Board

Date: 3 February 2016



Item: Property Partnerships – Developing TfL's Assets

This paper will be considered in public

1 Summary

- 1.1 This paper describes the proposal to maximise the value of TfL's property assets by establishing a framework of property developers with experience and expertise in the London development market with a view to entering into joint ventures (JVs) for specific development opportunities to assist with the delivery of £3.4bn of non-fares income over the TfL Business Plan. This paper proposes that TfL should:
 - (a) establish a framework of property developer suppliers to maximise the value of TfL's property assets; and
 - (b) establish a series of wholly owned subsidiaries for the purposes of developing or disposing of TfL's land, including (but not limited to) by way of the JVs established under the framework described in (a) above.
- 1.2 On 21 January 2016, the Finance and Policy Committee endorsed the recommendations in this paper.
- 1.3 A paper is included on part 2 of the agenda, which contains exempt supplementary information. The information is exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the business affairs of TfL. Any discussion of that exempt information must take place after the press and public have been excluded from the meeting.

2 Recommendations

- 2.1 The Board is asked to note this paper and the supplemental paper on Part 2 of the agenda and:
 - (a) approve the awarding of a framework (the Framework) of property development suppliers (Framework Suppliers) as described in this paper with the objective of entering into corporate joint ventures (JVs) with individual members of the Framework on a site by site basis following further competition between Framework Suppliers (a mini competition) as a means of TfL developing its property assets;
 - (b) delegate to TfL Officers and any of its Subsidiaries (as described in paragraph 2.2 below) authority to enter into all such contracts

necessary to deliver each development opportunity under the Framework and undertake, all ancillary matters, including (without limitation) the approval and giving of guarantees and indemnities, the approval of investment decisions, the transfer of assets including land or shares in any of the TfL subsidiaries formed for the purposes of disposing or developing TfL's land provided that:

- the value of land being disposed of under a mini competition does not exceed the relevant TfL Officer's land authority under TfL Standing Orders (and in the event it does approval of the Board will be sought);
- (ii) the Mayor's Opinion has been granted in accordance with paragraph 12 (1) to Schedule 11 to the Greater London Authority Act 1999;
- (iii) if required, the consent of the Secretary of State has been obtained in accordance with Section 163 of the Greater London Authority Act; and
- (iv) in accordance with TfL Standing Orders, the appropriate consulatation has taken place with the Director of Commercial Development;
- (c) agree that, where the disposal of land is proposed to take place by means of a disposal of all or any part of the company in which it is held, such disposal shall be treated as a disposal of land for the purposes TfL Standing Orders and Land Authority and Disposal Authority will be deemed to have been given;
- (d) note that approval for any TfL investment and guarantees required for the delivery of any development opportunity following a mini competetion under the Framework shall be sought separately in accordance with the levels of authority under TfL Standing Orders;
- (e) authorise the TfL Officers and any of its Subsidiaries (as described in paragraph 2.2 below) to:
 - (i) form companies as wholly owned subsidiaries of TfL or any of the Subsidiaries (as appropriate) necessary for the delivery of the JVs formed as part of the Framework referred to in paragraph 2.1(a) above;
 - (ii) approve the adoption of the memorandum and articles of the new subsidiaries;
 - (iii) approve the individuals to comprise the board of directors and the Company Secretary of each of the new subsidiaries;
 - (iv) approve the names of each of the new subsidiaries;

- (v) wind up or dissolve any of the new subsidiaries at any time when any of them is no longer required; and
- (vi) provided that the approvals given under paragraphs 2.1(e) (ii) (iv) above and paragraph 2.1(f) below shall lapse in respect of any new subsidiary formed in accordance with paragraph 2.1(e)
 (i) above when such company ceases to be a "subsidiary" of Transport for London, as such term is defined in Section 1159 of the Companies Act 2006;
- (f) authorise the TfL Officers and the Subsidiaries (as described in paragraph 2.2 below) to negotiate, approve, authorise, agree and execute (whether by deed or otherwise on behalf of TfL or any Subsidiary (as appropriate)) any documentation:
 - (i) to be entered into in connection with the incorporation of any of the new subsidiaries; and
 - (ii) required in relation to the creation, operation, introduction and management of any of the new Subsidiaries' regulatory compliance requirements including, without limitation, letters of financial support, all agreements, deeds, guarantees, indemnities, announcements, notices, contracts, certificates, letters and other documents;
- (g) authorise the TfL Officers and Subsidiaries (as described in paragraph 2.2 below) to do all such other things as they consider necessary or desirable to facilitate (i) the regulatory compliance of the new companies; and/or (ii) the operation and implementation of the Framework and the JVs formed under the Framework.
- 2.2 The following Officers and Subsidiaries shall have delegated authority:
 - (a) TfL Officers: the Commissioner, Managing Director Finance, General Counsel and Director of Commercial Development; and
 - (b) Subsidiaries: Subsidiaries of TfL including Transport Trading Limited (TTL), TTL Properties Limited and any other subsidiary (whether existing presently or to be formed) of TTL, and the directors of such authorised company shall be authorised to act for and on behalf of that company.

3 Background

3.1 To date TfL has followed a traditional disposal route for its assets, minimising risk, but also restricting the potential long term receipts from the development of its surplus property assets. In February 2014, the Board approved the formation of a corporate JV with Capital and Counties Properties PLC for the development of TfL's freehold ownership of the former Exhibition Centres known as Earls Court 1 and 2.

- 3.2 Following the establishment of the Earls Court corporate JV, the TfL Business Plan has been updated to reflect the potential receipts that could be received if TfL were to follow the JV route established at Earls Court and undertake a series of corporate JVs for a number of the development opportunities it controls.
- 3.3 A portfolio of 75 development opportunities were identified as having the potential for commencing development within the ten year Business Plan. Within these, 49 have been identified as having the potential to be taken forward through a JV within the property partnership framework. A list of these development opportunities is included in the paper on Part 2 of the agenda.
- 3.4 The TfL ten year Business Plan assumes that Commercial Development will make a gross contribution of £4.2bn, net £3.4bn of which £1.1bn net is from property development activity. The property development business plan targets assume receipts from land sales together with a share of profit from undertaking developments within JVs.

4 Property Partnerships Framework

- 4.1 After receiving advice from TfL's commercial advisors, Deloitte, it was decided that the best way to maximise TfL's returns was to establish a framework (the Framework) of property developers who have experience in the London development market (the Framework Suppliers). All those Framework Suppliers who are appointed to the Framework will enter into a framework agreement setting out the terms necessary to be a member of the Framework (the Framework Agreement).
- 4.2 With each development opportunity brought forward, a further competition will be run with the Framework Suppliers (mini competition). The successful Framework Supplier and TfL will then enter into a series of agreements called off from the Framework Agreement (described in detail in paragraph 5 below) which, if all conditions are met will lead to the establishment of the JV for that development opportunity. TfL will dispose of its land at market value to the JV, for which it will receive an initial return. It will also have the opportunity to invest in the JV. The successful Framework Supplier will provide their expertise by acting as the business and development manager and will provide investment in their capacity as a partner. Returns will be divided in accordance with each partner's shareholding.
- 4.3 Deloitte advised that a framework of development partners would provide the diverse skills and capacity necessary to effectively deliver the large scale development programme TfL is proposing. As the JV's will involve the delivery of services and occasionally works, in order to establish the Framework, it was necessary to undertake a public procurement exercise in compliance with EU procurement rules, the details of which are set out in paragraph 4.6 below. A number of other options for the procurement of development partners were considered including:
 - (a) undertaking a full procurement exercise for each site TfL was advised by Deloitte that individual marketing of sites by undertaking individual

- procurement processes would be time consuming and expensive for both TfL and the Framework Suppliers; and
- (b) selecting a single development partner in light of the volume and diversity of development opportunities analysis of the market by Deloitte confirmed that there is no single supplier/partner with either the capacity or skill set to deliver all of these developments.
- 4.4 Once the Framework has been established TfL will continue to retain full flexibility with regard to how it disposes of its surplus property assets. TfL is not committed to offer any of the development opportunities to the Framework and will only do so if the use of the Framework offers best value and is state aid compliant. TfL, on advice from its property advisors, will assess each development opportunity to establish the optimum solution to ensure that it achieves best value. This could be through the Framework but might include a traditional sale route, the formation of a separate JV with a third party (typically a special purchaser), or even a standalone procurement to allow the wider market the opportunity to bid.
- 4.5 The public procurement process commenced on 6 February 2015 with the issuing of an OJEU notice. A summary of the procurement process and evaluation is set out in the paper on Part 2 of the agenda.

5 Outline of Framework and Commercial Terms

- 5.1 To align with the TfL Business Plan, the Framework has been designed to last for ten years. In order to ensure compliance with the procurement regulations and to ensure the Framework covers the diverse variety of development opportunities within the portfolio over the ten year period. The majority of detailed requirements will be set when each development opportunity comes forward and the Framework Suppliers bid via a mini competition. Each bidder will have the opportunity of bidding at each mini competition.
- 5.2 The Framework allows TfL to take between a 10 per cent and 90 per cent stake in any JV. Following the advice of its property and financial advisors TfL will assess what percentage stake it will take before each opportunity is sent to mini competition. A number of factors will inform this decision, including the impact development finance would have on TfL's corporate borrowing. Currently, under government rules, if TfL holds a minority stake in a JV then any borrowings of that JV will not be regarded as a TfL debt and so will not impact on TfL's corporate borrowing. If TfL holds a majority of the shares in the JV then it will be regarded as a debt.
- 5.3 Prior to each development opportunity being presented at a mini competition TfL will produce a detailed pack of information and specify a number of factors. This will include the required percentage stake in the proposed JV together with requirements for future overage.
- 5.4 Bids at each mini competition will be judged using the same evaluation criteria used when establishing the Framework.

- 5.5 The Framework has the flexibility to allow development opportunities to be introduced with or without planning. This will allow TfL to utilise the skills of the Framework Supplier, without committing to the formation of the JV until planning consent is granted.
- 5.6 The Framework will be supported by a suite of legal documents. To gain entry onto the Framework, each successful bidder will need to enter into the Framework Agreement. The remaining documents (referred to as the call-off contracts) will be entered into with the successful Framework Supplier following each mini competition and will include a conditional JV agreement, a business and development management agreement, a shareholders' agreement, a works agreement and the site specific property documents. A summary of the the main terms of these agreements in attached as Appendix 1. A summary of the key principles of these agreements is described below:

Outline of Key Principles in the Legal Documents

Primary Purpose

- (a) TfL's primary objective is to obtain best value from any development opportunities it puts through the Framework so that the revenues received by TfL can be utilised to improve London's transport system.
- (b) As with Earls Court, all activities are governed by the "Primary Purpose" which is to maximise the economic value of the development opportunity for TfL and its partner. This applies for the period before the JV is established and thereafter once the JV is established. Once the JV is established, the Primary Purpose is to maximise the economic value of the development opportunity for its shareholders by enabling the development of the site in accordance with the relevant planning consent.
- (c) The Primary Purpose provides focus and direction for the partners and makes it clear that the activities are commercial in nature. Once the JV is live it also provides protections for minority shareholders (be it TfL or its partner) in that it provides a check on the majority partner's activities in the JV.

Guarantees

(d) TfL's partner in any JV is to provide guarantees (or other suitable alternative security) in respect of its obligations where required and such guarantees will need to meet a minimum covenant test and then be subject to an on-going net asset value test. TfL likewise may be required to provide guarantees for the financial obligations of its subsidiaries.

Satisfaction of conditions and the conditional period

(e) Each successful Framework Supplier for a development opportunity will enter into a conditional JV agreement. This will govern how TfL and its partner will work collaboratively during the conditional period to seek to

- satisfy the conditions which need to be satisfied before any JV is formed. Activities will be in accordance with an agreed business plan.
- (f) The following conditions will need to be satisfied during the conditional period, following which the JV will be established:
 - (i) securing a planning consent for the relevant site;
 - (ii) site assembly (if relevant); and
 - (iii) the relevant site being valued at market value with the benefit of planning consent (following satisfaction of the other two conditions).
- (g) Once the conditions are satisfied TfL and the Framework Supplier will form the JV.
- (h) The costs incurred during the conditional period will be shared between TfL and its partner Framwork Supplier. TfL will cover 50 per cent of the costs except where it elects to take more than a 50 per cent equity stake in the JV (its commitment to fund those costs being increased to the relevant equity stake percentage).
- (i) During the conditional period, TfL and its partner will establish a project board that will act as the "shadow JV" and oversee the progress of the development. All decisions must be unanimous at this stage.

Management arrangements

- (j) TfL initially (and the JV upon satisfaction of the conditions) will appoint the successful Framework Supplier as the Business and Development Manager (BDM) for the relevant development opportunity. The BDM will be responsible for day to day management of the opportunity to achieve satisfaction of the conditions initially and once satisfied, day to day management of the JV to the conclusion of the development under the direction of the JV Board and Executive Committee (if applicable). The BDM will be paid a fixed percentage fee, which will be bid at mini competition stage and will be evaluated as part of the selection process.
- (k) The BDM's authority will be subject to acting at all times in accordance with the agreed business plan and subject to specified financial authority levels.

Formation of the JV

- (I) In certain circumstances it may be more economically efficient for TfL to transfer the land into a new vehicle in advance of the JV being formed (with that coporate vehicle then becoming the JV) and, where appropriate, TfL proposes to do this.
- (m) It is intended that ultimately TfL will be able to establish new corporate JV's constituted as UK Limited Liability Partnerships (LLPs) but this will

not happen until TfL secures the necessary statutory powers to enter into an LLP. If the powers are not obtained then the development opportunities will be taken forward as companies limited by shares.

JV governance arrangements

- (n) Under the terms of the shareholders agreement, the JV will maintain a JV Board for the duration of the agreement.
- (o) The number of directors to be appointed by TfL to the JV Board will be confirmed at the point in time when TfL confirms what shareholding percentage it wishes to take in the JV, save that TfL has reserved the right to require equality of representation should it hold over 40 per cent (but less than 50 per cent) of the shares in the JV. Voting will be by majority at board level but where the board is deadlocked there are deadlock resolution procedures for the parties to follow.
- (p) The JV Board will meet regularly, likely to be at least quarterly.
- (q) Depending on the scale of the opportunity, an executive committee will be formed which is likely to meet more regularly and oversee the BDM.
- (r) Where either TfL or its partner has a conflict of interest, their respective board appointees will be conflicted out at board and, if applicable, executive committee level.

Transparency

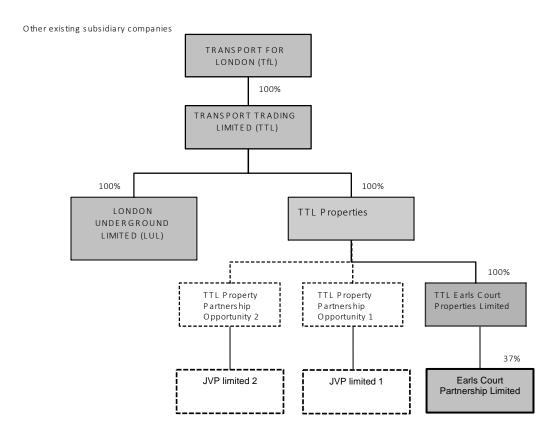
(s) TfL will have access to information from the JV (and BDM) to enable it to prepare a status and progress report on the JV that TfL will then publish.

6 New companies and corporate structure

- 6.1 It is proposed that TfL utilises the company holding structure previously approved by the Board and established for the Earls Court joint venture. It is therefore proposed to establish new companies with the intention that they are delivered under the Framework. Flexibility is required because as analysis of the development opportunities are undertaken it may become apparent that development under the Framework may not offer best value in all instances and at all times, but there could be advantages in establishing corporate vehicles in advance for the reason set out in paragraph 7.2 below.
- 6.2 With regard to the JVs formed as part of the Framework, a wholly owned subsidiary of TTL Properties Limited (JVP Limited) will need to be formed if the land is to be transferred in advance of the establishment of any JV under this Framework, with shares in that company being held by another wholly owned subsidiary of TTL Properties Limited (Holdco). Where this occurs, the selected Framework Supplier will purchase shares in JVP Limited. JVP Limited will then become the JV vehicle. Where land has not been transferred in advance of the establishment of the JV, a new JV vehicle would be established by the parties into which TfL's land interest will transfer. The

framework documents provide for various combinations of these arrangements to allow flexibility to reflect the particular circumstances of the development opportunities. Therefore it may be necessary for two companies to be established as TfL subsidiaries for each JV development opportunity. Diagram 1 shows how the new property partnership JV companies would fit in the existing TfL group structure.

Diagram 1 – company structure.



6.3 It is recognised that the Commercial Development team and the functions that support it such as legal, finance, operational and procurement will need to increase in order to manage the work envisaged by the Framework. This process has commenced with the property development team increasing from five surveyors at the commencement of 2015 to a team of 11 senior development professionals including a new Director of Development. It is envisaged the overall team will number 29 by the end of 2016. Commercial Development is currently working with other departments to ensure their resource is being increased to meet the needs of the new team.

7 Tax

7.1 Transfers of land are subject to Stamp Duty Land Tax (SDLT) at 4 per cent. However, if a TfL company transfers a property to a 100 per cent owned new TfL subsidiary, SDLT Group Relief will be available, meaning that no SDLT liability will arise on the transfer. If the new TfL subsidiary remains in the TfL Group for a minimum of three years from the date of the transfer, no SDLT liability will arise in respect of the earlier property transfer.

- 7.2 Based on the current TfL Business Plan, a number of sites will not satisfy the three year ownership period requirement. In these cases, if the new TfL subsidiary leaves the TfL Group within three years of the transfer there will be a claw back of the SDLT Group Relief. The SDLT payable will be the SDLT that would have been payable at the date of the intra group transfer i.e. based on the market value at that date. On the assumption that the intra group transfer takes place pre-planning permission and the JV is entered into post-planning permission, this would still represent a tax saving as the SDLT would be chargeable on a lower market value.
- 7.3 Transfers of shares in companies are subject to stamp duty at 0.5 per cent, payable by the purchaser of the shares.
- 7.4 Further detail of other relevant tax issues is provided in the paper on Part 2 of the agenda.

8 Strategy for Investment Decisions

- 8.1 Each development opportunity will be evaluated utilising independent property and financial advisors prior to being taken through the Framework to ensure that best value will be achieved by using the Framework and to ensure compliance with the state aid rules.
- 8.2 If a development opportunity is to be developed through the Framework, key decisions will be required before a mini competition can be launched. These will include the shareholding in the JV to be retained by TfL and whether value added through the planning process will be shared with TfL's partner as a performance incentive.
- 8.3 In considering which development opportunities should be the subject of a JV and the details of the JV, TfL will consider:
 - (a) the value of the development opportunity and scale of potential development;
 - (b) the growth potential for the development opportunity;
 - (c) the risk and level of developer profit the market is expected to require on the development opportunity;
 - (d) the balance of risk and exposures across the TfL's property portfolio; and;
 - (e) the scale of the capital requirement to develop the development opportunity.
- 8.4 Disposal and investment decisions will be taken in accordance with the authority levels set out in TfL's Standing Orders, in consultation with the Commercial Development Advisory Group (CDAG).

9 Due Diligence

9.1 Due diligence has been undertaken on all the potential Framework Suppliers and they have been assessed to test technical capability, financial standing and whether they can commercially offer best value for TfL when development opportunities are offered via mini competition to the Framework. Deloitte and TfL have, in addition, undertaken due diligence on the Framework Suppliers to establish whether any of them or their current directors have been involved in any criminal activity or fraud. All of these will be re-tested at the mini competition stage. A commentary on each of the bidders is included in the paper on Part 2 of the agenda.

10 Commercial Development Advisory Group

10.1 The CDAG has been engaged and updated throughout the process in the procurement of the framework partners. Input has been offered from the members of the CDAG to refine TfL's commercial position and their views have been reflected in the contractual documentation. Future mini competitions and the strategy for each site will be subject to a CDAG oversight.

11 Views of the Finance and Policy Committee

11.1 On 21 January 2016, the Finance and Policy Committee considered a similar paper. The Committee raised no specific issues for the attention of the Board and endorsed the recommendations in this paper.

List of appendices to this report:

Appendix 1: Summary of the Framework Agreements

Exempt supplemental information is contained in a paper on Part 2 of the agenda.

List of Background Papers:

None

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TRANSPORT FOR LONDON PROPERTY PARTNERSHIPS

LEGAL AND FINANCIAL STRUCTURE: SUMMARY OF MAIN TERMS

1. INTRODUCTION

TfL has undertaken a procurement to establish a series of framework agreements with suppliers in order for the suppliers to provide development management services and enter into joint ventures with TfL. This document is a high level summary of the terms of the framework and the Call-Off Contracts set out at paragraph 2.22.

2. STATUS OF THE FRAMEWORK AGREEMENT AND LEGAL DOCUMENTATION

- 2.1 The Call-Off Contracts referred to in paragraph 2.22 were issued to bidders as part of the Invitation to Submit Final Tenders ("ISFT"). All bidders who are now recommended to be taken forward as suppliers to the framework ("Suppliers") have accepted the Call-Off Contracts in the form presented to them with the ISFT.
- 2.2 Each Supplier will enter into a Framework Agreement with Transport for London ("TfL"). The Framework Agreement, amongst other things, sets out the process that TfL will follow in order to enter into the Call-Off Contracts following a Mini-Competition. A summary of the Framework Agreement is below.

FRAMEWORK AGREEMENT

- 2.3 The Supplier entities who were financially and technically tested as part of the procurement will be required to enter into the Framework Agreement, as well as the Supplier entities proposed to enter into the agreement in relation to the roles of joint venture partner and business & development manager (it being accepted, however, that on a call-off by call-off basis individual special purpose vehicles are likely to take these roles). Each Supplier's Framework Agreement will be on substantially the same terms as the other Suppliers' Framework Agreements.
- The Framework Agreement is drafted such that each Supplier will have a lead Supplier entity who will be responsible for complying with certain obligations (i.e. will lead on any mini competition proposals in terms of receipt and submission of information) (see clause 4) under the Framework Agreement and a "Relevant Supplier" which is the Supplier entity who will enter into the relevant Call-Off Contract (the "Relevant Supplier"). Not all Relevant Suppliers will be established at the point of entering into the Framework Agreement as it is most likely that Suppliers will establish special purpose vehicles to enter into individual Call-Off Contracts. Obligations on those Relevant Suppliers, therefore, will be governed by the Call-Off Contracts themselves.
- 2.5 Any GLA group member who signs an access agreement and joining agreement may also call-off under the Framework Agreement. If a member of the GLA Group joins a Framework Agreement, it is not doing so in place of TfL but rather as an additional party to it.

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Operative Provisions

- 2.6 There is no minimum guarantee of work to any Supplier and the services to be delivered under the Framework Agreement are non-exclusive. TfL has provided an indicative list of sites.
- 2.7 The Framework Agreement does not permit call-off by way of direct selection but does permit call-off by way of mini-competition. The process for mini-competition includes:
 - 2.7.1 the ability for TfL to issue either an expression of interest (optional stage) or an invitation to tender to all suppliers on the framework that TfL assesses in its sole discretion as being capable of entering into the Call-Off Contract;
 - if an expression of interest stage is used, Suppliers who confirm in the expression of interest that they wish to tender will either be required to respond to a sifting brief (also an optional stage and if used is expected to be issued as part of the expression of interest or as a second subsequent stage) or TfL will issue an invitation to tender. The sifting brief stage requires a series of confirmations from the supplier that it can meet the pass/fail requirements set (ability to meet the prescribed level of Security Package, agrees to the terms of the Call Offs and has no constitutional changes). This will allow TfL to deselect any Supplier who does not pass all the requirements. If TfL does not use a sifting brief, it will issue the invitation to tender to all Suppliers who have responded to the expression of interest;
 - 2.7.3 Suppliers' tenders must be valid for at least 90 business days from the date the tender is submitted and must only be submitted where the Suppliers have obtained their relevant approvals (including any approvals listed entities need to solicit from their shareholders); and
 - 2.7.4 TfL intends to award the Call-Off Contract to the tender which offers the most economically advantageous tender assessed by reference to the evaluation/award criteria applied during the framework procurement so far.
- 2.8 The term of the Framework Agreement is 10 years from the date of commencement. The length of the individual Call-Off Contracts will need to be considered on a case by case basis and be outlined at mini competition but is unlikely to extend beyond 15 years.
- 2.9 The Relevant Supplier will be required to provide a parent company guarantee in accordance with the terms of the Call-Off Contracts. Suppliers are to provide certain warranties under the Framework Agreement around their capacity and authority to enter into the Framework Agreement and capacity to enter into the Call-Off Contracts in the form attached to the framework agreement.
- 2.10 The Framework Agreement includes an express prohibition on the Relevant Supplier from assigning or sub-contracting any part of the services other than in circumstances detailed in the Call-Off Contracts. Where the Relevant Supplier is entitled to sub-contract any part of the services it shall ensure that the sub-contractor is obliged to comply with all of the obligations and duties of the Relevant Supplier under the relevant Call-Off Contract. The main services to be performed are under the Business & Development Management Agreement and any assignment/sub-contract of the services under that agreement requires the consent of the "employer.
- 2.11 Any change of control of the Supplier is subject to TfL's consent (save where the change of control is in respect of a listed entity).

- 2.12 The Supplier must check for conflicts of interest at regular intervals through the Framework Agreement and in any event not less than every six months. Where the Supplier does identify a conflict or potential conflict of interest it is required to notify TfL in writing immediately and work with TfL to manage the conflict. Where the conflict of interest relates to a Call-Off Contract and cannot be remedied, TfL is entitled to suspend the Supplier from the Framework Agreement so that it is not invited to participate in mini-competitions or enter into any Call-Off Contract until the conflict of interest is remedied to TfL's satisfaction. Where there conflict of interest remains unremedied then TfL is entitled to terminate the Framework Agreement with that Supplier. Conflicts of interest capture direct or indirect financial, economic or other personal interests of any individual employed by or engaged by the relevant Supplier which might be perceived to compromise the impartiality or independence of the Supplier and are intended to capture individual professional conflicts rather than corporate conflicts and land interests. The protections required relating to land interests and ensuing that a selected Supplier does not act in a manner which adversely affects a development to which it is appointed as the partner are included in the relevant Call-Off Contracts.
- 2.13 TfL is entitled to set off any liability of the Supplier to TfL to any liability of TfL to the Supplier.
- 2.14 Each Supplier acknowledges TfL's and the joint venture's ownership of intellectual property rights in TfL's and/or the joint venture's data. Subject to the terms of the Call-Off Contracts, intellectual property rights owned by the Supplier in performing the services remain with the Supplier but TfL has a licence to use the relevant materials for all purposes connected with the relevant Call-Off Contract/services.
- 2.15 The Framework Agreement includes TfL's standard provisions relating to freedom of information and transparency.
- 2.16 The dispute resolution provisions include a requirement for both TfL and the Supplier to use reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Framework Agreement before resorting to litigation.
- 2.17 Grounds for immediate termination of the Framework Agreement include:
 - 2.17.1 where the Supplier has committed any material or persistent breach of its obligations under the framework agreement, or which due to persistency becomes material, and fails to remedy the breach within the reasonable timescale specified by TfL;
 - 2.17.2 where the Supplier suffers an insolvency event;
 - 2.17.3 where the Relevant Supplier has committed any material or persistent breach of a Call-Off Contract, or which due to persistency becomes material, and fails to remedy the breach within the reasonable timescale specified by TfL;
 - 2.17.4 where a conflict of interest has not been remedied (suspension leading to termination);
 - 2.17.5 where the Supplier or its holding company undergoes a change in ownership which TfL has not consented to (save for where such change of control is in relation to a change in the legal or beneficial ownership of any shares in a company that is listed on a recognised investment exchange). The change of control provisions will be specific to each Supplier depending on their constitutional make-up and ownership; or

- 2.17.6 where the Supplier fails to meet the minimum standards of financial standing set out in the PQQ during the term of the Framework.
- 2.18 As part of any mini-competition, TfL will be asking Suppliers to confirm that there have been no changes to the information provided at PQQ stage. If there are any issues in relation to the exclusion grounds under the procurement regulations (such that a Supplier would not have been eligible to tender for the framework), the Framework Agreement provides for the following:
 - 2.18.1 a right to terminate a Supplier from the framework where it commits one of the offences listed in the procurement regulations;
 - 2.18.2 a right to terminate a Supplier from the framework where it falls within one or more of the grounds listed in the procurement regulations which cover matters such as committing acts of grave misconduct in the course of their business, and either the relevant grounds cannot be remedied or they can be remedied but the Supplier has failed to do so.
- 2.19 Where discretionary grounds can be remedied, the Framework provides for suspension. A failure to remedy in the time specified then leading to the right to terminate as per paragraph 2.18.2 above.
- 2.20 As an alternative to termination whether mandatory exclusion or discretionary exclusion grounds are present TfL can decide to suspend a Supplier from the framework for a specified period. TfL will set the period (and this links to the gravity/circumstances in question) but the Framework Agreement provides that this cannot exceed 5 years (for mandatory exclusion grounds) or 3 years (for discretionary exclusion grounds).
- 2.21 TfL may novate or transfer the Framework Agreement in whole or in part to any GLA Group member.

Call-Off Contracts

- 2.22 The "Call-Off Contracts" include the following standardised agreements which are annexed to the Framework Agreement:
 - 2.22.1 A Conditional Joint Venture Agreement (see paragraph 5);
 - 2.22.2 A Business & Development Management Agreement (see paragraph 7);
 - 2.22.3 A Shareholders' Agreement (see paragraph 8);
 - 2.22.4 A Works Agreement (see Schedule 3);
 - 2.22.5 a Site Transfer Principles Document (see Schedule 3); and
 - 2.22.6 Planning and Sales Overage Heads of Terms (see Schedule 3).
- The purpose of each Call-Off Contract is summarised within this document. The Call-Off Contracts will be entered into with Suppliers following a Mini-Competition for the particular Site. They will regulate how the selected Supplier for that Site and TfL will work together in joint venture to progress the development of the Site. Prior to forming a corporate joint venture arrangement, there will be a conditional period (regulated by the Conditional Joint Venture Agreement). During that period, the Supplier will provide the required business & development management services to benefit the

contractual joint venture between TfL and the Supplier. Once certain conditions are satisfied in respect of the development of the relevant Site, TfL and its selected Supplier will form a corporate joint venture (regulated by the Shareholders' Agreement). The principles underpinning the transfer of the Site from TfL to the joint venture are set out in this summary. The Works Agreement will regulate the initial development works undertaken by the joint venture.

3. PURPOSE OF THE PROPERTY PARTNERSHIPS & SITES

- 3.1 TfL intends to make a number of sites available through the Framework (each a "Site"). TfL's objective is to obtain best value from the Sites.
- 3.2 As part of the call-off procedure under the Framework Agreement, Suppliers will be invited to present their detailed scheme proposals, including suggested enhancements to the relevant Site and how those enhancements add value to TfL.

4. CONDITIONS TO BE SATISFIED

4.1 Prior to any joint venture vehicle ("JV" or "Joint Venture Vehicle") being established as between TfL and the successful Supplier (the "JVP") the following conditions (the "JV Conditions") will need to have been satisfied in relation to the relevant Site.

4.1.1 Planning Condition

Securing a Planning Consent for the relevant Site in respect of which the challenge period has expired without planning proceedings having been brought or any such proceedings having been successfully disposed of. The Planning Condition is subject to automatic extension to work through challenge periods/deal with appeals etc and can be mutually waived by TfL's landowning entity (usually London Underground Limited), TfL and the JVP.

4.1.2 Site Assembly

The acquisition (including entry into legally binding agreements for such acquisition) by TfL's landowning entity of any freehold and leasehold land interests and the acquisition, release or extinguishment of encumbrances which are, in the opinion of TfL, required for the development of the relevant Site and TfL's landowning entity and the JVP delivering vacant possession of the Site. The Site Assembly Condition may not apply to every Site. The Site Assembly Condition can be mutually waived by TfL's landowning entity, TfL and the JVP.

4.1.3 Site Value Condition

See paragraph 6. The Site Value Condition cannot be waived. It is envisaged that the Site Value Condition will be satisfied within three months following the grant of Planning Consent for the development.

- 4.2 The "Unconditional Date" shall be the date upon which all the JV Conditions have been satisfied. The JVP will:
 - 4.2.1 subscribe for its equity in the JV (where the JV is to be a newly formed entity); or

4.2.2 where TfL has already established the JV as a wholly owned subsidiary and requires that that entity become the JV, acquire shares in the JV

no later than 10 business days following the Unconditional Date. TfL will set its equity stake at the relevant Mini-Competition stage and that will also set the JVP's equity stake. Those equity percentages will not change during the Conditional Period.

- 4.3 Prior to the Unconditional Date there will be a conditional period which will govern how TfL and the JVP will interact up to the point (the "Conditional Period"). This will require TfL and the JVP to enter into a Conditional Joint Venture Agreement, the terms of which are summarised in paragraph 5.
- 5. CONDITIONAL PERIOD: CONDITIONAL JOINT VENTURE AGREEMENT ("CJVA")

Summary of the CJVA

The CJVA regulates the relationship between the relevant parties during the Conditional Period. During the Conditional Period a corporate JV has not been established but the parties are to act collaboratively and in good faith to seek to satisfy the JV Conditions. The CJVA also regulates how costs incurred in the Conditional Period are to be shared between TfL and the JVP.

During the Conditional Period the employer of the Business & Development Manager is likely to be TfL but the costs and any fee payable to the Business & Development Manager will be shared by TfL and the JVP in accordance with the CJVA. Once the JV Conditions are satisfied and the JV is formed, the JV will be the employer of the Business & Development Manager.

5.1 Parties

- 5.1.1 TfL (or relevant group member(s))
- 5.1.2 The TfL landowner, if required (see paragraph 5.2.1)
- 5.1.3 The JVP (or relevant group members)
- 5.1.4 The Business & Development Manager
- 5.1.5 Relevant guarantors (of TfL, the JVP and the Business & Development Manager)

TfL will confirm to Suppliers at Mini-Competition stage which entity will enter into the CJVA.

See paragraph 9 in relation to guarantees.

5.2 Main Terms

Primary Purpose

The Primary Purpose shall be enshrined in the CJVA.

CJVA Completion Events

The CJVA will not be assignable by any party without the reasonable consent of the other parties, and will:

- Require TfL's landowning entity (the "Landowner") to enter into an option agreement pursuant to which the relevant Site will be capable of draw down (the "Option Agreement"). In the event that the Landowner has determined to transfer the Site early into a group vehicle prior to establishment of the JV (with that entity then becoming the JV) the Option Agreement will not be required and the Landowner will not be a party to the CJVA. Where an Option Agreement is required the following principles will apply:
 - the Option Agreement will be entered into between the Landowner and the TfL entity which enters into the CJVA, with the latter being required to direct the Landowner to transfer the relevant Site to the JV, once established, for the Site Value (see paragraph 6); and
 - 5.2.1.2 the option will only be capable of exercise on or after the Unconditional Date.
- 5.2.2 Require the Business & Development Manager (and any relevant guarantor) to enter into the Business & Development Management Agreement with TfL (or relevant group member) to cover the Conditional Period. See paragraph 7 in relation to the Business & Development Management Agreement.

Business Plan

The business plan which the JVP submitted through Mini-Competition (the "Business Plan") will be annexed to the CJVA and will form the basis upon which all activities during the Conditional Period are undertaken.

Project Board

- During the Conditional Period TfL and the JVP will establish a "**Project Board**" which shall act within the parameters of seeking to achieve the Primary Purpose and be responsible for the day to day management of the relevant project (including the management of the Business & Development Manager during the Conditional Period). The Project Board will be established on the following principles:
 - 5.4.1 TfL and the JVP are to procure that the Project Board acts within the parameters of seeking to achieve the Primary Purpose;
 - 5.4.2 both TfL and the JVP will have equal representation on the Project Board;
 - 5.4.3 the Project Board will meet at least monthly and any meeting will require the attendance of a TfL appointee and JVP appointee in order to be guorate;
 - decisions of the Project Board will require the unanimous consent of TfL and the JVP and in the event of a deadlock arising the matter will be referred to senior officers for determination and then potentially to an expert (save for disagreements regarding Business Plan variations which shall not be referable to an expert). If a matter is not referred to an expert and the senior officers cannot agree then the status quo is maintained;
 - the Project Board will be authorised to take all operational decisions relating to the Project and at all times in order to achieve the Primary Purpose and in accordance with the Business Plan, including, without prejudice to the generality of the foregoing:

- 5.4.5.1 reviewing and approving any updates and amendments to the Business Plan from time to time as required subject always to any material variation (by reference to a percentage variation on projected returns) requiring the approval of TfL and the JVP;
- 5.4.5.2 procuring that the Business & Development Manager updates the Business Plan as and when required by the Project Board during the Conditional Period; and
- 5.4.5.3 approving the costs to be incurred in the Conditional Period.
- 5.4.6 Pursuant to the Business & Development Management Agreement, the Business & Development Manager shall report to the Project Board during the Conditional Period on the terms set out in the Business & Development Management Agreement. TfL (or a subsidiary undertaking of TfL) will be the employer of the Business & Development Manager pursuant to the Business & Development Management and will agree not to take (and to procure that any relevant subsidiary undertaking shall not take) any action under or pursuant to the Business & Development Management Agreement unless such action or activity has the prior approval of the Project Board. The approval of the Project Board is not required where TfL (or relevant subsidiary undertaking) wishes to take any action for breach or alleged breach of the Business & Development Management Agreement.

Events following the Unconditional Date

- 5.5 On or after the Unconditional Date, the JV will be formed as follows:
 - 5.5.1 If the Landowner has transferred the relevant Site early to a wholly owned TfL entity, that entity may become the JV (as TfL may still require a new entity to be established for taxation reasons). If that entity is to become the JV then:
 - 5.5.1.1 the JVP will acquire shares in that vehicle from TfL for its relevant proportion of the Site Value less any Gain share (see paragraph 6.4) and in such circumstances there is no payment to the landowner:
 - 5.5.1.2 TfL and the JVP (and any relevant guarantors) will enter into the Shareholders' Agreement;
 - the JV entity will already have the benefit of owning the relevant Site and being the employer under the Business & Development Management Agreement and, as such, no novation of the Business & Development Management Agreement will be required (although novation to the JV entity of other agreements entered into by the Business & Development Manager may be required); and
 - 5.5.1.4 TfL will provide appropriate warranties to the JVP in relation to the business of the JV entity (covering the period when it is a wholly owned TfL entity).
 - 5.5.2 If the Landowner has not transferred the relevant Site early to a wholly owned TfL entity or where TfL requires that the JV is a newly formed entity, then:

- 5.5.2.1 TfL and the JVP will form a new vehicle as the JV with them being the first subscribers for shares in the JV in accordance with their agreed percentages and by reference to the Site Value less any Gain share (see paragraph 6.4) and the JV will then pay the Site Value (less any relevant Gain Share attributable to the Joint Venture Vehicle) to the landowner;
- 5.5.2.2 TfL and the JVP (and any relevant guarantors) will enter into the Shareholders' Agreement;
- 5.5.2.3 the Business & Development Management Agreement and any other related contracts and/or appointments entered into by the Business & Development Manager will be novated to the JV; and
- the Landowner will be directed to transfer the relevant Site to the JV for the Site Value (less any gain share) (see paragraph 6) pursuant to the Option Agreement.
- 5.5.3 In circumstances where the entity which will become the JV has not been incorporated prior to the date of the CJVA but where TfL proposes to incorporate it prior to the Unconditional Date, TfL shall consult with the JVP as to the most appropriate legal form for the Joint Venture Vehicle provided always that TfL shall be entitled to incorporate the Joint Venture Vehicle in whatever legal form it so determines prior to the Unconditional Date (subject always to TfL acting both reasonably and within its powers).

Termination

- 5.5.4 The CJVA will be capable of termination by TfL or the JVP (as applicable) where:
 - 5.5.4.1 the JV Conditions are not satisfied by the condition target date which is subject to extension in limited circumstances to the condition long stop date (see paragraph 5.5.6);
 - 5.5.4.2 a party is in material (or persistent) breach of the CJVA;
 - 5.5.4.3 TfL or the JVP (and/or their respective guarantors) becomes insolvent and, in the case of an insolvency of a guarantor, does not put in place an alternative guarantee (acceptable to the other party, acting reasonably) within a certain time period;
 - the JVP or its guarantor, where applicable, fails to comply with any of its obligations in paragraph 9;
 - 5.5.4.2 if the Business & Development Management Agreement is terminated in accordance with its terms;
 - there is a change of control of the JVP, except where it has first obtained the prior written consent of TfL (save where such change of control is in relation to a listed entity on both the London Stock Exchange or the Alternative Investment Market); or
 - 5.5.4.4 where the JV arrangements are put in place following satisfaction or waiver of the JV Conditions.

Termination provisions which apply equally to TfL (e.g. where it or a guarantor of the TfL contracting entity becomes insolvent) have been agreed to ensure balance and reciprocity due to the underlying joint venture principles underpinning TfL's and the JVP's relationship.

- 5.5.5 The CJVA will automatically terminate on the occurrence of any one of the following events:
 - 5.5.5.1 the formation of the JV in accordance with the principles set out in the CJVA; or
 - 5.5.5.2 all parties agreeing in writing to a termination of the CJVA;
- 5.5.6 The condition target date will vary for each Site. It will be capable of extension subject to an ultimate long stop date (the condition long stop date). Suppliers will be invited to set out in their responses to the relevant Mini-Competition their suggested condition target date and condition long stop date. Alternatively, TfL may specify at the relevant Mini-Competition stage the condition target date and the condition longstop date. Subject to approval by TfL in its absolute discretion, the condition target date and condition long stop date set out by the successful Supplier/TfL (as applicable) will become the condition target date and condition long stop date for the purposes of the CJVA (unless otherwise extended by TfL in its absolute discretion).

Conditional Period Costs and Conditional Period Fee

- 5.5.7 The costs incurred during the Conditional Period will be incurred by the Business & Development Manager in seeking to satisfy the JV Conditions. The employer (being TfL in the Conditional Period) (the "Employer") will be required to reimburse the Business & Development Manager the Conditional Period Costs (as defined in paragraph 7.2.2) monthly in arrears. If so determined by TfL at Mini-Competition Stage, the Employer may also be required to pay a fee during the Conditional Period ("Conditional Period Fee") under the Business & Development Management Agreement.
- 5.5.8 TfL and the JVP shall provide funding to the Employer necessary for it to pay to the Business & Development Manager the Conditional Period Costs and any Conditional Period Fee in accordance with the Business & Development Management Agreement. This will be in one of two ways, determined by TfL at Mini-Competition stage.
- 5.5.9 The first option is that TfL funds its proportion of the Conditional Period Costs and any Conditional Period Fee as they fall due as follows.
 - 5.5.9.1 Upon receipt by the Employer of an application for Conditional Period Costs and any Conditional Period Fee the Employer shall provide a copy to the Project Board TfL (if not the Employer) and the JVP.
 - 5.5.9.2 Within 10 Business Days of receipt:
 - (a) TfL pays to the BDM Employer its relevant percentage; and
 - (b) the JVP pays to the Employer its relevant percentage

of the sum to be paid under the Business & Development Management Agreement by the Employer to the Business & Development Manager, in respect of that Conditional Period Application. For this purpose, each party's percentage will be 50% unless TfL's equity share is greater than 50% in which case each party's relevant percentage will be equivalent to its equity share.

- 5.5.9.3 The Employer shall not be obliged to pay the Business & Development Manager that proportion of any Conditional Period Costs or Conditional Period Fee which the JVP is to pay unless and until the JVP has paid such sum to the Employer.
- 5.5.9.4 If the Unconditional Date is not achieved by the end of the Conditional Period by reason of a matter which is a breach by the JVP, the Business & Development Manager or either of their guarantors the JVP will reimburse to TfL the Conditional Period Costs and any Conditional Period Fee paid by TfL to the Employer.
- 5.5.9.5 If the Unconditional Date is not achieved by the end of the Conditional Period by reason of:
- (a) a breach or default by TfL;
- (b) a termination of the CJVA by TfL by reason of an operational reason other than a Forced Operational Reason

TfL will reimburse to the JVP the Conditional Period Costs and any Conditional Period Fee that the JVP has paid.

- 5.5.10 A Forced Operational Reason is an operational reason which has arisen by reason of a change in circumstance after the date of the CJVA and which has arisen as a result of a decision which TfL or Landowner has been required to take to comply with any law or recommendation of any statutory body (including without limitation the Health and Safety Executive and the Office of Rail and Road) or to fulfil any statutory obligation to which TfL is subject.
- 5.5.11 The second option is that the JVP funds the Conditional Period Costs and any Conditional Period Fee as follows.
 - 5.5.11.1 Upon receipt by the Employer of an application for Conditional Period Costs and any Conditional Period Fee the Employer shall provide a copy to the Project Board TfL (if not the Employer) and the JVP.
 - 5.5.11.2 Within 10 Business Days of receipt the JVP shall pay to the Employer 100% of the sum to be paid under the Business & Development Management Agreement by the Employer to the Business & Development Manager.
 - 5.5.11.3 It is agreed that the Employer shall not be obliged to pay the Business & Development Manager any Conditional Period Costs or any Conditional Period Fee which the JVP is to pay the Employer unless and until the JVP has paid such sum.

- 5.5.11.4 If the Unconditional Date is not achieved by the end of the Conditional Period:
- (a) and there has been no default or breach on the part of any party (including termination by TfL for a Forced Operational Reason) TfL will reimburse to the JVP its relevant percentage of the Conditional Period Costs and any Conditional Period Fee paid by the JVP to the Employer;
- (b) by reason of a default or breach by TfL, TfL will reimburse to the JVP 100% of the Conditional Period Costs and any Conditional Period Fee paid by the JVP to the Employer;
- (c) because this Agreement has been terminated by TfL for an operational reason other than a Forced Operational Reason TfL will reimburse to the JVP 100% of the Conditional Period Costs and any Conditional Period Fee paid by the JVP to the Employer; or
- (d) by reason of a matter which is a breach by the JVP the Business & Development Manager or either of their guarantors TfL will not be required to reimburse to the JVP any amount in respect of the Conditional Period Costs or any Conditional Period Fee.
- 5.5.11.5 If the Unconditional Date is achieved TfL will reimburse to the JVP its relevant percentage of the Conditional Period Costs and any Conditional Period Fee paid by the JVP to the Employer.

Dealings of the Parties during the Conditional Period

- 5.5.12 During the Conditional Period the following provisions apply:
 - 5.5.12.1 Each party shall not and shall procure that no member of its Group shall, during the term of the CJVA, and thereafter, until the expiry of five (5) calendar years intentionally do anything to bring the standing of the other parties into disrepute or to attract adverse publicity for the other parties provided that:
 - (a) this shall only relate to acts and activities which are related to the development of the relevant Site; and
 - (b) this shall not preclude any party from pursuing any rights of action it may have against another party which may lead to Court or other proceedings.

6. SITE VALUATION & SCHEME CHANGES

- 6.1 The Site will be valued with the benefit of the relevant Planning Consent (following satisfaction of all the other JV Conditions) (the "Site Value") which is to be sought so as to achieve the Primary Purpose (and, therefore, assists TfL in meeting its best value objectives).
- 6.2 The Site Value will be as agreed between the Landowner and the JVP or, failing agreement, shall be the higher of the Market Value (as agreed or determined by an independent valuer) and the Guaranteed Minimum Land Value. "Market Value" means the market value that a third party purchaser would be willing to pay for the Site in the open market assuming a willing seller and a willing purchaser and

disregarding any purchaser with a special interest in each case as included in the edition of RICS Valuation Standards that is current at the time that the value is agreed or the independent valuer is assessing the Site Value.

- 6.3 The independent valuer referred to in paragraph 6.2 shall make its own assessment of all other factors required to calculate the Market Value based on the current market value as at the time that the independent valuer is assessing the Site Value, including the price a prospective developer would bid in the open market to acquire the relevant Site. The valuer will also be given a set of valuation instructions in a form prepared by TfL to guide the calculation of the Market Value.
- The Site Value (less any gain share) will capture the value of the relevant Site when the joint venture begins. At Mini-Competition stage TfL will elect whether and to what extent to allow the Supplier to share in any uplift in value between the Residual Land Value bid by the successful supplier at Mini-Competition and the Site Value (the "Gain").
- The Site Value (less any share of the Gain where the Joint Venture Vehicle shares in the Gain) will be payable as noted at paragraphs 5.5.2.1 and 5.5.2.4.
- 6.6 TfL may also require the Joint Venture Vehicle to enter into a Sales and Planning Overage Agreement with the Landowner under which TfL will take a share of any further uplift in value of the Site obtained from the grant of any further planning permission in respect of the Site before the development is commenced or the site is disposed of and will also take a share of any sales overage calculated either on a gross development value or net profit basis as determined by TfL at Mini-Competition stage. See Schedule 2 which sets out the planning and sales overage principles.
- 6.7 Following selection of the JVP the delivery of the relevant scheme development (the "**Project**") may be subject to change in accordance with the following parameters:

6.7.1 Square footage of development

The parameters for agreed change will specify what range of increase/decrease of square footage of development will be permissible in relation to the particular Site.

6.7.2 Changes in use

The parameters for permissible changes will specify the range of potential uses for the particular Site.

6.7.3 Changes in unit mix

The parameters for permissible changes will specify potential mixes and ranges of uses for the Site by reference to the overarching potential site uses.

6.7.4 Changes in phasing approach/strategy

The parameters for permissible changes will specify any changes to phasing approach/strategy that TfL will consider.

6.7.5 <u>Changes in delivery programme</u>

The parameters for permissible changes will specify any changes to the development delivery timetable that TfL will consider.

6.7.6 Changes in scheme design

The parameters for permissible changes will specify any changes to the design of the development works that TfL will consider.

- The presumption is that any such changes will only be made by the JVP and TfL during the Conditional Period or by the JV (once established) so as to achieve the Primary Purpose and, therefore, to maximise the value of the end development.
- 6.9 Any such changes shall be reflected in an updated Business Plan to be adopted during the Conditional Period by TfL and the JVP and, once the JV is established, by the JV.
- 6.10 Any changes to the Project will require TfL's consent where any such changes may amount to a material change for the purposes of the public procurement regulations and law. TfL will assess whether such changes amount to a "material change" for the purposes of the public procurement regulations at the relevant time.

7. BUSINESS AND DEVELOPMENT MANAGEMENT AGREEMENT ("BDMA")

Summary of BDMA

Under the BDMA, the Business & Development Manager is engaged to provide the business and development management services required to deliver the development to its employer and, during the Conditional Period, to procure the appropriate third parties, such as architects and quantity surveyors, in order to satisfy the JV Conditions. During the Conditional Period the employer of the Business & Development Manager is likely to be TfL but the costs and any fee payable to the Business & Development Manager will be shared by TfL and the JVP in accordance with the CJVA. Once the JV Conditions are satisfied and the JV is formed, the JV will be the employer of the Business & Development Manager.

7.1 Parties

- 7.1.1 The BDMA will be entered into between:
 - 7.1.1.1 TfL (or its relevant site specific vehicle) or the JV (see paragraph 7.1.2) (as "Employer")
 - 7.1.1.2 The Business & Development Manager
 - 7.1.1.3 Any relevant guarantor in relation to the Business & Development Manager's obligations under the BDMA.
- 7.1.2 For the Conditional Period (prior to establishment of the relevant JV) the Employer will be TfL (or its relevant Site specific vehicle). On JV formation, the BDMA will be novated to the relevant JV. If the JV is established prior to the BDMA being entered into, then the JV will be the Employer.

7.2 **Fee**

7.2.1 The fee payable to the Business & Development Manager will be a percentage of development costs, subject (where requested) to a cap bid during the Mini-Competition. The range of costs that constitute development costs is specified in the BDMA as developed and approved by TfL's external commercial adviser.

- 7.2.2 Prior to the relevant JV having been established, at Mini-Competition stage TfL will decide whether or not during the Conditional Period the Business & Development Manager shall be entitled to payment of any fee. If it is then the percentage fee as referred to at paragraph 7.2.4, will be paid on the costs payable to any third party (and/or, where tendered at Mini-Competition stage on a value for money basis, in-house costs incurred) by the Business & Development Manager in performing its obligations during the Conditional Period ("Conditional Period Costs"). The Business & Development Manager shall in any event be reimbursed the Conditional Period Costs.
- 7.2.3 The Business & Development Manager's entitlement to payment of Conditional Period Costs is subject to:
 - 7.2.3.1 them being reasonable and proper and incurred in accordance with the Business Plan;
 - 7.2.3.2 the Employer's right of audit of the Conditional Period Costs;
 - 7.2.3.3 them being within the authority and financial thresholds set out in the BDMA;
 - 7.2.3.4 the provision of evidence satisfactory to the Employer (acting reasonably) as to the incurrence of the Conditional Period Costs (and where incurred in-house by the Manager that they have delivered value for money).
- 7.2.4 Once the JV has been formed, the JV will be responsible for payment of development costs (incurred after the Conditional Period) and the Business & Development Manager shall be entitled to a percentage fee (tendered at Mini-Competition stage within a range tendered during the Framework procurement) on those development costs (including (to the extent no fee has been paid on them during the Conditional Period) all Conditional Period Costs incurred during the Conditional Period).

7.3 Contracts during the Conditional Period

- 7.3.1 During the Conditional Period the Business & Development Manager will work to satisfy the JV Conditions and will enter into all necessary contracts with consultants and/or contractors on terms approved by the Employer (usually TfL during the conditional period) in order to satisfy and discharge the JV Conditions. If required by the Employer the Business & Development Manager will procure collateral warranties from those contractors and/or consultants in favour of the Employer and the Landowner.
- 7.3.2 If the JV is formed all contracts entered into by the Business & Development Manager shall be novated (or at the Employer's option and subject to the Business & Development Manager's approval (not to be unreasonably withheld or delayed)) assigned to the JV.
- 7.3.3 If the CJVA terminates and the relevant JV is not formed, the Employer can require (at its discretion) that all contracts entered into by the Business & Development Manager shall be novated or (with the Business & Development Manager's approval) assigned to it or its nominee.
- 7.3.4 The Business & Development Manager shall ensure that all contracts provide for novation or assignment in accordance with paragraphs 7.3.2 and 7.3.3.

7.3.5 Following novation or assignment as contemplated by paragraph 7.3.2 or 7.3.3 the Business & Development Manager shall have no liability for the works/services performed by the Consultants and/or contractors, but without limiting the Business & Development Manager's liability for performing the BDMA Services.

7.4 Services

- 7.4.1 The Business & Development Manager shall deliver the services specified in the BDMA (the "BDMA Services") with such reasonable skill, care and diligence as expected of a competent Business & Development Manager experienced in providing the relevant Services. The Business & Development Manager shall act in accordance with and provide the Services to obtain the objectives of the Business Plan.
- 7.4.2 The template BDMA to be annexed to the Framework Agreement will identify the range of potential services required to be provided by the Business & Development Manager. The services required for each Site will be informed by the successful Supplier's proposal for delivery of the relevant Project at the Mini-Competition stage.
- 7.4.3 The full suite of BDMA Services is at Schedule 2 to this document and have been developed with input from TfL's external commercial adviser.
- 7.4.4 The Business & Development Manager will provide such non-confidential information as TfL reasonably requires to TfL to enable TfL to prepare a status and progress report in respect of the JV that is then published. It is anticipated that the report will have summaries of key areas such as planning and stakeholder engagement, key activities against the Business Plan programme and delivery of the Site development (such as Site conditions and construction arrangements). See Schedule 2 paragraph 22.

7.5 **Employer's obligations**

The principal obligations of the Employer are to:

- 7.5.1 So far as it is reasonable for it to do so, and where reasonably requested by the Business & Development Manager, do all lawful acts and things as shall be necessary and within its control or power and co-operate with the Manager so as to enable the Manager to discharge its obligations provided that where the Employer is TfL the Employer's exercise of its statutory obligations and obligations shall not be fettered;
- 7.5.2 procure that sufficient monies are maintained in the development accounts in accordance with the budget;
- 7.5.3 provide when requested information reasonably required for the Business & Development Manager to perform its services; and
- 7.5.4 pay the Agreed Fee and reimburse Conditional Period Costs.

7.6 Scope of Authority

The scope of the Business & Development Manager's authority to act on behalf of the Employer shall be set out in a schedule of authority. The authority schedule will be in the form set out in the template BDMA to be annexed to the Framework Agreement,

but with the Site specific authority and financial authority levels being set out by TfL at Mini-Competition stage on a Site by Site basis.

7.7 Intellectual Property

Intellectual property in documents provided by the Business & Development Manager shall remain vested in the Business & Development Manager but the Employer shall be granted an irrevocable, non-exclusive, royalty-free licence to use the same for all purposes connected with the relevant Site.

7.8 Insurance and Liability

- 7.8.1 The Business & Development Manager shall be required to take out and maintain as a minimum:
 - 7.8.1.1 professional indemnity insurance for a period expiring no earlier than 12 years after the date of termination of the BDMA in an amount of not less than £5,000,000 per occurrence and in the aggregate per annum; and
 - 7.8.1.2 Public liability insurance of not less than £10,000,000 per occurrence;
 - 7.8.1.3 Employer's liability insurance as required by law.

The levels of insurance are to be confirmed at Mini-Competition stage.

7.9 **Termination**

- 7.9.1 The Employer may terminate the BDMA if:
 - 7.9.1.1 the Employer has given the Business & Development Manager not less than 20 Business Days prior notice that it does not intend to proceed with the Project for an Operational Reason;
 - 7.9.1.2 the Business & Development Manager commits a material breach of its obligations under the BDMA (or a breach which by reason of being persistent becomes material) that is capable of being remedied and fails to remedy it after notice from the Employer giving it a reasonable period of time, to be specified in the notice, to remedy the breach;
 - 7.9.1.3 the Business & Development Manager commits a material breach of its obligations under the BDMA that is incapable of being remedied;
 - 7.9.1.4 the Business & Development Manager or the Guarantor becomes insolvent and does not put in place an alternative guarantee (acceptable to the other party, acting reasonably) within a certain time period;
 - 7.9.1.5 the Business & Development Manager fails to cease any conduct materially prejudicial to the Project or the carrying out of the Services within a reasonable period of being required by the Employer to do so;

- 7.9.1.6 the Guarantor is in breach of its obligations under the Deed of Guarantee:
- 7.9.1.7 in circumstances where the Business & Development Manager or any member of its Group holds shares in the Employer, the Business & Development Manager or any member of its Group ceasing to have a shareholding in the Employer;
- 7.9.1.8 the JV Agreement is terminated in accordance with its terms;
- 7.9.1.9 the Business & Development Manager or any of its officers employees or agents commits any act of bribery described in the Bribery Act 2010; or
- 7.9.1.10 there is a change of control of the Business & Development Manager.
- 7.9.2 The Manager may terminate the BDMA if:
 - the Employer commits a material breach of its obligations under the BDMA that is capable of being remedied and fails to remedy it after notice from the Manager giving it a reasonable period of time, to be specified in the notice, to remedy the breach;
 - 7.9.2.2 the Employer commits a material breach of its obligations under the BDMA that is incapable of being remedied; or
 - 7.9.2.3 the Employer becomes insolvent.
- 7.9.3 Upon termination of the BDMA for reasons other than the default of the BDMA or its guarantor the Employer shall pay to the Business & Development Manager:
 - 7.9.3.1 any part of the Agreed Fee due but unpaid at that date;
 - 7.9.3.2 such proportion of the Agreed Fee as is fair and reasonable in respect of services provided prior to that date but in respect of which at that date no payment had become due; and
 - 7.9.3.3 any Conditional Period Costs incurred by the Manager prior to the date of termination and otherwise reimbursable by the Employer

in each case subject to the Employer's right to set-off. The Manager shall not be entitled to any other payment or recompense as a result of any termination. If the JVP is in breach and, as a result the JV is not formed and the development does not progress, the JVP will be responsible for the costs (and applicable fees, if any) payable to the Business & Development Manager.

7.10 Restrictions on Assignment and Sub-Contracting

The Business & Development Manager shall not sub-contract, assign or novate its obligations under the BDMA without the prior approval of the Employer (which may be TfL in the Conditional Period and the JV thereafter). There are no restrictions on assignment by the Employer.

7.11 Reporting

The Business & Development Manager shall report on a regular basis on the progress or all the services (including the Business Plan, design, planning and financial management) to:

- 7.11.1 the Project Board (see paragraph 5.5) and TfL (during the Conditional Period); and
- 7.11.2 the JV in all other circumstances.

7.12 **Policies (including TfL policies)**

- 7.12.1 The Business & Development Manager will be required to ensure that the development is procured in accordance with the following TfL policies (as the same may be amended from time to time by TfL):
 - 7.12.1.1 Work Related Road Risk Requirements
 - 7.12.1.2 London Living Wage
 - 7.12.1.3 Timber Standards

TfL has reserved the right to advise at the relevant Mini-Competition stage as to whether any additional policies are to be added to this list.

- 7.12.2 The Business & Development Manager will be required to procure goods, works and services on behalf of the Employer in accordance with any procurement policy/protocols which the Employer adopts or requires from time to time.
- 7.12.3 It should be noted that if the JV is a "contracting authority" for public procurement purposes (if, for example, TfL takes a majority stake and funding position) then all goods, works and services will need to comply with the public procurement regime.

7.13 **TUPE**

The BDMA contains a note stating that the application of TUPE will be reviewed on a case by case basis and setting out the principles underpinning any TUPE transfer. Namely:

- 7.13.1 where TfL is of the view that there will be a 'relevant transfer' for the purpose of the TUPE Regulations TfL will provide Suppliers with information on the number of relevant employees so that Suppliers can then bid on that basis;
- 7.13.2 where there is a relevant transfer, warranties and indemnities will be included as follows:
 - 7.13.2.1 a warranty confirming that TfL has provided all relevant employee liability information as required by the TUPE Regulations;
 - 7.13.2.2 an indemnity in favour of the Joint Venture Vehicle with respect to any failure to inform and consult transferring employees of TfL under the TUPE Regulations, save where the Supplier has failed to provide any/adequate information with respect to any

'measures' that it envisages taking with respect to relevant transferring employees;

- 7.13.2.3 an indemnity in favour of the Joint Venture Vehicle with respect to any employment related claims relating to any pre-transfer acts or omissions relating to transferring TfL employees (save for any losses arising from any proposed act or omission of the Joint Venture Vehicle and/or the Business & Development Manager);
- 7.13.2.4 an indemnity in favour of TfL with respect to any employment related claims relating to any post-transfer matters;
- 7.13.2.5 an indemnity in favour of the Joint Venture Vehicle in relation to any unexpected TfL employees;
- 7.13.2.6 appropriate provisions relating to pension matters, if applicable and deemed to be required by TfL; and
- 7.13.2.7 indemnities in favour of TfL to protect at the end of the contract with respect to any failure to inform and consult under the TUPE Regulations, any employment related claims and any unexpected employees (i.e. anyone who transfers or alleges that they have transferred).

8. SHAREHOLDERS' AGREEMENT

Summary of the Shareholders' Agreement

The Shareholders' Agreement will be entered into by TfL and the JVP following satisfaction of the JV Conditions and will regulate the relationship between them during the term of the JV. In particular the Shareholders' Agreements sets out the governance of the JV including how decisions are taken and minority protections.

Whilst this document refers to a Shareholders' Agreement TfL could determine that the JV take the form of a limited partnership or a limited liability partnership (subject to TfL securing the power to participate in such a structure).

8.1 Parties and Term

- 8.1.1 The parties to the Shareholders' Agreement will be:
 - 8.1.1.1 TfL (or wholly owned subsidiary of TfL) (and references in this paragraph 8 to TfL shall include this entity)
 - 8.1.1.2 The JVP
 - 8.1.1.3 Relevant guarantors (of TfL and the JVP)

TfL will confirm to Suppliers at Mini-Competition stage which TfL company will provide a financial guarantee in relation to TfL's obligations under the Shareholders' Agreement. TfL will only provide a financial guarantee in respect of TfL subsidiaries and any TfL guarantee will only be given on the proviso that the JVP also provides a suitable guarantee and covenant for the

duration of the JV to cover its obligations under and arising out of the Shareholders' Agreement.

See paragraph 9 in relation to guarantees.

Reference to "Shareholders" are to TfL and the JVP and to any other Shareholders which may become shareholders of the JV from time to time.

- 8.1.2 The term of the JV shall be linked to the Business Plan for the relevant Site and completion of the delivery outputs envisaged by the Business Plan. The JV shall be capable of earlier termination where:
 - there is an event of default leading to a termination of the JV (see paragraph 8.12);
 - 8.1.2.2 the JV suffers an insolvency event; or
 - 8.1.2.3 the Shareholders unanimously agree to terminate the Shareholders' Agreement and the JV.

8.2 Business (Primary Purpose) and Business Plan

- 8.2.1 The JV's primary purpose (the "**Primary Purpose**") will be to maximise the economic value of the JV for its Shareholders by enabling the development of the relevant Site in accordance with the Planning Consent.
- 8.2.2 The business of the JV shall be to deliver the Business Plan and shall be:
 - 8.2.2.1 exclusively commercial in nature; and
 - 8.2.2.2 to conduct the business at all times in order to achieve the Primary Purpose.
- 8.2.3 The first Business Plan of the JV will be the Business Plan which the JVP submitted through Mini-Competition, as such Business Plan may have been updated in the Conditional Period in accordance with paragraph 5. It will be annexed to the Shareholders' Agreement and subject to review/update within the first three months of the JV going live (to allow for the parties to agree to any changes to reflect market conditions). It will subject to formal annual review and adoption (requiring all Shareholders' approval to such adoption). Any in-year variations to the Business Plan shall require the approval of the JV Board (defined in paragraph 8.6.1), provided that where there is a proposed variation to a Business Plan which would lead to a stated percentage variance (or more) of the projected returns to the Shareholders as set out in any Business Plan, any such variation shall require the consent of all The percentage variance will be set out by TfL at Mini-Shareholders. Competition stage.
- Paragraph 6 above sets out the principles which will apply to any proposed Project changes. Whilst TfL is a Shareholder in the JV (regardless of percentage), any changes to the Project will require its consent where any such changes may amount to a material change for the purposes of the public procurement regulations. TfL will assess whether such changes amount to a "material change" for the purposes of the public procurement regulations at the relevant time. Examples include, where:

- 8.2.4.1 the modification changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the initial contract;
- 8.2.4.2 the modification extends the scope of the contract considerably;
- 8.2.4.3 the modification introduces conditions which, had they been part of the initial call-off award process would have led to a different competition outcome; or
- 8.2.4.4 the value of the modification (or series of modifications) meets or exceeds the EU threshold which triggers the application of the Procurement Regulations or the relevant threshold for small value changes (e.g. for works contracts, that threshold is 15% of the initial contract value).

8.3 Shareholdings and Payment of Site Value to the Landowner

8.3.1 Shareholders and Shareholdings

TfL will set its equity stake in the JV and, therefore, the equity stake of its JVP in the JV. It will notify Suppliers of the equity stakes at the relevant Mini-Competition stage.

Any meeting of the Shareholders will require the attendance of all Shareholders holding 10% or more of the total issued shares in JV.

8.3.2 Payment of Site Value to the Landowner (or other relevant entity)

The Site Value will be calculated in accordance with paragraph 6. The Site Value (less any share of the Gain where the Joint Venture Vehicle shares in the Gain) will be payable as noted at paragraphs 5.5.2.1 and 5.5.2.4.

8.4 Funding of the JV

The working capital requirements of the JV will be funded by the Shareholders in line with their shareholding percentages. Any additional funding will be decided by the shareholders in line with the Shareholders Agreement.

8.5 Guarantees

See paragraph 9 in relation to guarantees.

8.6 The JV Board

- 8.6.1 Subject to the Shareholder Protections noted below, the management of the JV shall be vested in the board of the JV (the "JV Board") which shall act at all times within the parameters of seeking to achieve the Primary Purpose. TfL reserves the right to require that the JV Board establish an executive committee to support the JV Board on a Site by Site (and JV by JV basis) and will notify Suppliers at the Mini-Competition should it require such an executive committee to be established for a specific Site.
- 8.6.2 The JV Board will be comprised of individuals appointed by the Shareholders' from time to time. The number of directors to be appointed by TfL will be confirmed at the point in time when TfL confirms what shareholding percentage it wishes to take in the JV. TfL will require equality of

representation should it hold over 40% (but less than 50%) of the shares in the JV but can elect to reduce that requirement at its own discretion at the point in time when it settles its percentage interest in the JV.

- 8.6.3 Where TfL holds less than 40% of the shares in the JV the voting of the directors on the JV Board will mirror the percentage shareholding that the appointing party holds in the JV.
- 8.6.4 Resolutions of the JV Board will require a simple majority.
- 8.6.5 All meetings of the JV Board will, for such time as TfL is a Shareholder, require the attendance of at least one director appointed by it.
- 8.6.6 Where the JV Board is unable to make pass a resolution by reason of equality of votes, the matter shall be referred to the Shareholders for resolution. The votes of all Shareholders holding 10%+ of the shares in the JV shall be required before such matter is passed.

8.7 Conflicts of Interest

The Shareholders' Agreement will contain conflict provisions which preclude interested directors from voting on matters where any such matter concerns a member of its group including any decision as to whether to award a contract to another related Shareholder group entity and any decision as to take any action for breach/alleged breach under any such contract(s). This is particularly relevant where the JVP and the Business & Development Manager are part of the same group of companies.

8.8 Shareholder Protections

The Shareholders Agreement will contain certain provisions to protect TfL as a minority shareholder but which also apply equally to other minority Shareholders.

8.8.1 <u>Primary Purpose Objection</u>

Any Shareholder (including TfL) which holds more than 10% but less than 50% of the shares in the JV shall be entitled to object to any decision of the JV where it considers that the enactment of any such decision would be materially damaging to the economic value of the JV for its Shareholders.

The Shareholders' Agreement will set out a prescribed process but in summary it will operate as follows:

- a Shareholder seeking to invoke this protection must act reasonably and must serve notice on the JV Board and state the reasons for its objection;
- the objecting shareholder must serve notice on the JV Board and state the reasons for its objection;
- if the decision has not yet been implemented the JV Board will be precluded from implementing it upon receipt of such notice;
- if the decision has been implemented but is reversible then the JV Board must reverse such decision promptly upon receipt of such notice;

- the JV Board can counter the objection and if, following such counter notice, the objecting shareholder still considers that the JV Board would be materially damaging the economic value of the JV for the Shareholders in taking that decision then the matter will be referred to senior officers of the Shareholders holding 10%+ of the shares in the JV for determination; and
- where the senior officers of those Shareholders cannot agree on the matter, the matter will be referred to an expert for determination whose decision shall be final and binding.

8.8.2 <u>Shareholder Protection Matters</u>

In addition to the Primary Purpose objection process outlined above, the Shareholders will have the benefit of the Shareholder Protection Matters. These matters will require the consent of the Shareholders before being implemented by the JV – with the Shareholders agreeing to exercise any right they have to vote in accordance with the Primary Purpose. Certain matters will require the approval of:

- 75% or more of the Shareholders;
- 90% or more of the Shareholders:
- 100% or more of the Shareholder.

These are set out at Schedule 1 to this document.

8.9 **Deadlock**

- 8.9.1 The Shareholders' Agreement will contain a deadlock process where:
 - 8.9.1.1 a matter has been referred to the Shareholders who hold 10% or more of the issued shares by the Board pursuant to paragraph 8.6.6;
 - 8.9.1.2 otherwise, where there is a disagreement between the Shareholder (or any of them) in respect of a resolution.
- 8.9.2 Deadlock matters will be referred to the respective senior officers of the relevant determining Shareholders for resolution. If the senior officers are unable to resolve any such matter then:
 - 8.9.2.1 if the matter is capable of determination by an expert it will be capable of referral to an expert by the relevant determining Shareholders and such expert's determination shall be final and binding on the JV; and
 - 8.9.2.2 if the relevant determining Shareholders do not agree to refer the matter to an expert or agree that the matter is not capable of determination by an expert, then the status quo shall apply.
- 8.9.3 Certain matters will be carved out of this process such that they will be referred to senior officers for determination but if such senior officers are unable to agree on the matter the status quo will continue to apply to such

matters (i.e. they are not referable to an expert for determination). Examples are:

- 8.9.3.1 any proposed alteration to the nature and/or scope of the business of the JV;
- 8.9.3.2 any approval of or amendment to the Business Plan; and
- 8.9.3.3 any proposed variation to the project documents which are entered into by the JV from time to time.

In addition, where a Shareholder Protection Matter is not passed by reason of not reaching the required Shareholder authorisation threshold, the matter will not be passed.

8.10 Transfers of Shares

8.10.1 General Principles

- 8.10.1.1 No Shareholder shall be permitted to transfer any of its shares in the JV where such transfer is to a "Prohibited Person" which is an individual or entity:
 - (a) which is a company incorporated in or an individual resident in a country outside the United Kingdom unless it agrees to be bound by the jurisdiction of the English Courts and in respect of which a legal opinion from a reputable independent law firm in the relevant jurisdiction is provided in a form reasonably satisfactory to TfL (acting reasonably) relating to:
 - (i) the authority and capacity of the company or individual to act as the assignee, guarantor or funder (as applicable); and
 - (ii) the enforceability of the obligations of the company or individual as assignee, guarantor or funder (as applicable);
 - (b) which enjoys sovereign or state immunity, unless it is a department, body or agency of the United Kingdom Government;
 - (c) which uses funds that are derived from illegal or illegitimate activities;
 - (d) which has been convicted of criminal activities, or is or has been involved in organised crime;
 - (e) which is named on the Consolidated List of Terrorists maintained by the Bank of England pursuant to any authorising statute, regulations or guideline;
 - (f) which is, or professes to be, resident in a nation state which at the relevant time is not recognised by the Government of the United Kingdom;

- (g) which is otherwise prohibited from entering into the proposed transaction pursuant to any applicable law or requirements of any country or governmental authority (including any exchange control regulations applicable thereto);
- (h) with whom TfL or any member of its Group may not lawfully contract, or with whom the established policy of the UK Government is that they should not contract;
- whose activities would prevent the discharge by TfL or any member of its Group of its or their statutory duties or other legal functions;
- (j) which has a substantial direct interest(s) in gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons (provided that any organisation that is engaged in legitimate investment and lending to any such business shall not constitute a Prohibited Person); or
- (k) whose activities could pose a threat to national security.
- 8.10.1.2 No transfer shall be permitted where it would trigger a breach of any senior finance documents.
- 8.10.1.3 Transfers of part will be permitted provided that they are in transfers of 10% or more of the total issued shares in the JV.
- 8.10.1.4 Intra-group transfers shall be permitted subject to the transferee having sufficient covenant strength to meet its future obligations or whose obligations are backed by a suitable guarantee. Furthermore, TfL shall be permitted to transfer all or part of its shares in the JV where required to do so due to a statutory requirement/direction.
- 8.10.1.5 Transfers to third parties are also subject to covenant tests and ensuring the transferee procures suitable guarantees if required for the proportion of shares it is acquiring.
- 8.10.1.6 In the case of the JVP, the JVP will not be permitted to transfer any if shares (save where such transfer is an intra-group transfer) to a third party prior to the issue of the final certificate of making good defects of the proposed development or such shorter period as TfL may determine (acting reasonably, having regard to the scale and complexity of the Site and projected phasing for delivery) (the "Lock In Period").

8.11 Change of Control

- 8.11.1 There shall be no change of control permitted of any Shareholder where any such Shareholder shall have any shares or other interest in it held by or on behalf of a Prohibited Person (see paragraph 8.10.1.1).
- 8.11.2 Within the Lock In Period, no change of control shall be permitted in respect of the JVP except where:

- 8.11.2.1 such change of control is in relation to a listed entity on both the London Stock Exchange or the Alternative Investment Market: and/or
- 8.11.2.2 it has first obtained the prior written consent of TfL.
- 8.11.3 The provision at paragraphs 8.11.2 shall not, for the avoidance of doubt, apply to TfL.

8.12 **Default**

- 8.12.1 An event of default shall occur in respect of a Shareholder where:
 - 8.12.1.1 it commits a material breach of its obligations under the Shareholders' Agreement;
 - 8.12.1.2 it or its guarantor, where applicable, fails to comply with any of its obligations in paragraph 9;
 - 8.12.1.3 it or its guarantor suffers an insolvency event and does not put in place an alternative guarantee (acceptable to the other party, acting reasonably) within a certain time period; or
 - 8.12.1.4 any guarantor who is guaranteeing the obligations and/or performance of such Shareholder under the Shareholders' Agreement suffers an insolvency event.

It should be noted that a default under the BDMA shall not trigger a default under the Shareholders' Agreement.

8.13 **Policies and Procurement**

- 8.13.1 The JV will procure its goods, works and services in line with a procurement policy from time to time to be adopted by the JV. Where TfL takes a minority stake in the JV, the expectation is that Suppliers will set out the procurement policy for each JV on a Site by Site basis at Mini-Competition stage to demonstrate value for money to the JV and delivery of the Primary Purpose.
- 8.13.2 The JV will deliver the development in accordance with the following TfL policies (as such policies may be amended from time to time by TfL):
 - 8.13.2.1 Work Related Road Risk Requirements
 - 8.13.2.2 London Living Wage
 - 8.13.2.3 Timber Standards

TfL has reserved the right to advise at the relevant Mini-Competition stage as to whether any additional policies are to be added to this list.

8.14 TfL right of acquisition

8.14.1 TfL shall have a right to acquire all or part of the completed development from the relevant JV at market value once the development is completed. The Shareholders' Agreement retains flexibility for TfL to take such transfer back

by way of a distribution in kind on terms to be agreed by the JV Board at the relevant time.

- 8.14.2 On a winding up of the JV TfL will have the first right to acquire any developed or undeveloped assets of the JV at market value. Any mid-development assets will be continued by the JV to realise development proceeds before being wound up. The Shareholders' Agreement retains flexibility for TfL to take such transfer back by way of a distribution in kind on terms to be agreed by the winding up practitioner at the relevant time.
- 8.14.3 Furthermore, TfL reserves the right to specify at the relevant Mini-Competition stage whether it wishes to acquire commercial elements of the development, once developed, as a right to acquire (rather than a right of first offer) and will specify at the relevant Mini-Competition stage whether this will be a call option (i.e. to enable TfL to require the JV to sell to it) or a put and call option (i.e. additionally enabling the JV to require TfL to purchase at market value). The option agreement will include the option for TfL to take any such transfer of assets as distributions in kind provided that is agreed by the JV Board at the relevant time.

8.15 **Profit Distribution**

- 8.15.1 Any available profits will be distributed in accordance with a dividend policy agreed from time to time by the Shareholders and will be paid pro rata to the shareholdings. The JV Board will determine what profits are available for distribution ensuring that reserves are maintained for working capital and reinvestment in the JV as necessary.
- 8.15.2 The JV Board may direct that a dividend may be satisfied wholly or partly by the distribution of assets at their market value (rather than by way of cash payment).

8.16 **Confidentiality & Transparency**

The Shareholders' Agreement includes TfL's standard provisions in relation to Freedom of Information and Transparency. In addition, the JV (and the Business & Development Manager) will provide TfL with such non-confidential information as TfL reasonably requires to enable TfL to prepare a status and progress report on the JV that is then published. It is anticipated that the report will have summaries of key areas such as planning and stakeholder engagement, key activities against the Business Plan programme and delivery of the Site development (such as Site conditions and construction arrangements).

9. **GUARANTEES**

Summary of Guarantees

9.1 Each of TfL and the Supplier will be required to procure that their respective obligations under the CJVA and the Shareholders' Agreement are guaranteed. In addition, the Supplier will be required to guarantee the BDMA obligations of the Business & Development Manager and the JV's obligations under the Works Agreement. Where TfL is guaranteeing it will only provide guarantees in respect of the financial obligations of TfL subsidiaries.

TfL Guarantees

- 9.2 Any guarantees provided by TfL are financial only (not performance guarantees) and are only in respect of entities which are TfL subsidiaries.
- 9.3 The TfL Guarantees are in respect of:
 - 9.3.1 TfL's obligations under the CJVA; and
 - 9.3.2 TfL's obligations under the Shareholders' Agreement.
- 9.4 Any TfL guarantor shall be subject to provisions where it is subject to a Change of Status or where the relevant entity being guaranteed ceases to be a subsidiary of the relevant guarantor, as follows:
 - 9.4.1 on a Change of Status event, the TfL Guarantor shall, within 30 business days, put in place an alternative guarantee to the reasonable satisfaction of the JVP or JV (as applicable); and
 - 9.4.2 any guarantee provided by TfL Guarantor will fall away where the relevant entity being guaranteed ceases to be a subsidiary of the relevant guarantor. Prior to that event occurring, the TfL Guarantor shall (if aware of the impending change of status of the subsidiary) put in place an alternative guarantee to the reasonable satisfaction of the JV or JVP (as applicable),

and a failure to do so will be an event of default under the relevant Call-Off Contract.

- 9.5 A "Change of Status" is any re-enactment or amendment to the Greater London Authority Act 1999 which results in:
 - 9.5.1 TfL guarantor ceasing to be a body responsible for facilitating the discharge of the transport strategy and provision of transport facilities to, from and within Greater London (or a subsidiary of such a body); or
 - 9.5.2 TfL guarantor ceasing to be treated as a "local authority", within the meaning of local authorities finance legislation (or a subsidiary of such a body);

unless (i) TfL guarantor remains a public sector body; and (ii) the credit rating of TfL guarantor is BBB- or better from Standard and Poor's Corporation or Baa3 or better from Moody's Investors Services Inc.

JVP Guarantees

- 9.6 The Supplier will be required to procure that its respective obligations under the Call-Off Contracts are guaranteed.
- 9.7 The JVP Guarantees are in respect of:
 - 9.7.1 the JVP's obligations under the CJVA;
 - 9.7.2 the JVP's obligations under the Shareholders' Agreement; and
 - 9.7.3 JV obligations under the Works Agreement (see paragraph 9.8).
- 9.8 As noted, the JVP will also be required to provide a guarantee in favour of the TfL landowning entity for the obligations of the JV under the Works Agreement. The JVP's quarantor's liability under the guarantees it will be providing in respect of the JV's

obligations under the Works Agreement will be limited, in respect of any claim, to the JVP's percentage shareholding in the JVP from time to time. TfL will stand behind its shareholding but will not provide any guarantor.

- 9.9 The following provisions shall apply to all relevant Call-Off Contracts where a guarantee is being provided in respect of the JVP's or Business & Development Manager's obligations under or arising out of any such Call-Off Contract.
 - 9.9.1 Any guarantee procured by the JVP and/or the Business & Development Manager in respect of its obligations to TfL and/or JV and any liabilities arising out of the relevant Call-Off Contracts must be from a guarantor of sufficient covenant strength tested at the Mini-Competition stage.
 - 9.9.2 At the Mini-Competition stage TfL will indicate the minimum financial covenant threshold required in respect of any such guarantor which is likely to be by reference to a net asset value threshold (the "Financial Threshold").
 - 9.9.3 The JVP, the Business & Development Manager and their respective guarantors will be contractually obliged to provide TfL and/or the JV (where applicable) with each guarantor's financial statements on an annual basis. This is an ongoing monitoring device and will also apply to any replacement guarantor.
 - 9.9.4 The JVP, the Business & Development Manager and their respective guarantors will be contractually obliged to notify TfL and/or the JV (where applicable) in the event that a guarantor's Financial Threshold is breached. This will also apply to any replacement guarantor and:
 - 9.9.4.1 failure to notify will be an event of default under the relevant Call-Off Contract; and
 - 9.9.4.2 following notification the JVP, the Business & Development Manager and their respective guarantors will have a period of 30 Business Days to put in place an alternative guarantee which meets the Financial Threshold requirement. Failure to do so in that timescale will be an event of default under the relevant Call-Off Contract.
 - 9.9.5 If a guarantor (or any replacement guarantor) at any time becomes subject to a change which would have an impact on its ability to meet its obligations under the relevant Call-Off Contract, it (or the JVP or Business & Development Manager, as applicable) must notify TfL and/or the JV (where applicable). A failure to notify will be an event of default under the relevant Call-Off Contract.
 - 9.9.6 Upon the notification referred to above, TfL will be able to require the relevant guarantor (or replacement guarantor) to put in place an alternative guarantee which meets the Financial Threshold and this must be in place before any such restructure/asset transfer is put in place. Failure to do so prior to any such restructure/asset transfer will be an event of default under the relevant Call-Off Contract.
 - 9.9.7 TfL's and/or the JV's (as applicable) consent will be needed in relation to any new proposed guarantor and TfL and/or the JV (as applicable) will act reasonably provided the Financial Threshold is met, provided always that TfL shall not be obligated to accept a guarantee from an Prohibited Person (see paragraph 8.10.1.1).

9.10 Changes in Shareholdings in the JV and impact on the Guarantees – Applicable to TfL Guarantees and JVP Guarantees

Where the JV has been formed:

- 9.10.1 if the JVP or TfL (as applicable) transfer part of their shares to a third party (i.e. out of their group) a deed of guarantee must be entered into by an entity with sufficient covenant to perform the transferee's obligations; and
- 9.10.2 if the JVP or TfL (as applicable) transfers the entirety of their shares to a third party (i.e. out of their group) then their relevant guarantee will fall away provided that a deed of guarantee is entered into by an entity with sufficient covenant to perform the transferee's obligations.

SCHEDULE 1 SHAREHOLDER PROTECTION MATTERS

	Restricted Activity	Shareholders' Issued Shares		
Any decision to (or agree to):		75%	90%	100%
1.	make any change to this Agreement and any other of the Call-Off Contracts			√
2.	adopt a new Business Plan			√
3.	make any Material Variation to the Business Plan			√
4.	extend its activities outside the scope of the Business or close down any business operation;			√
5.	sell, lease (as lessor), license (as licensor), transfer, otherwise dispose of (or agree to do any of the foregoing) any of its assets (including, without limitation, any rights or other interests in land) except to the extent required in order to implement the business of the Company as contemplated by the Business Plan;	√		
6.	buy, lease (as lessee), license (as licensee), otherwise acquire (or agree to do any of the foregoing) any assets (including, without	√		

	Restricted Activity	Shareholders' Issued Shares		ssued
Any c	Any decision to (or agree to):		90%	100%
	limitation, any rights or other interests in land) otherwise than in the ordinary course of the Business, except to the extent required in order to implement the business of the Company as contemplated by the Business Plan;			
7.	enter into or make any contract with a cost of £[X] which is not allowed for in the Business Plan;		√	
8.	incur any item or series of items of capital expenditure in excess of £[X] unless provided for in the Business Plan;		√	
9.	give or take any loans, borrowing or credit (other than normal trade credit in the ordinary course of business) unless expressly provided for in the Business Plan or pursuant to a debt raising process conducted pursuant to clause 6;		√	
10.	give any guarantee, suretyship or indemnity to secure the liabilities of any person or assume the obligations of any person;		√	
11.	create any Encumbrance over the whole or any part of the undertaking or assets of the Company or over any Share forming part of the authorised or issued share capital of the Company unless expressly provided for in the Business Plan;	√		
12.	enter into any agreement not in the ordinary course of the Business and/or which is not on an arm's length basis or amend its standard terms of business;		√	
13.	give notice of termination of any agreements of a material nature in the context of the Business or make any material variation or amendment to any such agreements;	√		
14.	make a political donation or gift;			✓
15.	commence, settle or defend any claim, proceedings or other litigation brought by or against the Company, except in relation to debt collection in the ordinary course of the Business;	√		

	Restricted Activity	Shareholders' Issued Shares		ssued
Any decision to (or agree to):		75%	90%	100%
16.	appoint or remove or approve the remuneration of the auditors of the Company;	√		
17.	alter the Company's Accounting Date;	√		
18.	approve or sign the annual accounts of the Company;	√		
19.	change any of the Company's accounting or reporting practices;	✓		
20.	recruit or dismiss any senior employee unless provided for in the Business Plan;	√		
21.	pay any fees, remuneration or other emoluments to any Director or vary any such fees, remuneration or emoluments. For the avoidance of doubt this paragraph shall not apply to the payment or reimbursement of expenses properly incurred by any Director in the course of carrying out his duties in relation to the Company nor to any indemnity by the Company to which the Director is entitled pursuant to the Articles or under any relevant law;	√		
22.	alter the remuneration or conditions of employment of any employee or any consultant of the Business unless provided for in the Business Plan or unless obliged to do so by statute;	√		
23.	establish or amend any pension scheme;	√		
24.	enter into any contracts or arrangements with any of the Shareholders or Directors or any person with whom any Shareholder or Director is connected, associated or interested (whether as director, consultant, shareholder or otherwise) otherwise than contemplated pursuant to this Agreement;	✓		
25.	change the name of the Company;	√		
26.	change the registered office of the Company;	√		
27.	petition or pass any resolution to wind up the Company or make any application for an administration or winding up order or any order			√

	Restricted Activity	Shareholders' Issued Shares		ssued
Any d	lecision to (or agree to):	75%	90%	100%
	having similar effect in a different jurisdiction in relation to the Company or give notice of intention to appoint an administrator or file a notice of appointment of an administrator unless in any case the Company is at the relevant time insolvent and the Directors reasonably consider (taking into account their fiduciary duties) that it ought to be wound up or it ought to enter into administration, save as provided for in this Agreement;			
28.	reduce or cancel any share capital of the Company, allot or agree to allot, whether actually or contingently, any of the share capital of the Company or any security of the Company whether or not convertible into share capital, grant any options or other rights to subscribe for or to convert any security into shares of the Company or alter the classification of any part of the share capital of the Company or issue any loan capital of the Company otherwise than in accordance with this Agreement;			√
29.	purchase any of its own Shares;			√
30.	make any capitalisation, repayment or other distribution of any amount standing to the credit of any reserve of the Company or pay or declare any dividend (other than pursuant to this Agreement) or other distribution to shareholders or redeem or buy any Shares or otherwise reorganise the share capital of the Company;			√
31.	admit any person whether by subscription or transfer as a Shareholder of the Company save as provided for in this Agreement or where pursuant to an equity raising process conducted in accordance with clause 6;			✓
32.	apply for the listing or trading of debt securities on any stock exchange or market			√
33.	form any subsidiary undertaking of the Company which is not a wholly owned subsidiary of the Company, or acquire any shares in any other company, whether through subscription or transfer, such that the company concerned becomes a subsidiary undertaking of the Company otherwise than in accordance with			√

	Restricted Activity	Shareholders' Issued Shares		ssued
Any decision to (or agree to):		75%	90%	100%
	the Business Plan;			
34.	consolidate or amalgamate with any company, association, partnership or legal entity or acquire any business or undertaking of any other person otherwise than in accordance with the Business Plan;			√
35.	enter into any partnership or profit sharing arrangement with any person or create any share option, bonus or other incentive scheme otherwise than in accordance with the Business Plan;			√
36A	make any agreement with any revenue authorities or any other taxing authority;	√		
36B	make any claim, disclaimer, election or consent of a material nature for tax purposes in relation to the Company, its business, assets or undertaking		√	
36.	alter any of the provisions of the Articles or any of the rights attaching to the Shares;			√
37.	appoint or remove any director of the Company otherwise than in accordance with this Agreement; or		√	
38.	change the bankers of the Company.	√		
	where '√' indicates that consent of the shareholders holding the relevant percentage of shares is required			

SCHEDULE 2

BDMA SERVICES

Please note that this schedule reflects the services schedule contained in the BDMA. It should be noted that the Employer in the Conditional Period is likely to be TfL. Once the JV Conditions are satisfied and the JV is formed, the JV will be the Employer of the Business & Development Manager (referred to as "Manager" in this Schedule 2).

[NOTE: Relevant services to be confirmed at the relevant Mini-Competition stage.]

In this Schedule the following words shall have the following meanings:

"Board" shall be a reference to the Project Board (as defined in the CJVA) during the Conditional Period and the JV Board (as defined in the Shareholders' Agreement) following establishment of the Joint Venture Vehicle.

The Manager shall represent the Employer and undertake on behalf of the Employer responsibility for the management, directing and day to day operation of the Project in accordance with this Agreement, the Primary Purpose and the Business Plan. The Manager shall have overall responsibility for the co-ordination, supervision and project management of third parties, advisers, the professional team and the construction team.

In particular, the Manager shall:

1. BUSINESS PLAN

- 1.1 Perform the Services in order to deliver the objectives of the Primary Purpose and the Business Plan.
- 1.2 Review and propose variations and updates to the Business Plan as often as may be reasonably required and in any event no less frequently than [monthly] [quarterly]¹. Recommend and advise upon revisions to the Business Plan and provide relevant supporting information to the Board for review in accordance with the JV Agreement.
- 1.3 On behalf of the Employer produce and provide for the Board all such information as is required for any Board meeting pursuant to the JV Agreement.

2. FUNDING MANAGEMENT

- 2.1 Assist the Employer and its retained fund raising advisors from time to time on the fund raising (whether by way of debt or equity investment) in accordance with the JV Agreement and the Business Plan.
- 2.2 Co-ordinate and secure appropriate taxation advice in relation to any funding options or disposals of or partnering arrangements regarding the Project.
- 2.3 Make recommendations to the Employer on the appropriateness and feasibility of entering into any development partnering arrangements in relation to the Project.

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¹ To be confirmed at Mini-Competition

- 2.4 Assist the Employer's fund raising advisers in reporting to the Employer on the terms of any proposed funding arrangements.
- 2.5 Recommend solicitors to the Employer and on approval from the Employer instruct solicitors and other appropriate professionals as required to negotiate and agree the terms of any funding documentation and manage and co-ordinate all legal due diligence and similar processes required to complete any funding transaction and satisfy any conditions relating thereto.
- 2.6 Monitor the financial covenants and warranties under any of the Employer's finance documents and advise the Employer on the status of such compliance.
- 2.7 Assist the Employer with any proposed drawdown under any of the Employer's finance documents.
- 2.8 Prepare and deliver all reports required by the Employer's banks.
- 2.9 Deal with the day to day relationship with the Employer's banks.

3. FINANCIAL MANAGEMENT

- 3.1 Record and maintain all such financial records and information as are required to enable the preparation of the financial information in accordance with the requirements of the JV Agreement and to prepare such information as is required to enable the Joint Venture Vehicle to comply with any of its reporting obligations under the JV Agreement.
- 3.2 Submit to the Employer, prior to any meeting of the Board such that information can be included in the relevant Board pack to be provided to the Board pursuant to the JV Agreement, all financial information required to monitor the finances of the Project together with all necessary supporting documentation to enable the Board to take informed decisions in relation to the Project.
- 3.3 Review, update and report variances and, as necessary, propose variations to each item of financial information which has been previously submitted to or approved by the Employer.
- 3.4 Review and propose to the Employer variations and updates to the financial information for review in accordance with the Business Plan and in order to reflect any economic changes or changes in market conditions.
- 3.5 Operate and maintain agreed and compliant day to day accounting procedures for the Employer.
- 3.6 Arrange for and provide information and data required for property and other valuations, audits and the preparation of all financial accounts for the Employer.
- 3.7 Prepare management accounts and provide to the Employer's accountants or auditors (as appropriate) all such information to enable the preparation of the final or audited accounts for submission to and approval by the Board in accordance with the requirements of the JV Agreement.

4. BANK ACCOUNTS

4.1 Manage the bank accounts of the Employer (the "Accounts").

- 4.2 Subject to there being sufficient funds in the Accounts, make payments from the Accounts on behalf of the Employer where the Employer has given the Manager authority to make such payments.
- 4.3 Advise the Employer upon the reasonable amounts of working capital which the Manager recommends should be maintained in the Accounts from time to time and the Manager shall monitor the balances on the Accounts and shall notify the Employer as soon as reasonably practicable when further sums are likely to be required.

5. **ADDITIONAL PROPERTIES**

(a) Advise the Employer of any properties owned by third parties which it would be advantageous for the Employer to acquire for the Project, and if instructed by the Employer to do so, instruct agents to negotiate the terms of such acquisitions.

6. STATUTORY CONSENTS

- 6.1 Instruct and see that the professional team take account of the requirements of planning and other competent authorities in designing and implementing the Project.
- 6.2 In consultation with the relevant members of the professional team inform the Employer of the need and timetable for obtaining all statutory consents required for the Project including:
 - 6.2.1 any requisite planning permissions; and
 - 6.2.2 any consents by the local planning authority of matters reserved by planning permissions.
- 6.3 Instruct and assist the professional team and the construction team, to apply for and use all reasonable endeavours to obtain on reasonably satisfactory terms all statutory consents and deliver to the Employer a copy of each of the statutory consents as soon as it is obtained.
- Review, advise and report to the Employer on all applications for statutory consents and permissions and issue instructions to the professional team on the Employer's behalf in connection with them.
- [Instruct and monitor the negotiation by the relevant members of the professional team of] [Negotiate]² the terms of all necessary planning agreements and (if applicable) infrastructure agreements with the relevant statutory authority.
- 6.6 If the Manager properly considers unreasonable any conditions subject to which any statutory consents are or are to be granted, promptly notify the Employer of the unreasonable condition(s) and its reasons for reaching that conclusion. In consultation with relevant members of the professional team, consider and instruct the taking of such proper steps as are necessary to withdraw the application or to appeal against such conditions and seek and act upon the instructions of the Employer in relation to such steps.
- 6.7 If a statutory consent is refused, promptly notify the Employer of the refusal and in consultation with relevant members of the professional team consider and instruct the taking of such proper steps as are necessary to appeal against the refusal or take

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To be confirmed at Mini-Competition.

- other appropriate action in order to proceed with the Project and seek and act upon instructions of the Employer in relation to such steps or action.
- 6.8 See that the professional team and the construction team implement and deal with any conditions in and take any action required by any planning agreement, infrastructure agreement and/or planning permissions and notify the Employer in good time when payment of any CIL and/or s.106 payments fall due.

7. SURVEYS AND ASSET AGREEMENTS

- 7.1 In consultation with relevant members of the professional team, instruct all reports, structural surveys and similar surveys, ground reports and analysis necessary for the carrying out of the Project.
- 7.2 Instruct relevant members of the professional team to negotiate in liaison with the Employer the terms of the asset protection agreements, consents (or similar) required to be entered into by the Employer or obtained in respect of any assets of [TfL] or any other infrastructure provider affected by the Project.
- 7.3 In conjunction with the professional team monitor due compliance with such surveys and agreements referred to in this **paragraph 7** and report upon any issues arising.

8. THIRD PARTY AGREEMENTS

- 8.1 [Negotiate] [Instruct relevant members of the professional team to negotiate]³ the terms of all agreements required with:
 - 8.1.1 the statutory suppliers of services and utilities;
 - 8.1.2 the owners and occupiers of neighbouring property for the acquisition of additional land, the release of rights of way, light and air and the extinguishment of interests in, over or with respect to the Project to the extent that such rights and interests would be infringed by the Project or would prevent or impede the carrying out or progress of the Project; and
 - 8.1.3 the owners and occupiers of neighbouring property for the grant to the Employer of all rights necessary for the Project and agreements relating to the use and maintenance of any areas or structures to be used in common with adjoining owners and occupiers; crane oversailing agreements, temporary and permanent rights of access and services, hoardings and all other neighbourly matters relevant to the Project.
- [Instruct relevant members of the professional team to apply] [Apply]⁴ for and use all reasonable endeavours to obtain any necessary orders for the stopping up or diversion of highways or footpaths to the extent that they may be required to enable the Project to be carried out.
- 8.3 [Instruct the relevant members of the professional team to develop] [Develop]⁵ a strategy for the financing installation and supply of energy infrastructure and services for the Project.

To be confirmed at Mini-Competition.

⁴ To be confirmed at Mini-Competition.

⁵ To be confirmed at Mini-Competition.

8.4 [Instruct the relevant members of the professional team to establish] [Establish] and implement a party wall strategy and [to] negotiate all necessary party wall awards.

9. SALES AND MARKETING PLAN

- 9.1 At the appropriate time or as required by the Employer, draft for review by the Employer a sales and marketing plan, in accordance with the Primary Purpose and the current Business Plan parameters, which sets out the strategy for disposals of land and/or the strategy for the sales and/or letting of units. The strategy for the sales and letting shall contain:
 - 9.1.1 the commercial parameters for a pricing strategy;
 - 9.1.2 who shall be targeted;
 - 9.1.3 when and how the product shall be launched;
 - 9.1.4 who shall be the sales advisors and what would be their compensation;
 - 9.1.5 the budget for implementing the strategy;
 - 9.1.6 who shall be the branding and marketing consultants.
- 9.2 Implement the sales and marketing plan as approved by the Employer.
- 9.3 Review and make recommendations for approval by the Employer as to any variation to the sales and marketing plan as and when necessary.

10. APPROVAL OF CAPITAL REQUIREMENTS FOR DESIGN AND DEVELOPMENT

- 10.1 At the appropriate time or as required by the Employer submit to the Employer a report (a "Capital Expenditure Approval Report") including a draft of the financial model ("Financial Model") (which must be consistent with the Primary Purpose and the current Business Plan) for the Project or any Phase with all necessary supporting documentation to enable the Employer to take an informed decision as to whether or not to approve the same, and the capital required to be invested in the design concept and feasibility of the Project or a Phase (a "Capital Requirement").
- 10.2 Review and propose amendments and updates to the Financial Model for consideration and approval by the Employer as the design development of the Project or a phase progresses and propose to the Employer for approval, any increase in the Capital Requirement beyond the amount previously so approved by the Employer and which is required to progress the design and prepare for implementation of the Project or a phase.
- 10.3 At the appropriate time or as required by the Employer, submit to the Employer a request for approval to an increase in the Capital Requirement to enable the carrying out of development of the Project or a phase and such request shall be accompanied by an updated Capital Expenditure Approval Report with supporting Financial Model and other supporting documentation to enable the Employer to take an informed decision as to whether or not to approve the request.
- 10.4 Review, report variances, update and as necessary propose variations to each approved Capital Expenditure Approval Report and approved Capital Requirement.

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To be confirmed at Mini-Competition.

11. DEVELOPMENT AND DESIGN BRIEFS

- 11.1 At the appropriate time or as required by the Employer in consultation with relevant members of the professional team draft a development brief ("**Development Brief**") for the Project or a Phase in accordance with the Primary Purpose and the current Business Plan for review and approval by the Employer which:
 - 11.1.1 shall be based upon the Financial Model as supported by the sales and marketing plan and other relevant financial information;
 - 11.1.2 sets out the commercial parameters that control the design and the delivery of the Project;
 - 11.1.3 defines the Project and its quality with cost benchmarks referenced;
 - 11.1.4 brings forward the design brief.
- 11.2 Upon approval of the Development Brief by the Employer in consultation with relevant members of the Professional Team, draft for review and approval by the Employer a design brief ("the Design Brief") in accordance with the Development Brief.
- 11.3 In consultation with relevant members of the professional team review, advise on and monitor the design of the Project or any phase with reference to considerations of commercial viability, efficiency, economy and suitability for investment, sale or lease in accordance with the Primary Purpose and the Business Plan.
- 11.4 Instruct and supervise the professional team in relation to the development and coordination of the design and programming of the Project or any phase and the preparation of detailed specifications and drawings.
- 11.5 Monitor the progress of the design development and take all reasonable steps to ensure that the design work accords with the Primary Purpose and the Business Plan.
- 11.6 Initiate unilaterally or if the Employer shall so request, in either case after obtaining the views of the professional team, design alternatives by the professional team to achieve a more economical or time effective solution in accordance with the Primary Purpose and the Business Plan and advise on management procedures and keep the Employer informed and advised of the same.
- 11.7 In consultation with relevant members of the Professional Team advise on and monitor the financial and timetable implications of any proposed changes, variations, alternative designs and materials and the effect on the cost of the Project and the interests of the Employer and take appropriate actions with regard to the same but where the same is not the subject of a Authority not take such action without first obtaining the consent of the Employer.
- 11.8 Consult with the professional team and the contractor and report to the Employer from time to time as required by this Agreement or as otherwise requested by the Employer, on selection of materials, building systems and equipment, availability of materials and labour, time requirements for design, construction and installations.

12. **PROFESSIONAL TEAM MANAGEMENT**

12.1 Recommend to the Employer a strategy for the procurement (including whether they should be appointed by way of competitive tender or negotiation (providing reasons if negotiation is recommended instead of competitive tender)) and management of the professional team. In doing so, comply with the Employer's procurement policy ("the

Procurement Policy") and consider and have due regard to the law relating to EU procurement. Make recommendations to the Employer as regards value for money in procurement, reflecting scope, value, complexity and sensitivity of the Project.

- 12.2 Identify prospective appointees and draw up criteria for the selection and terms of appointment of the professional team and keep the Employer informed of the Manager's progress with the process for the appointment of proposed members of the professional team.
- Prepare, negotiate and agree the terms of the appointments, and duty of care warranties and third party rights in favour of all requisite persons, including the Employer, tenants and future purchasers of the Project and funders of the Project.
- Make recommendations to the Employer as to the need for the appointment by the Employer of additional members of the Professional Team and for any other specialist advice in relation to the Project.
- 12.5 In liaison with the professional team and the construction team, provide available information to and discuss proposals with the professional team in relation to the preparation of tender information including:
 - 12.5.1 division of the Project into suitable packages
 - 12.5.2 preparation of specifications or schedules of works
 - 12.5.3 preparation of schedule of rates
 - 12.5.4 preparation of other documentation
 - (b) to enable prospective members of the construction team to prepare a tender.
- Manage the production and presentation of the design for all key stakeholders in the Project including potential funders, investors, occupiers, purchasers and development partners.
- 12.7 Seek all necessary approvals from [TfL] and any other infrastructure providers in their operational capacity to the appointment of the professional team.
- 13. Generally manage and co-ordinate the delivery by the professional team and all parties instructed in accordance with this Schedule, of their obligations under and in accordance with their appointments including monitoring their performance, giving direction and taking all reasonable steps available to the Manager to secure their performance.

14. **REPORTING**

- 14.1 Keep the Employer regularly informed of progress of all services in which the Manager is engaged under this Agreement and provide all such information in relation to the services as the Employer shall reasonably request from time to time, including attending all relevant meetings of the Employer as the Employer shall require from time to time (acting reasonably).
- 14.2 Make full and timely disclosure to the Employer immediately upon becoming aware of any:
 - 14.2.1 matter which adversely affects the Employer or the Project or the Primary Purpose;

- 14.2.2 matter which arises (or is likely to arise) and which would have a material adverse effect on the ability of the Manager to perform the services in accordance with this Agreement;
- 14.2.3 actual or potential conflict of interest which may arise with the Manager or any of the Manager's key personnel in the performance of their duties and obligations under this Agreement.
- 14.3 When required by the Employer attend meetings of the Board to provide a full briefing and professional advice to the Board on the performance of the services and the Project, to seek Board approval (where required) and to support its actions and to answer either at, or as soon as is reasonably practicable after, such meeting all enquiries made at such meetings.
- 14.4 At the end of each calendar month (starting at the end of the first full calendar month following the date of this Agreement), prepare a monthly costs report ("Monthly Costs Report") and deliver the same to the Employer in any event within 10 Business Days of the end of the relevant calendar month setting out in information required in the JV Agreement.
- 14.5 Serve drawdown notices in the relevant parties to the JV Agreement in order to meet the funding requirements of the Employer.

15. **PROCUREMENT**

- 15.1 Recommend to the Employer a strategy for the procurement (including whether they should be appointed by competitive tender or negotiation (providing reasons if negotiation is recommended instead of competitive tender)) and management of the construction team. In doing so, comply with the Procurement Policy and consider and have due regard to the law relating to EU procurement and requirements of [TfL]⁷ where works are on over or around its operational assets. Make recommendations to the Employer including a value for money analysis in procurement, reflecting scope, value, complexity and sensitivity of the Project.
- 15.2 [Instruct the relevant members of the Professional Team to prepare] [Prepare]⁸ a suitable competitive procedure for selection and method of appointment of preferred members of the construction team including the extent of design and specifications to be included in tender documents. Advise and obtain the Employer's approval of the same and implement the approved procedure.
- 15.3 Identify prospective appointees and draw up criteria for the selection and terms of appointment of the construction team and keep the Employer informed of the Manager's progress with the process for the appointment of proposed members of the construction team.
- Prepare, negotiate and agree the terms of the building contracts, and duty of care warranties and third party rights in favour of all requisite persons, including the Employer, tenants and future purchasers of the Project and funders of the Project.
- 15.5 Report to the Employer as required on the tender procedure, the selection method, the tender information, the list of tenders for the building contracts, the technical suitability, experience and expertise of prospective members of the construction team.

⁷ To be confirmed at Mini-Competition.

⁸ To be confirmed at Mini-Competition.

- 15.6 Submit to the Employer for its consent the tender awards to and proposed appointments of the construction team.
- 15.7 [Instruct the relevant members of the Professional Team to negotiate] [Negotiate] the contract prices with the selected contractors and keep the Employer informed of progress with those negotiations. Upon conclusion of such negotiations, but before there is a contractual commitment, advise and obtain the consent of the Employer in respect of such prices where the contract prices are not in accordance with the Business Plan.
- 15.8 Seek all necessary approvals from [TfL]¹⁰ and any other infrastructure providers in their operational capacity to the appointment of the construction team.

16. MONITORING OF CONSTRUCTION

- 16.1 Arrange, chair and minute periodic meetings (not less frequently than monthly) with the construction team, the professional team and others as required to discuss, monitor and progress the Project.
- 16.2 Keep full and proper records of all meetings and negotiations attended or conducted by the Manager and on request provide copies to the Employer.
- 16.3 Monitor the progress of the professional team and construction team under the appointments and the building contracts, including site visits as necessary, making observations and recommendations and reporting to the Employer.
- 16.4 In liaison with the professional team, bring to the Employer's attention any material risks, liabilities or defects identified during the progress of the Project.
- Report on adherence to the agreed programme for the Project from its own knowledge and as advised to it by the professional team and the construction team.
- 16.6 Monitor the quality and progress of the completed work and to the extent the Manager ought reasonably to be aware of such matters, advise whether the works are constructed and the services of the professional team and construction team are performed in accordance with the appointments and the building contracts.
- 16.7 In consultation with relevant members of the professional team, maintain a review of the construction team's quality management and control programmes and monitor the construction team's performance related to all material matters of proper site management and safety in accordance with good industry practice and appropriate standards.
- 16.8 In consultation with relevant members of the professional team, undertake all properly required actions of the Employer under the appointments and the building contracts to be done, save as to payments and formal dispute resolution, but where the action is or gives rise to a matter in respect of which there is no authority, subject to the prior approval of the Employer.
- 16.9 In consultation with relevant members of the Professional Team manage the interface between the handover of completed parts of the Project to the estate manager and the Employer/occupiers.

To be confirmed at Mini-Competition.

To be confirmed at Mini-Competition.

17. **CERTIFICATIONS**

- 17.1 Examine and consider in consultation with relevant members of the professional team any building contract valuations, together with supporting documentation, received and if these vary from the assumptions or allowances contained in the approved Capital Requirement notify the Employer and advise or manage the giving of advice to the Employer on the amounts claimed.
- 17.2 Issue on behalf of the Employer, as Employer, any notices, accounts and/or statements, including any certificates as appropriate to be issued by or on behalf of the Employer in accordance with the terms of the appointments and the building contracts, but subject to the consent of the Employer where the subject of that certificate exceeds the assumptions or allowances contained in the approved Capital Requirement.
- 17.3 Monitor the progress of the preparation and agreement of all interim and the final fee accounts for the professional team and the construction team and advise the Employer on the same. Advise the Employer on payments due and manage the payment process.
- 17.4 In the event of the Employer being involved in any formal dispute resolution or litigation resulting from the Project (other than a claim against the Manager under this Agreement), provide all reasonable assistance to the Employer's solicitors in preparing any necessary documentation and reports and, if required by the Employer, attend any hearings and give such assistance and information in its possession or readily available to it.

18. **ESTATE MANAGEMENT STRATEGY**

- 18.1 Until the earlier of (a) completion of the Project or any relevant Phase and (b) handover to the estate manager:
 - 18.1.1 arrange and manage the maintenance, security and protection of the Site;
 - 18.1.2 assess and implement appropriate opportunities to generate ancillary income from the Site;
 - 18.1.3 maintain an HSSE risk register and report to the Employer possible measures to further mitigate risk and/or improve the risk management policy and put in place appropriate mitigation measures;
 - 18.1.4 take all reasonable steps to ensure that the Employer does not commit any breach of the terms of any lease under which the Site is held:
 - 18.1.5 arrange all usual services for the day to day management of the Site including letting, rent collection, routine maintenance, security, marketing management and promotion in accordance with good estate management principles.
- 18.2 At an appropriate time draft an estate management strategy (including a service charge policy) ("the Estate Management Strategy") in accordance with the Primary Purpose and the current Business Plan for review and approval by the Employer in respect of all common areas and access ways within the Site.
- 18.3 Review and make recommendations for approval by the Employer as to any variations to the Estate Management Strategy as and when necessary.

18.4 Make recommendations to the Employer for its approval as to the identity and terms of appointment of an estate manager.

19. INTELLECTUAL PROPERTY RIGHT PROTECTION

(c) Make recommendations for approval by the Employer as to the protection of all intellectual property rights of the Employer and securing all intellectual property licences required for the Employer.

20. GOVERNANCE, COMPLIANCE AND SECRETARIAT FUNCTIONS

- 20.1 Monitor compliance by the Employer with any legal and/or regulatory requirements.
- 20.2 Supervise the Employer's audit process.
- 20.3 Ensure compliance by the Employer of all its tax matters including:
 - 20.3.1 Administering the Employer's SDLT obligations and keeping the Employer fully informed of any SDLT matter;
 - 20.3.2 Administering the Employer's VAT matters and ensuring all VAT returns are prepared and submitted;
 - 20.3.3 Administering the Employer's Construction Industry Scheme matters and ensuring all sub-contractors for the purposes of the Construction Industry Scheme are verified prior to any payment for services;
 - 20.3.4 Ensuring all relevant tax returns and computations are prepared and submitted by the Employer.
- 20.4 Establish, maintain and operate the Employer's:
 - 20.4.1 records;
 - 20.4.2 books of accounts:
 - 20.4.3 registered office; and
 - 20.4.4 principal place of business.
- 20.5 Serve all relevant notices which, in accordance with the JV Agreement, are to be served on any of the Parties thereto.
- 20.6 Take and produce the minutes of meetings of the Employer, which shall include minutes of the Board and any committee (including any executive committee).
- 20.7 Ensure the giving of any notices required to be given or filings required to be made or advertisements required to be placed pursuant to any statute or law in respect of the Employer or the Project.
- 20.8 Instruct and assist the accountants appointed by the Employer to produce year end accounts in relation to the Employer in sufficient time as to enable the Employer to comply with its statutory obligations in relation to audits, annual accounts and tax returns.

- 20.9 In consultation with the accountants appointed by the Employer, assist them to prepare and (once approved by the Employer) file annual corporate reports and returns for the Employer.
- 20.10 Organise meetings of the Board and any committee of the Board, including the circulation of notices, agendas (and associated documents) in accordance with the JV Agreement.
- 20.11 Supply to the Employer all documents reasonably required for the purpose of making any Board decision (or that of any committee of the Board).
- 20.12 Send out demands in respect of any sums required to be paid to the Employer by its members or shareholders.
- 20.13 Arrange for the execution and/or sealing of documentation by or on behalf of the Employer.

21. **INSURANCE**

- 21.1 Seek from the Employer's insurance brokers recommendations as to the appropriate insurances in relation to the Employer's assets and the Project and arrange such insurances on behalf of the Employer (including property insurances, construction risk insurances, third party personal injury and property damage, D&O insurance and all other appropriate insurances in respect of the Employer or the Project).
- 21.2 Monitor and, in liaison with the insurers, renew such insurances as aforesaid and handle any claims thereunder.
- 21.3 At the direction of the Employer manage the process of reinstating the insured damage in accordance with this Schedule.

22. **REPORT**

- 22.1 TfL will periodically prepare a report for publication in relation to the Project and its status. Without prejudice to any other obligations in this Agreement the Manager shall co-operate with TfL in relation to the preparation of such reports including providing such non-confidential information as TfL (acting reasonably) shall from time to time request to enable TfL to prepare any report. By way of indication only, a report produced by TfL for publication in accordance with this clause may include the following in relation to the Project:
 - 22.1.1 planning history and stakeholder engagement;
 - 22.1.2 key activities against the Business Plan programme;
 - 22.1.3 delivery of the Site development (such as Site conditions and construction arrangements);
 - 22.1.4 development of the Site with an operational interface (such as any proposed enhancement works);
 - 22.1.5 key Business Plan milestones; and
 - 22.1.6 main contractor and any other principal suppliers engaged by the Joint Venture Vehicle.

SCHEDULE 3

PROPERTY AND DEVELOPMENT DOCUMENTS

PART 1

1. Approach to Property and Development Documentation

The Site Transfer Principles are the principles that will apply:

- 1.1 to the carrying out of development works for projects procured under the Framework Agreement;
- 1.2 to the land interests to be granted by TfL; and
- to the regimes that will apply for the protection of TfL's assets during the development and once the construction of the building has been completed.

When a Site is to be brought into a Mini-Competition TfL will issue documentation addressing the principles set out in this document as applicable to the relevant Site.

2. **Development Scenarios**

The following development scenarios may apply to the Sites:

- 2.1 The JV is undertaking development at such a distance from TfL's assets as to have a minimal effect on those assets or its operations and the JV is not undertaking any works to create new assets or alter existing assets for TfL;
- The JV is undertaking development, including development on or around TfL's assets, which may affect TfL's assets or operations but is not undertaking works to create new assets or alter existing assets for TfL;
- 2.3 As 2.2 but the JV's development takes direct support from TfL's assets;
- As 2.2 or 2.3 but TfL directly undertakes design and construction of interfaces with its assets on behalf of the JV (e.g. works to a load bearing structure over a railway or works to relocate operational kit, such as signalling equipment or traffic lights);
- 2.5 Any of 2.1 to 2.4 (inclusive) and the JV additionally undertakes works to provide new assets or alter existing assets for TfL, whether as Enhancement Works (see paragraph 7 of Part 2) or otherwise.

TfL will determine in its absolute discretion which scenario applies to each Site. For each development scenario TfL will have different requirements.

3. Works Regimes

Depending upon the particular development scenario one or more of the following regimes ("Works Regimes") will apply to regulate the works undertaken:

3.1 an infrastructure protection regime where development works are being undertaken which may affect TfL's assets or its operations;

- an assurance regime where, as part of or to facilitate or enable the development, works are being undertaken to create new assets or alter existing assets that will be owned and maintained by TfL. This regime will also apply to any Enhancement Works;
- an enabling works regime where TfL undertakes certain works on behalf of the JV.

At Mini-Competition stage for each Site the relevant Works Regime(s) that apply will be identified depending on the nature of that Site and the proposed development to be carried out on it. The specific requirements resulting from the application of the Works Regime(s) will depend on the level of interface with TfL's assets or operations.

4. **Documentation**

The Works Agreement and the Lease are the principal means whereby TfL's operations and infrastructure is protected from the development

4.1 Works Agreement

The initial development works will be governed by a works agreement between TfL and the JV ("Works Agreement") which will be entered into on or before the date of the Shareholders Agreement. There will be a separate Works Agreement for each Site. The Works Agreement will contain the Works Regimes applicable to the specific scheme as determined by TfL in its absolute discretion. The core principles of the Works Agreement are set out at Part 2 of this Schedule.

4.2 Lease

- 4.2.1 Subject to paragraph 4.2.3, TfL will grant a long lease of the Site ("Lease").
- 4.2.2 TfL may decide to set up a Site-specific special purpose vehicle and, subject to paragraph 4.2.5, grant the Lease to that entity before the date of the Shareholders' Agreement and the formation of the JV with TfL's appointed JVP. Even if TfL does do this it has reserved the right to require that the JV is a new company to which the Lease will be transferred and in which TfL and the JVP will subscribe for shares once the Conditional Joint Venture Agreement becomes unconditional.
- 4.2.3 Where the Lease has not been granted prior to the date of the Shareholders' Agreement to the entity which will become the JV, then it will only be granted (unless TfL agrees otherwise in its absolute discretion) following the Conditional Joint Venture Agreement becoming unconditional and formation of the JV whereupon TfL and the JVP will subscribe for shares in the JV. Alternatively, where appropriate, the Lease may not be granted until completion of the relevant development works, with the JV undertaking the development works under a licence.
- 4.2.4 The core principles of the Lease are set out at Part 3 of this Schedule.
- 4.2.5 TfL may in limited circumstances agree in its absolute discretion to transfer freehold title to parts of a Site. For the purposes of this document, the provisions of a Lease are referred to. If a transfer is granted the Lease provisions will be adapted to reflect that fact and any provisions specific to a freehold disposal will be included.

4.3 **Supplemental Documentation**

As the Lease may have been granted to the entity which will be the JV before the detailed design for the Site has been completed, the Lease may need to be supplemented or varied to cater for additional/amended rights and/or changes to the extent of the premises demised. The Works Agreement will contain a mechanism by which TfL will enter into such supplemental property documentation as may be required in relation to the Site.

4.4 Ancillary Documentation

The JV is likely to need to enter into ancillary documentation with third parties for the development of some of the Sites (to address issues including adjoining landowner's rights and utility operator rights). Any known requirement for such documentation will be identified for each Site at Mini-Competition stage, but the resolution of any third party development constraints will be the responsibility of the JV.

5. **Taxation**

At Mini-Competition stage, TfL and the entity which is intended to become the JV (if created at that point) will consider the tax implications for the development of each Site and endeavour to implement arrangements that have the most efficient tax treatment for the parties, having regard to TfL's status as a public body.

PART 2

Works Agreement Principles

1. Initial development works

The Works Agreement regulates the initial development works undertaken at the relevant Site by the JV. It does not oblige the JV to undertake the main development works at the Site (save in the case of any Enhancement Works that may be required) but sets out the approval framework within which those works must be undertaken.

2. Parties

The Works Agreement will be entered into by (i) TfL and (ii) the JV. TfL will require an appropriate guarantee in respect of the JV's liability to TfL under the Works Agreement. The JVP's share of liability under such guarantee will be limited to the proportion of the JVP's shareholding in the JV.

3. Paramount importance of the safety and operation of TfL's transport undertaking

Matters relating to the safety and operation of TfL's transport undertaking are paramount and TfL's rights as a consequence may need to override other express provisions of the Works Agreement.

4. Infrastructure Protection Regime

The infrastructure protection regime will apply to any development carried out through the Framework that involves works that may affect TfL's assets or operations, including any works to be undertaken near, on or over TfL's assets. It will also apply to the JV's design of those parts of the development that interface with TfL's assets or operations to TfL's relevant standards. In such cases the JV will be required obtain the approval of TfL's engineer to the design of the works and the scope, methodology and programme for the carrying out of the works and the key contractors/consultants appointed in relation to those works, who will also be required to provide warranties to TfL. All approvals under this regime will be at TfL's absolute discretion on matters relating to TfL's assets or operations.

5. New and Altered Assets Regime

- 5.1 The new and altered assets regime will apply to any development carried out through the Framework that involves works to existing or to create new assets that will be owned and maintained by TfL, most commonly operational assets. These works to create new or alter existing assets may arise as a planning requirement in respect of the development or as a consequence of the final design for the development. The new and altered assets regime will also apply to any Enhancement Works.
- The assurance regime is the process by which the operational business derives "assurance" in respect of the design and delivery of the relevant works to enable it to bring the assets generated by those works into operational use once they are complete.
- 5.3 In this context, "assurance" is the evidence supplied, pursuant to a controlled and documented process, by suppliers and third parties (such as developers and their supply chain) in order to provide assurance and confidence as to the design and delivery being in compliance with and satisfying all relevant technical, design, health

and safety, environmental, operational, customer-facing and user requirements of TfL in accordance with the appropriate standards, products and processes of TfL.

In such cases the JV will be required to obtain the approval of TfL's Engineer to the design of the works with design submissions required to be made at the various stages of the design cycle, as well as to the scope, methodology and programme for the carrying out of the works and the key contractors/consultants appointed in relation to those works, who will also be required to provide warranties to TfL. All approvals under this regime will be at TfL's absolute discretion on matters relating to TfL's assets or operations. The regime will also prescribe the process for bringing into use the relevant assets and the pre-conditions to achieving this.

6. **Enabling Works Regime**

TfL can at its discretion elect to undertake any part of the development works which affect TfL's assets or operations, including works to relocate TfL's plant and machinery or operational equipment. These works may be works which (i) can only be carried out by specifically licensed contractors or (ii) involve the design of passenger interfaces. TfL will enter into a separate agreement with the JV dealing with the specific scope, methodology and programme for such works to minimise interference with the development works to be undertaken by the JV (so far as practicable, having regard to any operational constraints) and covering other matters such as the provision of warranties to the JV (where appropriate) etc.

7. Enhancement Works

- 7.1 TfL shall be entitled to request at Mini-Competition Stage that Enhancement Works are carried out, for and at the cost of TfL, as an additional deliverable of the development works.
- 7.2 In respect of any such Enhancement Works, TfL will provide a scope, performance specification or design (depending on the criticality of the Enhancement Works to TfL). The JV will provide a cost proposal for such Enhancement Works and the final design, specification, and cost will be recorded in writing in a supplemental agreement to the Works Agreement.
- 7.3 The New and Altered Assets Regime and Infrastructure Protection regime noted above will apply to the Enhancement Works.

8. Works Approval and Monitoring Regimes

- 8.1 The relevant Works Regime(s) noted above will be documented in the Works Agreement and the JV will agree to adhere to them as a condition of carrying out the works.
- 8.2 The JV will be required to undertake any approved works in accordance with all relevant standards of TfL and such other requirements as TfL's engineer may properly consider it necessary to impose to ensure the safety of persons and the operation of TfL's transport undertaking.

9. **Indemnity**

The JV shall indemnify TfL against all liabilities arising out of or in consequence of the carrying out of any development works and any breach by the JV of the Works Agreement.

10. Insurance

The insurance required under each Works Agreement will be specified by TfL at Mini-Competition stage on a Site by Site basis and may include, without limitation, property, construction, public liability and professional indemnity insurance. Where TfL has a specific insurance framework in place to provide cost-effective insurance policies for developments of this nature the JV may be required (at TfL's absolute discretion) to procure insurance policies from this framework.

11. Dealings

The Works Agreement is personal to the JV and may not be assigned, novated or otherwise dealt with subject to approved funders' step-in rights.

12. Termination events and consequences

- 12.1 The Works Agreement may be terminated by TfL if:
 - 12.1.1 either the CJVA or BDMA is terminated in accordance with its terms;
 - 12.1.2 the developer or any guarantor becomes insolvent;
 - 12.1.3 there is a breach by the JV is notified and is not remedied within a reasonable period of time;
 - 12.1.4 in the event of an irremediable breach by the JV.
- 12.2 Termination of a Works Agreement will be without prejudice to the rights of either TfL or the JV under that Works Agreement in respect of any antecedent breach.

PART 3

Lease Principles

The main principles that will apply to each Site Lease granted by TfL are set out below. Each Lease will be granted on terms appropriate to the nature of the developed use of the Site and the impact on or interface with TfL's assets or operations.

Extent of demise

The tenant will be given a demise of the premises required for the use of the initial development of the relevant Site to be undertaken by the JV. If the Lease is granted before the scheme designed is fixed, the Works Agreement will allow for the demise to be modified when the design is fixed but the initial demise will include the valuable interest in the Site.

2. Term

The term length will be between 130 and 999 years determined at TfL's absolute discretion. Factors influencing TfL's decision as to the length of the term may include the type of development and the nature of the interface with TfL's assets.

3. Rent

The tenant will pay a peppercorn rent unless TfL specifies at Mini-Competition stage that it requires a ground rent in respect of the Lease premises. Any ground rent will be set and subject to rent review on a market acceptable basis.

4. Paramount importance of the operation of TfL's assets and operations

The safety and operation of TfL's assets and operations are paramount and TfL will reserve appropriate rights as a consequence.

5. Rights granted to the tenant

The rights granted and reserved will be appropriate having regard to the requirements of both TfL and the tenant of each individual Site and, to the extent that these are not determined when the Lease is granted, will be dealt with as noted at paragraph 4.3 of Part 1.

6. Repair

The Lease will contain such tenant's repairing obligations as TfL determines are appropriate to the premises demised having regard to TfL's retained land interests and infrastructure protection provisions commensurate with the works being undertaken.

7. Alterations

The tenant is not to undertake any works that may affect TfL's operations or assets without complying with the infrastructure protection regime outlined in Part 2 above. The tenant may undertake certain works that do not affect TfL's assets or operations without further reference to the infrastructure protection regime. The lease will contain such other controls on alterations as TfL determines are appropriate to the premises demised having regard to TfL's assets and operations.

8. Alienation

The Lease will contain such controls on dealings as TfL determines are appropriate have regard to TfL's assets and operations. Consent to dealings may be refused if there is a material breach of the tenant's covenants which may have an adverse effect on TfL's assets or operations.

9. User

The tenant will be permitted to use the premises for any use which does not interfere with or have an adverse effect on TfL's assets or operations.

10. Insurance

The insurance required under each Lease will be decided by TfL at Mini-Competition stage on a Site by Site basis and may include, without limitation, property, construction, public liability and professional indemnity insurance.

11. Indemnity

The tenant will indemnify TfL against all liabilities arising out of or in consequence of its use and occupation of the premises and any breach by the tenant of its Lease covenants.

12. Load Bearing Structure

- 12.1 If the premises include a load bearing structure which if not properly maintained would have an adverse effect on TfL's assets or operations TfL will impose additional requirements on the tenant for the upkeep of the structure and rights for TfL to safeguard this position. This may include a requirement for the tenant to establish and maintain a service charge or sinking fund for the maintenance of such load bearing structure.
- 12.2 Where premises include a load bearing structure over TfL's assets, TfL will reserve a right of forfeiture for breach of the tenant's obligations in the Lease. The forfeiture right will contain mortgagee protection provisions.
- 12.3 If TfL owns the load-bearing structure from which the premises takes support, TfL may impose a service charge or sinking fund regime or take a commuted payment towards the cost of maintenance of that structure.

PART 4

Planning and Sales Overage Principles

1. Planning overage

- 1.1 The requirement for planning overage and the detailed terms on which it will be calculated will be identified on a site by site basis at Mini-Competition. On larger sites the Landowner reserves the right to require planning overage to be calculated on a phased basis.
- Planning overage will apply to each subsequent planning permission (Further Planning Permission) obtained which permits an increase in Net Internal Area (NIA) measured in accordance with the Code of Measuring Practice (Sixth Edition) RICS 2007 of any use on the scheme from that permitted by the planning permission which satisfies the Planning Condition under the Conditional Joint Venture Agreement (Original Planning Permission). The Landowner reserves the right to adjust the area metric upon which planning overage will be based. For example, on some sites overage may be set on a habitable rooms basis or equivalent.
- 1.3 Planning overage will become payable on the first occasion that a Further Planning Permission is granted and:
 - 1.3.1 development is commenced pursuant to that Further Planning Permission; or
 - 1.3.2 a disposition is made with the benefit of that Further Planning Permission

and this will be the planning overage calculation date (Planning Overage Calculation Date).

- 1.4 Planning overage will be due on a rolling basis until development has been commenced across the whole of the site such that there may be a succession of overage payments made throughout the planning overage period.
- 1.5 The length of the planning overage period will be specified by TfL at Mini-Competition.
- 1.6 The planning overage will be calculated on a per sq ft basis relating to the weighted land price per sq ft fixed for each use as agreed in the Market Value (MV) used in the calculation of the Site Value under the Conditional Joint Venture Agreement with the benefit of the Original Planning Permission and weighted in line with the uses Gross Development Value (GDV) contribution under the Original Planning Permission.
- 1.7 The land price per sq ft will be weighted in line with that use's contribution to the total GDV included in the MV calculation. For example, where the use contributes 60% of the GDV the weighted land value per sq ft will be based on 60% of the MV of the land broken back on a price per sq ft basis.
- 1.8 The planning overage will take account of both increases and decreases in NIA sq ft for each permitted use between each planning permission.
- 1.9 Where a Further Planning Permission introduces a new use to the scheme the calculation of a weighted land value per sq ft for the purposes of the planning overage will be agreed by the parties or determined in default of agreement by an independent third party expert.

- 1.10 Once there is an increase in NIA sq ft (by use) the JV shall pay the Landowner planning overage calculated as a percentage (between 0 100%) of the weighted land value of the increase over the previous planning permission weighted land value.
- 1.11 Where planning overage is to apply the following formula will be used for each use where there is an increase in NIA sq ft or equivalent area metric:

Planning Overage = $((RP - OP) \times WLP) \times LOP$

Where:

RP = Revised planning permission sq ft

OP = Original (or previous) planning permission sq ft

WLP = Weighted Land Price (£psf by use - where appropriate subject to netting as set out above)

LOP = Landowner overage percentage

- 1.12 The planning overage is to be paid by the JV to the Landowner within 14 days of the Planning Overage Calculation Date or, if later, within 14 days of the date of determination together with any Value Added Tax payable on it JV.
- 1.13 Any dispute about the calculation of the planning overage may be referred by the Landowner or the JV to the decision of an independent expert.
- 1.14 The planning overage will be secured by a restriction on the JV's title in favour of the Landowner. The restriction will not catch certain categories of permitted dispositions including charges and dispositions of individual units of accommodation.

2. Sales Overage

- 2.1 Where Sales Overage is required it will be set in relation to the Gross Development Value (GDV) or net profit agreed as part of the MV used in the calculation of the Site Value under the Conditional Joint Venture Agreement with the benefit of the Original Planning Permission. On larger more complex sites with longer development periods net profit may be used to account for potential movements in both values and costs during the construction period.
- Where net profit is used as the profitability metric the exact details of how net profit will be calculated will be set out at Mini-Competition and may vary from site to site. However it is anticipated that net profit will take account of actual receipts less actual cost (including construction cost, professional fees and cost of finance) and a JV priority return.
- 2.3 On smaller sites GDV plus a buffer may be used on the basis that any increases in values and costs during the construction period can be factored into the buffer.
- The sales overage profitability metric will be defined on a site by site basis and set out at Mini-Competition.
- 2.5 A threshold or 'buffer' (the Threshold) relating to an increase in GDV of between 0% 100% will either be set at Mini-Competition or form a bid item as part of the Mini-Competition and will act as the trigger for the payment of sales overage. This Threshold will be set or bid at a level which takes into account increases in GDV as well as construction cost. The Landowner reserves the right to adjust the method of

applying a Threshold, for example the Threshold may be set in relation to cost and value indices and allowance for value generating enhancements may be included on more complex sites.

- 2.6 The sales overage will relate to all uses which form part of the development of the site. Once the proceeds of sale exceed the total GDV threshold as set out at Mini-Competition the JV shall pay to the Landowner sales overage equal to a specified percentage of the amount that the proceeds exceed the Threshold.
- 2.7 The requirement for sales overage and the arrangements for setting the threshold will be defined on a site by site basis at Mini-Competition.
- 2.8 On larger sites the Landowner reserves the right to require sales overage to be calculated on a phased basis.
- 2.9 Sales overage will become payable following the first quarter that the actual GDV or net profit exceeds the Threshold.
- 2.10 The length of the sales overage period will be specified by TfL at Mini-Competition.
- 2.11 The following formula will be used to calculate sales overage:

Sales Overage = (AGDV - EGDV) x LOP

Where:

AGDV = Actual GDV (at the end of the sales overage period there will be a deemed disposal of unsold parts or parts held as an investment and the AGDV will include the market value of those interests)

EGDV = Estimated GDV plus agreed threshold (where applicable)

LOP = Landowner Overage Percentage

- 2.12 The JV will after the date of the disposal of the first unit at the site provide the Landowner with a report on the cumulative proceeds for the quarterly period up to previous quarter day. Once the proceeds exceed the Threshold the JV shall at the same time as submitting such report to the Landowner pay to the Landowner the sales overage due on the dispositions of all units which have taken place in the quarter preceding the relevant quarter day.
- 2.13 Any dispute about the calculation of the sales overage may be referred by the Landowner or the JV to the decision of an independent expert.
- 2.14 The sales overage will be secured by a restriction on the JV's title in favour of the Landowner. The restriction will not catch certain categories of permitted dispositions including charges and dispositions of individual units of accommodation.

Where there are further land acquisitions following the granting of the initial planning consent, agreed by both JV partners, which involves an increase in floor area this land will be excluded from the overage calculation.

Board



Date: 3 February 2016

Item: Property Partnerships – Developing TfL's Assets –

Supplemental Information

This paper responds to correspondence received in relation to the Board item after the papers were published. It was provided to Members ahead of the meeting and will be published on tfl.gov.uk.

1 Purpose

1.1 Following the publication of the papers for this meeting, TfL received an email dated 29 January 2016 from Mr Osband, with a request that it be circulated to Members in advance of the meeting of the Board on 3 February 2016. A copy of the content of the email is attached as Appendix 1.

2 Issues Raised

- 2.1 Mr Osband makes various comments on the proposal for TfL to enter into a Property Partnership Framework agreement.
- 2.2 The substantive Board papers provide details of the proposal. The objective of the proposal is for TfL to maximise its returns from its property assets by entering into joint ventures with partners selected from the framework.
- 2.3 A decision will be taken on a site by site basis as to whether any particular site should be developed through the Property Partnership framework or whether it would be more advantageous for TfL to dispose of the site using a different mechanism. The framework will not oblige TfL (or the new Mayor) to develop sites through the Property Partnership arrangements and TfL will therefore continue to have full flexibility to develop its sites as it sees fit. Each development opportunity will be carefully analysed in light of market conditions at the time so that TfL can be satisfied that all disposals represent best value and that they are state aid compliant.
- 2.4 Mr Osband also makes various comments on the existing joint venture arrangements relating to Earls Court. TfL will respond to Mr Osband separately on that matter.
- 2.5 TfL is not subject to the statutory provision under section 123 of the Local Government Act 1972 which prohibits local authorities from selling land at an undervalue but is nevertheless under a fiduciary duty to obtain best value from its land disposals in order to protect the public purse.

- 2.6 TfL's approach on the Property Partnerships framework has been reviewed and is endorsed by both Deloitte and the Commercial Development Advisory Group.
- 2.7 The letter makes various comments on the existing joint venture arrangements relating to Earls Court which TfL will respond to separately

List of appendices to this report:

Appendix 1: Email from Mr Osband, dated 29 January 2016.

Received and circulated to Members after this paper had been circulated to Members

Appendix 2: Letter from Caroline Pidgeion AM, dated 2 February 2016 Appendix 3: Email from Andy Slaughter MP, dated 2 February 2016 From: **Richard Osband** [address redacted]

Date: 29 January 2016 at 09:38

Subject: TfL Board vote to approve the new Property Partnership Framework on the

3 February 2016

To: HowardCarter@tfl.gov.uk

Dear Mr Carter

I ask you to please forward this email to the Chair and Members of the Transport for London Board for their consideration before or at the Board Meeting on the 3 February 2016 and to provide a printed copy at the meeting. I request the Board to defer their decision until after the Mayoral Election to avoid making a controversial decision that the new Mayor (who will be Chair of TfL) may not approve. To make a decision on the 3 February 2016 will be a discourtesy to the new Mayor.

I ask the Board to defer their decision on item 10 of the agenda, for the meeting on 3 February 2016, until after the Mayoral election.

TfL's Board are due to vote to approve the new Property Partnership Framework on the 3 February 2016 to substitute a restricted mini competition for open market competition, by acting in bad faith to benefit a small framework of chosen suppliers, to state aid those suppliers by selling land, by the framework process, which limits the possibility of best consideration.

Click here for the 3 February 2016 Framework Board Paper.

Because TfL is not subject to Section 123 of the Local Government Act 1972, the TfL Section 123 Loophole, it is unique as a public body in its capacity to lawfully undersell its properties for less than the best consideration. However an undersell can be challenged under EU state aid legislation.

We have already seen the TfL Main Board frame-up TfL by approving the sale of the Earls Court Exhibition Centre land for a nil interest iou, on terms damaging to Transport for London, the exhibition industry, the local economy and for only token affordable housing. See appendix 1 as a postscript to this email for details of the sale terms the Board approved.

The Board decision to be made, in the dying embers of the Boris Johnson administration, will make the Framework a fait accompli the incoming Mayor will inherit.

The recommendations in the Board Paper for the 3 February 2016 TfL Board Meeting are in Appendix 2, as a postscript to this email.

Kind regards

Richard

Richard Osband Transport for London Bill Petitioner c/o Courtenay Trust, 1 Kensington Gore, London, SW7 2AR

Appendix 1

TTL Earls Court Properties Limited accounts for the year ended 31 March 2015 reveal the sale proceeds for the TfL EC1/EC2 land, by means of a new 999 year lease, and reveals a cash purchase by TfL of new shares in Earls Court Partnership Limited (ECP). The accounts, in the financial and business review on page 3, provide as follows:

"During the period, the Company invested in 3,737 ordinary shares of £1, representing 37 per cent of the issued share capital of Earls Court Partnership Limited (ECP), a property investment holding company incorporated, in England.

On 10 February 2015, the Company entered into an Escrow Arrangement with members of the Capital & Counties Properties PLC (Capco) group with a view to increasing its investment in ECP. Subsequent to the year end, on 2 April 2015, London Underground Limited, a fellow subsidiary undertaking of the Transport for London Group, signed a 999 year lease to let land at Earl's Court to ECP. Simultaneously, the Company also contributed funds totalling £44.4m to ECP. In consideration ECP issued share capital to a value of £44.4m, and non-interest bearing loan notes totalling £375.6m to the Company. The consideration owing to London Underground Limited in respect of the lease was settled between members of the Transport for London Group by means of intercompany loans. The Company's percentage holding in ECP remains unchanged at 37 per cent."

TfL has given up a highly saleable, 100 per cent owned property according to Jones Lang Lasalle (JLL), worth £357.7 million (JLL are also valuers for same land in CapCo's accounts) for £375.6 million of non-interest bearing loan notes.

The conversion of the 37 per cent investment in ECP in to cash for TfL over time will be by means of dividend income since the loan notes are non-interest bearing. The dividend policy will be controlled by the 63 per cent shareholder which is presently a CapCo subsidiary, EC PROPERTIES LP LIMITED, a company registered in Jersey (Company Number 108459) whose registered office is at 22 Seale Street, St Helier, Jersey, JE2 3QG, with £2 of issued share capital, tax havened in Jersey, where its accounts are not available at the Jersey equivalent of Companies House, and which has no apparent covenant strength. TfL has lost control of its asset.

It remains an open question what EC Properties LP Limited have put in to Earls Court Partnership Limited (ECP) to justify its 63 per cent.

The GLA has CPO powers which would have enabled it to CPO the CapCo exhibition centre leases for a price based on its existing use plus statutory compensation. The <u>District Valuation Service Final Report</u>, dated 10 August 2012, on behalf of the GLA, RBKC and LBHF, provides at 6.5, 6.6 and 6.7 on page 15:

- "6.5 The exhibition centres have been valued by CBRE at £110.7 million on the basis that the existing operational business continues for the foreseeable future, assuming that re-development does not take place."
- "6.6 We referred the valuation of the exhibition centres to our Specialist Property Valuers and their opinion of value on an existing use basis was £82.5 million."
- "6.7 A series of discussions ensued and neither party was able to reach agreement on value for the exhibition centres leading to the decision to pursue third party valuer (GVA) to determine. The third party opinion of value was £97m and we have adopted this value in our appraisal."

If we pro rate the CapCo results of £609 million for 63 per cent (click here for Capco results), we get a value of the whole of £966.7 million. If the GLA had used its CPO powers to acquire CapCo's EC1/EC2 leases for £97 million (statutory compensation can be ignored, as insignificant, in this calculation, since the basic loss payment is 7.5% of the value of the interest in land concerned, subject to a ceiling of £75,000) then the TfL asset would have been worth £869.7 million (£966.7 million less £97 million) at 31 December 2015, not £375.6 million (the price paid in non-interest bearing loan notes).

Appendix 2

- 2 Recommendations
- 2.1 The Board is asked to note this paper and the supplemental paper on Part 2 of the agenda and:
- (a) approve the awarding of a framework (the Framework) of property development suppliers (Framework Suppliers) as described in this paper with the objective of entering into corporate joint ventures (JVs) with individual members of the Framework on a site by site basis following further competition between Framework Suppliers (a mini competition) as a means of TfL developing its property assets;
- (b) delegate to TfL Officers and any of its Subsidiaries (as described in paragraph 2.2 below) authority to enter into all such contracts necessary to deliver each development opportunity under the Framework and undertake, all ancillary matters, including (without limitation) the approval and giving of guarantees and indemnities, the approval of investment decisions, the transfer of assets including land or shares in any of the TfL subsidiaries formed for the purposes of disposing or developing TfL's land provided that:
- (i) the value of land being disposed of under a mini competition does not exceed the relevant TfL Officer's land authority under TfL Standing Orders (and in the event it does approval of the Board will be sought);
- (ii) the Mayor's Opinion has been granted in accordance with paragraph 12 (1) to Schedule 11 to the Greater London Authority Act 1999;
- (iii) if required, the consent of the Secretary of State has been obtained in accordance with Section 163 of the Greater London Authority Act; and
- (iv) in accordance with TfL Standing Orders, the appropriate consulatation has taken place with the Director of Commercial Development;
- (c) agree that, where the disposal of land is proposed to take place by means of a disposal of all or any part of the company in which it is held, such disposal shall be treated as a disposal of land for the purposes TfL Standing Orders and Land Authority and Disposal Authority will be deemed to have been given;
- (d) note that approval for any TfL investment and guarantees required for the delivery of any development opportunity following a mini competetion under the Framework shall be sought separately in accordance with the levels of authority under TfL Standing Orders;
- (e) authorise the TfL Officers and any of its Subsidiaries (as described in paragraph 2.2 below) to:
- (i) form companies as wholly owned subsidiaries of TfL or any of the Subsidiaries (as appropriate) necessary for the delivery of the JVs formed as part of the Framework referred to in paragraph 2.1(a) above :
- (ii) approve the adoption of the memorandum and articles of the new subsidiaries;
- (iii) approve the individuals to comprise the board of directors and the Company Secretary of each of the new subsidiaries;

- (iv) approve the names of each of the new subsidiaries
- (v) wind up or dissolve any of the new subsidiaries at any time when any of them is no longer required; and (vi) provided that the approvals given under paragraphs 2.1(e) (ii) (iv) above and paragraph 2.1(f) below shall lapse in respect of any new subsidiary formed in accordance with paragraph 2.1(e) (i) above when such company ceases to be a "subsidiary" of Transport for London, as such term is defined in Section 1159 of the Companies Act 2006;
- (f) authorise the TfL Officers and the Subsidiaries (as described in paragraph 2.2 below) to negotiate, approve, authorise, agree and execute (whether by deed or otherwise on behalf of TfL or any Subsidiary (as appropriate)) any documentation:
- (i) to be entered into in connection with the incorporation of any of the new subsidiaries; and
- (ii) required in relation to the creation, operation, introduction and management of any of the new Subsidiaries' regulatory compliance requirements including, without limitation, letters of financial support, all agreements, deeds, guarantees, indemnities, announcements, notices, contracts, certificates, letters and other documents;
- (g) authorise the TfL Officers and Subsidiaries (as described in paragraph 2.2 below) to do all such other things as they consider necessary or desirable to facilitate (i) the regulatory compliance of the new companies; and/or (ii) the operation and implementation of the Framework and the JVs formed under the Framework.
- 2.2 The following Officers and Subsidiaries shall have delegated authority:
- (a) TfL Officers: the Commissioner, Managing Director Finance, General Counsel and Director of Commercial Development; and
- (b) Subsidiaries: Subsidiaries of TfL including Transport Trading Limited (TTL), TTL Properties Limited and any other subsidiary (whether existing presently or to be formed) of TTL, and the directors of such authorised company shall be authorised to act for and on behalf of that company.

Richard Osband



Isabel Dedring City Hall The Queen's Walk London SE1 2AA

By email: mayor@london.gov.uk

Dear Isabel,

RE: Property Partnership Framework

I understand that at the TfL Board meeting on the $3^{\rm rd}$ February you are due to discuss the setting up a new Property Partnership Framework to enable TfL to make the most of its property development opportunities over the next decade.

City Hall

The Queen's Walk London SE1 2AA

Switchboard: 020 7983 4000

Web: www.london.gov.uk

Date: 02/02/2015

In the light of the central government revenue grant being scrapped, it of course makes sense to maximise other revenues. I have however had a request put to me to ask the Board to defer making this decision until after the Mayoral election. The reason given for the request is that this decision will tie the next Mayor to a particular approach on a very significant issue.

I wanted to let you know.

With best wishes,

Caroline Pidgeon AM

Leader of the London Assembly Liberal Democrat Group

Direct telephone: 020 7983 4362 Fax: 020 7983 4417 Email: caroline.pidgeon@london.gov.uk

From: SLAUGHTER, Andrew [mailto:andy.slaughter.mp@parliament.uk]

Sent: 02 February 2016 15:10

To: Carter Howard

Subject: Lillie Bridge depot

Dear Mr Carter

I write to formally request that TfL consider that tomorrow's decision on item. 10 of the agenda with regards to Lillie Bridge depot be deferred until after the London Mayoral election in May.

If a premature decision was made then the hands of a future mayor could be tied and could fall under the purdah period.

Kind regards

Andy Slaughter

Member of Parliament for Hammersmith