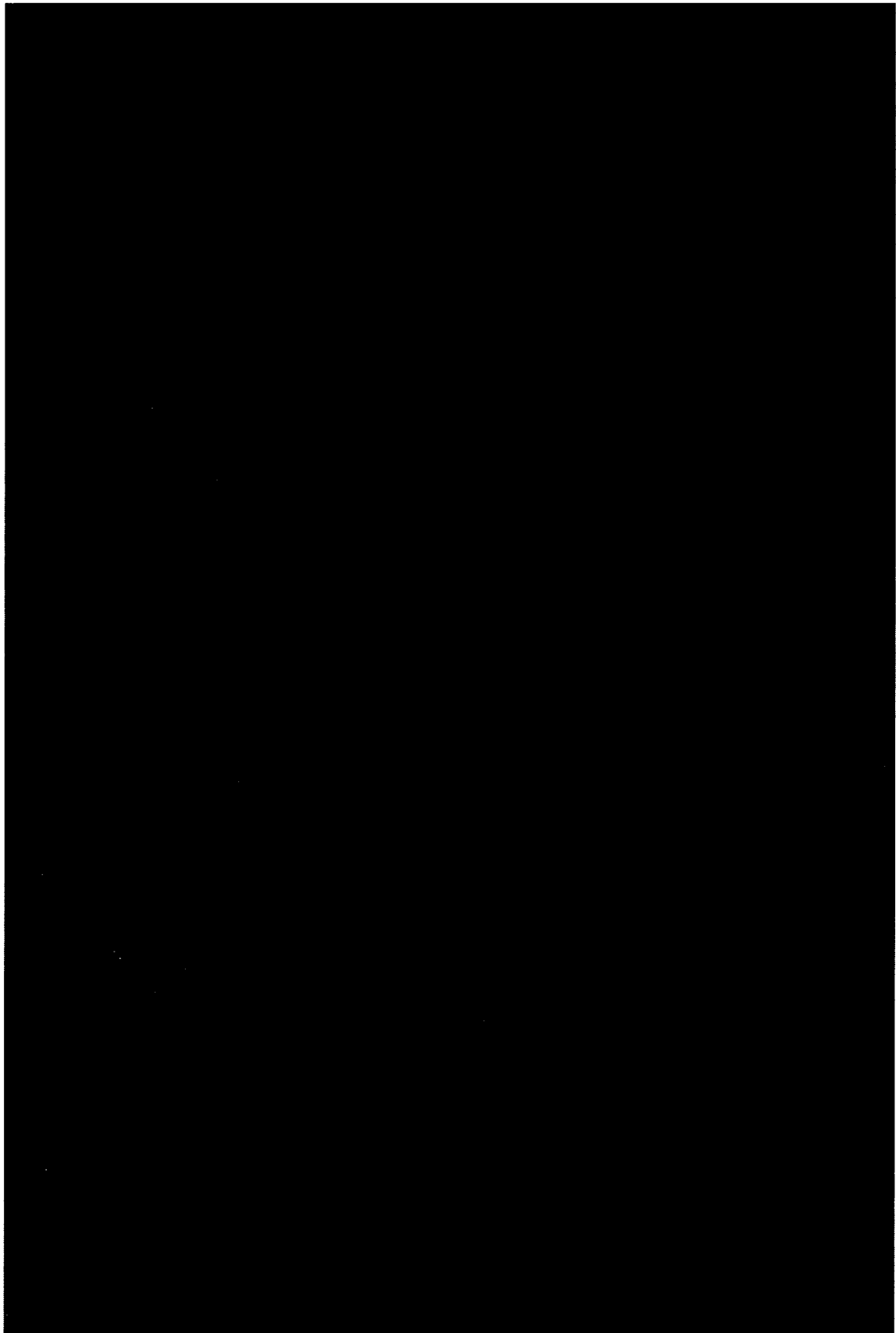
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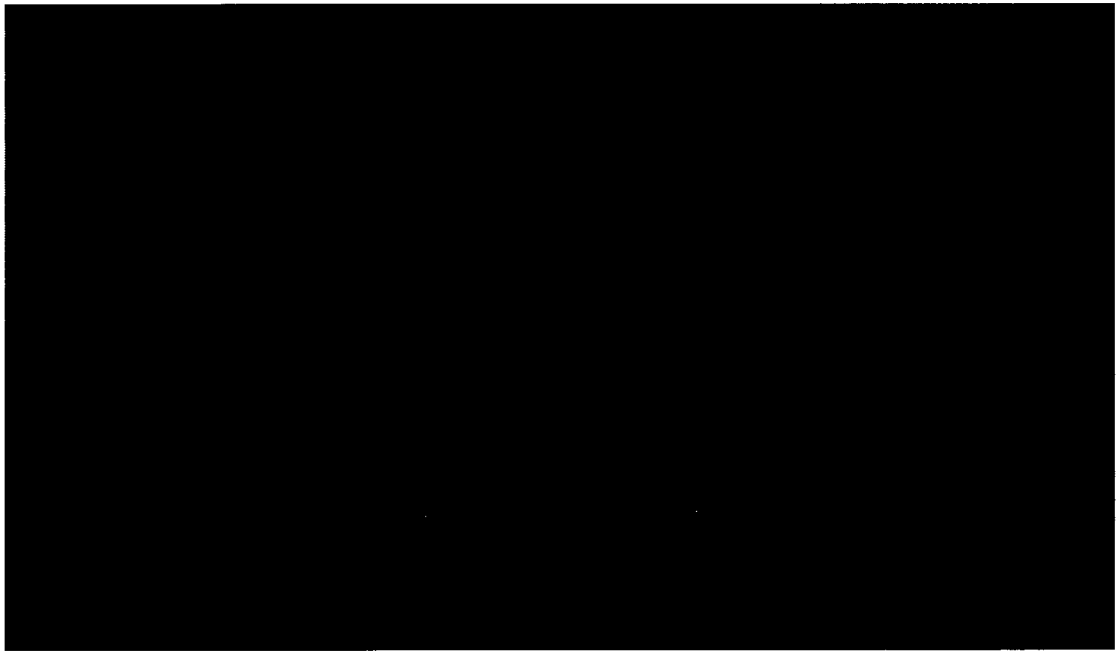
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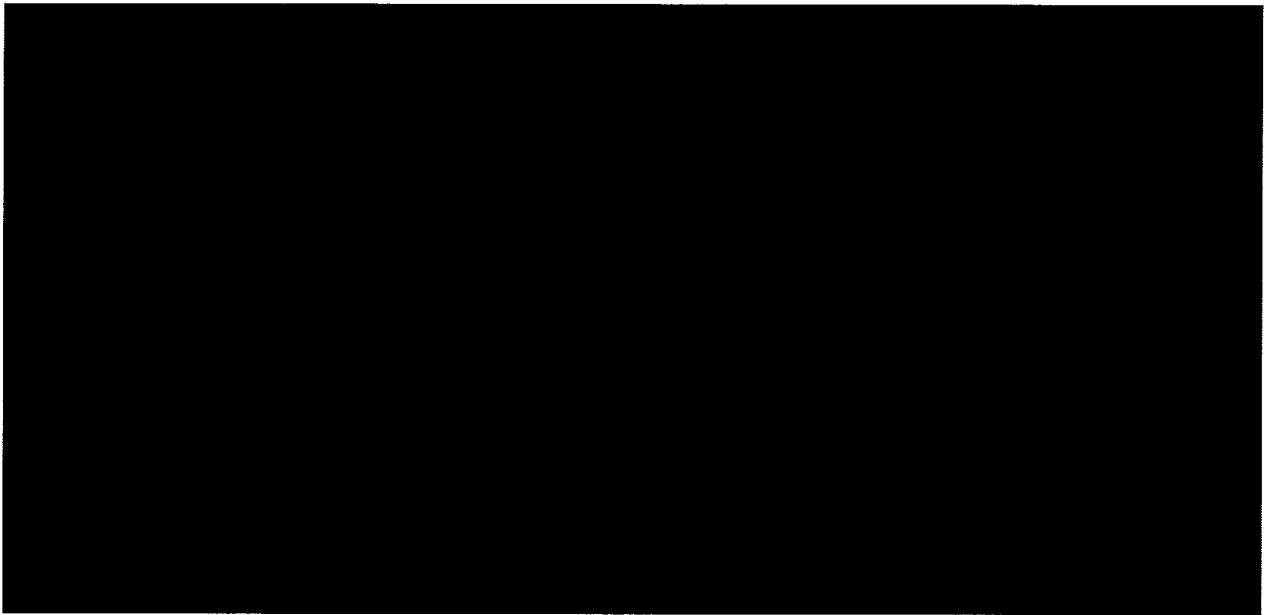
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Part 6 –



## **SCHEDULE 6 – DEVELOPMENT SUBSIDIARIES**

This Schedule shall apply to Development Subsidiaries.

### **1 ESTABLISHMENT AND INCORPORATION**

- 1.1 Where the JV Partners have unanimously agreed then a separate Development Subsidiary shall be formed for the sole purpose of undertaking the development of a Site or a Non-Council Site (or part thereof) which comes forward for development in accordance with the relevant Site Development Plan, an Option Agreement (if relevant), this Agreement and the Partnership Business Plan. Where this Agreement contains a provision which requires a Development Subsidiary to do or refrain from doing any particular act or relates to a Development Subsidiary doing or refraining from doing any particular act, each of the JV Partners and the LLP shall exercise all voting rights and other powers of control as are available to them to seek to ensure that the particular act occurs or does not occur, as the case may be.
- 1.2 Prior to the exchange of contracts for the transfer of any Site or Non-Council Site to the LLP (or as it may direct) pursuant to the terms of this Agreement (or as otherwise unanimously agreed by the JV Partners);
  - 1.2.1 the LLP shall establish a Development Subsidiary in accordance with the provisions of this Schedule;
  - 1.2.2 the JV Partners shall procure that each such Development Subsidiary shall be required to develop the Site or Adopted Non-Council Site transferred to it in accordance with the relevant Site Development Plan, the Option Agreement (if any), this Agreement and the Partnership Business Plan;
- 1.3 Each Development Subsidiary established by the LLP shall be solely owned by (i) the LLP (holding 99.9% capital (or equivalent) interest); and (ii) the Nominee (holding 0.1% capital (or equivalent) interest) as its only members (each of which shall be the designated members under the Act).
- 1.4 The JV Partners agree that each Development Subsidiary shall have the same registered office, Financial Year End, Auditors and Bank as the LLP.
- 1.5 The LLP warrants and undertakes to each JV Partner that it shall acquire an interest in each Development Subsidiary for its own absolute beneficial and legal ownership and not on behalf of any other person.
- 1.6 The LLP and/or the JV Partners (as appropriate) shall use reasonable endeavours to procure the novation or assignment to the relevant Development Subsidiary of the whole or part of any agreement or contract which the LLP and/or the JV Partner (as applicable) entered into for the purposes of development (in accordance with the relevant Site Development Plan) of the relevant Site or Adopted Non-Council Site to be transferred to such Development Subsidiary where it was intended that the Development Subsidiary would have the benefit and/or burden of such agreement or contract (or relevant part of it).
- 1.7 It is agreed that the Nominee shall at all times have 2 directors, one of whom shall be a PSP Representative and one of whom shall be an employee or elected Member of the Council.

### **2 MANAGEMENT AND OPERATIONS**

- 2.1 The JV Partners and the LLP agree that save where varied in accordance with paragraph 2.2 below (and save to the extent otherwise agreed in writing by the JV Partners or where the context otherwise requires), the provisions of this Agreement shall also apply to the Development Subsidiary mutatis mutandis as if the Development Subsidiary was the LLP.

2.2 In relation to the following matters and those set out in paragraphs 3 and 4 below, the terms of this Agreement shall be deemed to have been varied in respect of the application of the Agreement to a Development Subsidiary:

2.2.1 subject to the JV Partners' written agreement to the contrary in respect of a particular Development Subsidiary, the Representatives of the JV Board shall be deemed to be representatives of the Development Subsidiary JV Board (or equivalent);

2.2.2 matters relating to a Development Subsidiary which (but for this paragraph 2.2.2) would otherwise (by virtue of paragraph 2.1) be deemed to be rights or obligations of, or references to, the members of the Development Subsidiary (including in respect of decisions that would be so reserved to the members of the Development Subsidiary in accordance with the Delegation Policy or any other provision of this Agreement) shall remain rights or obligations of, or references to, the JV Partners (save insofar as the context otherwise requires);

2.2.3 the JV Partner Loans shall continue to operate as set out in clause 7 and shall not apply mutatis mutandis as if the Development Subsidiary was the LLP;

2.2.4 where any Development Subsidiary JV Board is unable to pass a resolution no Deadlock Matter shall be capable of crystallising within the Development Subsidiary and in which case there shall be deemed a Deadlock Matter in relation to the LLP and the provisions of clause 18 shall apply;

2.2.5 the interests of the members in each Development Subsidiary shall be non-transferrable and no such member shall sell, assign, transfer, exchange, pledge, encumber or otherwise dispose of all or any part of its rights and obligations under this Agreement, or voluntarily dissolve or voluntarily withdraw or resign as a member of a Development Subsidiary and the provisions of clause 21 (*Transfer of Shares*) shall not apply to any Development Subsidiary; and

2.2.6 the provisions of clause 7.4 shall not apply to a Development Subsidiary.

2.3 On incorporation the Development Subsidiary shall adopt the relevant Business Plans and shall adopt any variations, updates and amendments to such Business Plans that are effected in accordance with this Agreement.

### 3 PROFIT

3.1 The JV Partners and the LLP agree and shall procure that on Site Completion (and during the development of a Site if it is agreed in accordance with the terms of this Agreement that a distribution should be made in advance of Site Completion) all receipts and Net Profits of each Development Subsidiary shall be applied in the following order of priority:

3.1.1 provisions for payment of the Development Costs of the Development Subsidiary;

3.1.2 provisions for the repayment of all principal Third Party Funding (plus any interest accrued thereon and any other associated costs including any interest breakage costs and premature pre-payment fees) attaching to the Site and Development Subsidiary;

3.1.3 provisions for repayment of any principal Additional Council Finance and Additional PSP Finance advanced to the Development Subsidiary (and any other associated costs) (*pari passu*);

3.1.4 provisions for repayment of any amounts outstanding to the LLP under any finance given by the LLP to the Development Subsidiary;

3.1.5 provisions for working capital that are necessary; and

- 3.1.6 amounts remaining after the above provisions have been made shall be distributed to the LLP first as payments of profit.

#### **4 TERMINATION AND WIND UP OF DEVELOPMENT SUBSIDIARIES**

- 4.1 On a Termination Event in relation to the LLP, there shall be deemed a Termination Event in relation to each and every Development Subsidiary and in which case the JV Partners and the LLP shall use reasonable endeavours to exercise their powers to ensure that each Development Subsidiary shall be wound up prior to the winding up of the LLP (following the completion of all works pursuant to those Supply Chain Contracts that have been entered into by such Development Subsidiary in respect of which works have commenced; the realisation of all sales proceeds in relation to the relevant development; and the distribution of all receipts and Net Profits of such Development Subsidiary to the LLP) and (to the extent applicable and excluding clause 24.2.2(e)) the provisions of clause 24 (except for clause 24.4) shall apply mutatis mutandis to the winding up of the individual Development Subsidiaries as they apply to the LLP.
- 4.2 Without prejudice to clauses 22 and 23 or any other rights a Party may have under this Agreement where there is a Termination Event in relation to a Development Subsidiary (other than one arising under paragraph 4.1 above) this shall not of itself constitute a Termination Event in relation to any other Development Subsidiary or the LLP.

## SCHEDULE 7 - DEED OF ADHERENCE

THIS DEED is made on

20[ ]

**BETWEEN** [ ] (number [OC][ ]) [of [ ]] [whose registered office is at [ ]] (**Covenantor**) in favour of the persons whose names are set out in the Schedule to this Deed and is supplemental to the Partnership Agreement dated [ ] and made between (1) the Council, (2) Muse Development Limited, and (3) Wirral Growth Company LLP (the **Partnership Agreement**).

Terms defined in the Partnership Agreement shall bear the same meanings in this Deed.

### THIS DEED WITNESSES AS FOLLOWS:

- 1 In consideration of the Covenantor being accepted as a Party for the purposes of the Partnership Agreement by the Parties thereto, as from [ ] the Covenantor hereby confirms that it shall be a Party to the Partnership Agreement as a JV Partner and agrees to be bound by all of the relevant provisions of the Partnership Agreement as if it had been an original Party thereto in place of the JV Partner whose JV Partner Share is to be transferred to the Covenantor.
- 2 The Covenantor hereby covenants with and undertakes to the LLP, and the other JV Partners from time to time and any other party who hereafter becomes a JV Partner bound by the Partnership Agreement, to adhere to and be bound by the provisions of the Partnership Agreement (including but not limited to any remaining obligation to subscribe for JV Partner Loan Notes or otherwise provide funding in accordance with the terms of the Partnership Agreement) and acknowledges that it shall be entitled as from the date stated in paragraph 1 above to exercise the rights of a JV Partner under the Partnership Agreement.
- 3 This Deed is governed by English law.

**EXECUTED AND DELIVERED** as a deed by the Covenantor on the date which first appears above.

[Insert appropriate execution block]

[Schedule to Deed - Parties to the Partnership Agreement including those who have executed earlier deeds of adherence].

## **SCHEDULE 8 - DISTRIBUTION OF PARTNERSHIP ASSETS ON A WINDING UP**

### **Part 1 - Distribution of partnership assets on a winding up arising pursuant to a Default Event**

#### **1 APPLICATION OF PART 1**

This Part 1 shall apply on any winding up of the LLP under clause 23.1.3 and sets out how the aggregate of the Partnership Assets available for payment to the JV Partners after distributions have taken place under clause 24.4 (the **Available Assets**) shall be shared between the JV Partners.

#### **2 DISTRIBUTION OF PARTNERSHIP ASSETS ON A WINDING UP ARISING PURSUANT TO A PSP DEFAULT EVENT**

On a winding up of the LLP arising pursuant to a PSP Default Event under clause 22.1, the Available Assets shall be distributed in the following proportions:

2.1 55% of the Available Assets shall be distributed to the Council; and

2.2 45% of the Available Assets shall be distributed to the PSP.

#### **3 DISTRIBUTION OF PARTNERSHIP ASSETS ON A WINDING UP ARISING PURSUANT TO A COUNCIL DEFAULT EVENT**

On a winding up of the LLP arising pursuant to a Council Default Event under clause 22.2, the Available Assets shall be distributed in the following proportions:

3.1 45% of the Available Assets shall be distributed to the Council; and

3.2 55% of the Available Assets shall be distributed to the PSP.

### **Part 2 – Distribution of partnership assets on a non-Default Event winding up**

#### **1 APPLICATION OF PART 2**

This Part 2 shall apply on any winding up of the LLP under clauses 23.1.1, 23.1.2, 23.1.4 to 23.1.9 and sets out how the aggregate of the Partnership Assets available for payment to the JV Partners after distributions have taken place under clause 24.4 (the **Available Assets**) shall be shared between the JV Partners.

#### **2 DISTRIBUTION OF PARTNERSHIP ASSETS ON A NON-DEFAULT EVENT WINDING UP**

On a winding up of the LLP under the clauses referred to in paragraph 1 of this Part 2, the Available Assets shall be distributed to the JV Partners pro rata to the amount of their respective Capital Contributions.

## **SCHEDULE 9 - SHARE VALUE**

- 1 For the purposes of clause 22, the **Share Value** shall be determined in accordance with the principles identified in this Schedule.
- 2 The Share Value shall be the price which a third party would pay to acquire the relevant Share upon the following assumptions:
  - 2.1 the sale takes place as between a willing vendor and a willing purchaser;
  - 2.2 the transferee takes over all rights and obligations of the transferor under this Agreement.
- 3 In determining the Share Value, the Valuer shall:
  - 3.1 take into account any outstanding obligation to pay any Initial PSP Loan, PSP Loan, and Additional PSP Finance (in the case of the PSP's Share Value) or Initial Council Loans, Council Loans and Additional Council Finance (in the case of the Council's Share Value) as part of the calculation of the Share Value;
  - 3.2 where the transferor is the PSP, discount the existence of any lease from the LLP and/or any Development Subsidiary to the Council and where the transferor is the Council, discount any right of the Council to terminate any lease between the LLP or any Development Subsidiary and the Council by reason of the proposed transfer;
  - 3.3 take into account the value of any bona fide offer which may have been received to purchase the Share on the basis of the assumptions referred to in paragraph 2 above;
  - 3.4 where the transferor is the PSP, disregard any enhancement in Share Value which would (but for this paragraph 3.4) apply to the extent that the same is attributable to the rights of any member of the PSP's Group pursuant to Schedule 5 (Procurement Strategy);
  - 3.5 take into account the realisable value of the work in progress of the LLP (to the extent not already counted under the previous sub-paragraphs of this paragraph 3); and
  - 3.6 take into account all such other matters relating to the affairs of the LLP as the Valuer thinks fit.

The Share Value shall be determined by the Valuer who shall act as expert and not as arbitrator. Such Valuer shall have at least 10 years qualification experience in valuing interests of the type of the Share. In reaching his determination, the Valuer shall attribute to the Share its market value as at the date of any relevant Default Event. The determination of the Valuer shall be final and binding and the costs of the Valuer and other professionals consulted by him shall be borne by the Defaulting JV Partner.-

## SCHEDULE 10 - STATEMENT OF GOOD STANDING

Please answer the following questions in full. Note that every organisation that is being substantially relied upon by the potential JV Partner must also complete these questions.

|                 |   |  |
|-----------------|---|--|
| Section 1       | Grounds for mandatory disqualification from appointment as a JV Partner   |  |
| Question number | Question  | Response   |
| 1.1(a)          | <b>Regulations 38(8) and (9) of the Concession Contracts Regulations 2016</b><br><br>The detailed grounds are available at <a href="http://www.legislation.gov.uk/uk/si/2016/273/pdfs/uk-si_20160273_en.pdf">www.legislation.gov.uk</a> through the link: <a href="http://www.legislation.gov.uk/uk/si/2016/273/pdfs/uk-si_20160273_en.pdf">http://www.legislation.gov.uk/uk/si/2016/273/pdfs/uk-si_20160273_en.pdf</a> which should be referred to before completing these questions.<br>Please indicate if, within the past five years you, your organisation or any other person who has powers of representation, decision or control in the organisation been convicted anywhere in the world of any of the offences within the summary below. |  |
|                 | Participation in a criminal organisation.   | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If Yes please provide details at 2.1(b) |
|                 | Corruption.   | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If Yes please provide details at 2.1(b) |
|                 | Fraud.  | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If Yes please provide details at 2.1(b) |
|                 | Terrorist offences or offences linked to terrorist activities   | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If Yes please provide details at 2.1(b) |
|                 | Money laundering or terrorist financing   | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If Yes please provide details at 2.1(b) |
|                 | Child labour and other forms of trafficking in human beings   | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If Yes please provide details at 2.1(b) |
| 1.1(b)          | If you have answered yes to question 2.1(a), please provide further details.<br>Date of conviction, specify which of the grounds listed the conviction was for, and the reasons for conviction, identity of who has been convicted<br>If the relevant documentation is available electronically please provide the web address, issuing authority, precise reference of the documents.  |  |
| 1.2             | If you have answered Yes to any of the points above have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground? (Self Cleaning)   | Yes <input type="checkbox"/><br>No <input type="checkbox"/>  |
| 1.3(a)          | <b>Regulation 38(10) of the Concession Contracts Regulations 2016</b><br>Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related   | Yes <input type="checkbox"/><br>No <input type="checkbox"/>  |

|        |   |  |
|--------|---|--|
|        | to the payment of tax or social security contributions?   |  |
| 1.3(b) | If you have answered yes to question 2.3(a), please provide further details. Please also confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines. |  |

Please Note: The authority reserves the right to use its discretion to disqualify a potential JV Partner or organisation that is being substantially relied upon by the potential JV Partner where it can demonstrate by any appropriate means that the potential JV Partner or organisation that is being substantially relied upon by the potential JV Partner is in breach of its obligations relating to the non-payment of taxes or social security contributions.

|                 |  |   |
|-----------------|--|---|
| Section 2       | Grounds for discretionary disqualification from appointment as a JV Partner  |   |
| Question number | Question   | Response  |
| 2.1             | <b>Regulation 38 (16) Concession Contracts Regulations 2016</b><br><br>The detailed grounds are available at <a href="http://www.legislation.gov.uk/ukxi/2016/273/pdfs/ukxi_20160273_en.pdf">www.legislation.gov.uk</a> through the link: <a href="http://www.legislation.gov.uk/ukxi/2016/273/pdfs/ukxi_20160273_en.pdf">http://www.legislation.gov.uk/ukxi/2016/273/pdfs/ukxi_20160273_en.pdf</a> which should be referred to before completing these questions.<br><br>Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation. |   |
| 2.1(a)          | Breach of environmental obligations?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If yes please provide details at 3.2 |
| 2.1 (b)         | Breach of social obligations?  | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If yes please provide details at 3.2 |
| 2.1 (c)         | Breach of labour law obligations?  | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If yes please provide details at 3.2 |
| 2.1(d)          | Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation's assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State?  | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If yes please provide details at 3.2 |
| 2.1(e)          | Guilty of grave professional misconduct?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If yes please provide details at 3.2 |
| 2.1(f)          | Entered into agreements with other economic operators aimed at distorting competition?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If yes please provide details at 3.2 |
| 2.1(g)          | Aware of any conflict of interest within the meaning of Regulation 35 of the Concession Contract Regulations 2016 due to the participation in the procurement procedure?   | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If yes please provide details at 3.2 |
| 2.1(h)          | Shown significant or persistent deficiencies in the  | Yes <input type="checkbox"/>  |

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|---------------|--|---|
|               | performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions?  | No <input type="checkbox"/><br>If yes please provide details at 3.2                                 |
| 2.1(i)        | Please answer the following statements   |   |
| 2.1(i) - (i)  | The organisation is guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds.  | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If Yes please provide details at 3.2 |
| 2.1(i) - (ii) | The organisation has withheld such information.  | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If Yes please provide details at 3.2 |
| 2.1(i)-(iii)  | The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or negligently provided misleading information that may have a material influence on decisions. | Yes <input type="checkbox"/><br>No <input type="checkbox"/><br>If Yes please provide details at 3.2 |
| 2.2           | If you have answered Yes to any of the above, explain what measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for disqualification? (Self Cleaning)   |   |

## SCHEDULE 11 – CONDITIONS OF SALE

1 In this Schedule 11, the following terms have the following meanings:-

1.1 **"Standard Conditions"** means Part 1 of the Standard Commercial Property Conditions (Second Edition) as amended or varied as stated in the remaining provisions of this Schedule 11;

1.2 **"Developer"** means the LLP or the Development Subsidiary as appropriate

2 Standard Conditions 1.1.1(g) and (o), 3.1.3, 3.3, 6.4.2, 6.6.5 and 8.7 do not apply.

3 There shall be a new definition inserted as Standard Condition 1.1.1(g) which reads: "Business Day" means .00 am to 5.00 pm on any day (other than i) a Saturday or Sunday or a public holiday in the United Kingdom and ii) 27<sup>th</sup> December to 31<sup>st</sup> December in each year inclusive) on which clearing banks in the City of London are open for the transaction of normal sterling banking business

4 Standard Condition 1.3 is amended to read as follows:

"1.3 Notices and Documents

1.3.1 A notice required or authorised by the contract must be in writing.

1.3.2 Giving a notice or delivering a document to a party's conveyancer at the address and quoting the reference (if any) stated in the contract has the same effect as giving or delivering it to that party.

1.3.3 Where delivery of the original document is not essential, a notice or document is validly given or sent if it is sent by fax (but it is not validly given or sent if sent by e mail).

1.3.4 Subject to conditions 1.3.5 to 1.3.7, a notice is given and a document delivered when it is received.

1.3.5

(a) A notice or document sent through the document exchange is received when it is available for collection.

(b) A notice or document which is received after 4.00 pm on a Business Day, or on a day which is not a Business Day, is to be treated as having been received on the next Business Day.

1.3.6 Condition 1.3.7 applies unless there is proof:

(a) that a notice or document has not been received, or

(b) of when it was received.

1.3.7 Unless the actual time of receipt is proved, a notice or document sent by the following means is treated as having been received as follows:

(a) by first class post before 4.00 pm on the second Business Day after posting unless returned undelivered;

(b) by second class post before 4.00 pm on the third Business Day after posting unless returned undelivered;

(c) through a document exchange before 4.00 pm on the first Business Day after the day on which it would normally be available for collection by the addressee unless returned undelivered;

- (d) by fax one hour after despatch unless it is proved that the fax was not received.

1.3.8 In condition 1.3.7, "first class post" means a postal service which seeks to deliver posted items no later than the next Business Day in all or the majority of cases.

1.3.9 In addition:

- (a) any notice addressed to a party by name shall not be rendered invalid by reason of the party having died, become insolvent or changed name, whether or not the party serving notice is aware of the fact;
- (b) any notice required to be given by a party may be given on that party's behalf by that party's conveyancer;
- (c) a notice shall be considered as given to a party if delivered to the address given for that party in this agreement. If such party shall wish, during the currency of this agreement, to nominate an alternative address for service, such other address shall only be deemed to be substituted for the original address for service when such party's conveyancer shall have advised the other party's conveyancer in writing of such alternative address and such advice shall have been acknowledged in writing by the other party's conveyancer; and
- (d) the foregoing provisions of this condition 1.3 shall also apply (mutatis mutandis) to the delivery of documents."

5 Standard Condition 3.1.2 is amended as follows:

5.1 Standard Condition 3.1.2(c) shall read:

"those the Developer does not know about."

5.2 Standard Condition 3.1.2(d) is amended to read:

"entries made before the date of the contract in any public register except mortgages and monetary charges protected by such entries in registers maintained by the Land Registry or its Land Charges Department or by the Companies Registry."

5.3 Standard Condition 3.1.2 is extended as follows:

"(f) any matters, other than mortgages and monetary charges, which would have been revealed to the Council if before the date of the contract he had made all searches enquiries and inspections regarding the Site which a prudent buyer would make

so far as the same are still subsisting at completion, are capable of taking effect and relate to the Site."

5.4 Standard Condition 6.1.3 is extended as follows:

"But the foregoing provisions of this condition 6.1.3 apply only to documents in the possession of the Council or its mortgagee".

6 In Standard Condition 6.6.4(a) the words "(but by way of indemnity only and not further or otherwise) to observe and perform the obligations and to indemnify the Developer against all costs, expenses, losses, demands, actions, liabilities, claims or proceedings whatsoever arising in respect of any future breach, non performance or non observance of such obligation" are substituted for the words "to indemnify the Developer against liability for any future breach of the obligation and to perform it from then on".



SCHEDULE 12 – MILESTONES

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APPENDIX 1 –

