



## Contractor Framework Agreement

[HDV]

and

[Lendlease Construction]

***Note: The draft KPI principles paper which has been inserted after Schedule 5 of this agreement is indicative only. The principles contained within such draft paper and the drafting relating thereto are subject to further refinement. On this basis, any provisions in this draft agreement (including definitions) which relate to key performance indicators (including the consequences of failure to achieve the same) will need to be adapted.***

relating to the development of development sites within the London Borough of Haringey

2017

## CONTENTS

CLAUSE	PAGE
1. INTERPRETATION .....	1
2. FRAMEWORK .....	5
3. PROTOCOLS .....	8
4. KEY PERFORMANCE INDICATORS .....	8
5. DEVELOPMENT MANAGER .....	9
6. TERM OF THIS AGREEMENT .....	9
7. VARIATIONS .....	9
8. SEVERABILITY .....	9
9. NO WAIVER .....	9
10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT .....	9
11. GOOD FAITH AND CONFIDENTIALITY .....	9
12. ASSIGNMENT .....	10
13. LIMIT ON LIABILITY .....	10
14. NOTICES .....	11
15. DISPUTES .....	12
16. NON-COMPLIANCE OF THE CONTRACTOR .....	12
17. TERMINATION .....	13
18. ANTI-BRIBERY .....	13
SCHEDULE 1 .....	16
D&B Protocol .....	16
SCHEDULE 2 .....	12
CM Protocol .....	12
SCHEDULE 3 .....	15
General KPIs and Headings in respect of Project Specific KPIs .....	15
SCHEDULE 4 .....	1
Form of D&B Contract .....	1
Form of Construction Management Agreement .....	1

**THIS AGREEMENT** is made on

2017

**BETWEEN:**

- (1) [HDV] (No. [●]) whose registered office is at [ ] ("HDV"); and
- (2) [LENDLEASE CONSTRUCTION] (No. [ ] ) whose registered office is at [ ] (the "Contractor"),

together the "**Parties**" and each a "**Party**".

**RECITALS**

- (A) HDV or a HDV Party will own a long leasehold interest or freehold in the Development Sites.
- (B) The Contractor is a main contractor including a design and build contractor and construction manager.
- (C) The Parties wish to enter into this agreement to record and agree the terms on which the Contractor will be given an opportunity to seek the award of Vertical Works Contracts and Horizontal Works Contracts.
- (D) The Parties are entering into this agreement in good faith and are relying on its terms.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

The following definitions apply in this agreement, unless the context otherwise requires:

1.1 **Definitions**

"**Adjudicator Nominating Body**" means the Royal Institution of Chartered Surveyors;

"**Appointments**" means as the context so requires:

- (a) the Development Management Agreement; and
- (b) the appointment of any member of the Independent Verification Team or the Development Solicitor by HDV and/or any member of the HDV Group as referred to in Clause 2.10 or Clause 2.11;

"**Bid Process**" means the process of the Contractor seeking the award of a Vertical Works Contract or a Horizontal Works Contract (as applicable) pursuant to this agreement;

"**Bid Vertical Build**" means the Vertical Build by Gross Internal Area to be constructed on the Development Sites, which those Vertical Works Contracts which the Contractor has been given the opportunity to seek the award of in accordance with this agreement relate to;

"**Business Day**" means a day which is not a Saturday or Sunday or a day from and including 25 December in any year to and including 1 January of the next year or a bank or public holiday in the United Kingdom;

"**CM Protocol**" means, subject to Clause 3.2, the procedure set out in Schedule 2;

**"Constructed Vertical Build"** means the Vertical Build by Gross Internal Area constructed on the Development Sites, which a Vertical Works Contract awarded to the Contractor pursuant to this agreement relates to;

**"Construction Management Agreement"** means the form of construction management agreement annexed at Schedule 5;

**"Corruption Laws"** has the meaning given to it in Clause 18.1;

**"Council Group"** has the meaning set out in the Members Agreement;

**"D&B Contract"** means the form of design and build contract annexed at Schedule 4;

**"D&B Protocol"** means, subject to Clause 3.2, the procedure set out in Schedule 1;

**"Development"** means the development of any of the Development Sites or any part of them;

**"Development Business Plan"** has the meaning set out in the Members Agreement;

**"Development Management Agreement"** has the meaning set out in the Members Agreement;

**"Development Manager"** means Lendlease Development (Europe) Limited (incorporated and registered in England and Wales with company number 02946679) whose registered office is at 20 Triton Street, Regent's Place, London, NW1 3BF or any replacement thereof notified by HDV to the Contractor from time to time;

**"Development Programme"** means the programme for Development of a Phase contained in a Procurement Recommendation approved by the [DevLLP Board] pursuant to Clause 18.8.9 of the Members Agreement;

**"Development Sites"** means the Category 1 Properties or Category 2 Properties or Category 3 Properties (as applicable) with each such term having the meaning given to the same in the Members Agreement and references to a "Development Site" shall be construed as references to the whole or any part of a Development Site as the context shall require;

**"Development Solicitor"** means a firm of solicitors appointed by HDV (which shall not be either a member of the PSP Group or Council Group) to perform the Legal Services;

**"DevLLP"** has the meaning given to such term in the Members Agreement;

**"DevLLP Board"** means [INSERT];

**"General KPIs"** means the key performance indicators set out in Schedule 3;

**"Gross Internal Area"** means the gross internal area of the relevant premises measured or calculated in accordance with the RICS Code of Measuring Practice (6th Edition);

**"HDV Group"** has the meaning given to such term in the Members Agreement;

**"HDV Party"** has the meaning set out in the Members Agreement;

**"Horizontal Works Contract"** means a proposed contract (with HDV or the relevant HDV Party) for, inter alia, the carrying out of or the management of the carrying out of any construction works for the Development of a Phase which do not include the construction of any Vertical Build;

**"ICC Services"** means the scope of services to be performed by the consultant appointed as the Independent Cost Consultant which shall include but not be limited to the services referred to in Schedule [INSERT] of the Development Management Agreement;

**"Independent Cost Consultant"** means a consultant which shall not be either a member of the PSP Group or Council Group appointed by HDV to perform the ICC Services;

**"Independent Programme Auditor"** means a consultant which shall not be either a member of the PSP Group or Council Group appointed by HDV to perform the IPA Services;

**"Independent Verification Team"** means the following advisers (which shall not be either a member of the PSP Group or Council Group) appointed by HDV:

- (a) Independent Cost Consultant; and
- (b) Independent Programme Auditor,

and any other consultant to be included in the Independent Verification Team pursuant to Clause 2.11.

**"IPA Services"** means the scope of services to be performed by the consultant appointed as the Independent Programme Auditor which shall include but not be limited to the services referred to in Schedule [INSERT] of the Development Management Agreement;

**"KPIs"** means General KPIs and Project Specific KPIs;

**"Legal Services"** means the scope of services to be performed by the solicitor appointed as the Development Solicitor which shall include but not be limited to the services referred to in Schedule [INSERT] of the Development Management Agreement;

**"Material Breach"** means any of the circumstances specified in each "Applicability" section of the General KPI's;]

**"Members Agreement"** means the members agreement dated [●] 2017 made between [●] as such agreement may be varied from time to time;

**"PCSA"** means an agreement with HDV or the relevant HDV Party to provide pre-construction services prior to the award of any Vertical Works Contract or Horizontal Works Contract in relation to the Development of a Phase;

**"Phase"** means either a Development Site or where the Development Business Plan for a Development Site divides that Development Site into distinct and separate parts so as to differentiate between the Development of such parts, each such part of that Development Site;

**"Planned Total Vertical Build"** means the total Vertical Build by Gross Internal Area which it is planned to procure the construction of on the Development Sites as provided for in the Development Business Plans;

**"Procurement Recommendation"** means, in respect of a Development Site, a recommendation in relation to the procurement of goods, services or works included in the relevant Development Business Plan by the Development Manager for approval by the [DevLLP Board] pursuant to the Members Agreement;

**"Project Specific KPIs"** means the key performance indicators for delivery of a Phase (including any works to be carried out under a PCSA) formulated between the Development Manager and the Contractor under the heading set out in Schedule 3 and approved by the [DevLLP Board] during the Bid Process provided that it is hereby agreed

that in no circumstances at any time shall the Project Specific KPI's incorporate any [financial related indicators]]];

**"Protocol"** means the D&B Protocol, the CM Protocol or the relevant Substitute Protocol as the context requires;

**"PSP Group"** has the meaning set out in the Members Agreement;

**"Services"** shall mean the ICC Services, IPA Services and the Legal Services as the context so requires;

**"Standard Form Construction Documents"** means the Construction Management Agreement and the D&B Contract;

**"Substitute Protocol"** means, subject to Clause 3.2, a protocol other than the D&B Protocol or the CM Protocol that a Procurement Recommendation approved by the [DevLLP Board] pursuant to Clause 18.8.9 of the Members Agreement provides for the use of for a Bid Process for a Vertical Works Contract or Horizontal Works Contract;

**"Total Vertical Build"** means the total Vertical Build by Gross Internal Area which has been constructed on the Development Sites;

**"Vertical Build"** means buildings including foundations and sub-structure;

**"Vertical Build Cap"** means 60% of, prior to completion of the construction of all Vertical Build on the Development Sites, the Planned Total Vertical Build and thereafter the Total Vertical Build; and

**"Vertical Works Contract"** means a proposed contract (with HDV or the relevant HDV Party) for, inter alia, the carrying out of or the management of the carrying out of any construction works for the Development of a Phase which include the construction of any Vertical Build.

## 1.2 Interpretation

- (a) Unless otherwise expressly stated, the rules of interpretation set out in this Clause 1.2 apply in this agreement.
- (b) Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- (c) A reference to a Clause or Schedule shall be to a Clause or Schedule in this agreement unless otherwise expressly stated.
- (d) The Schedules form part of this agreement. Any reference to this agreement includes the Schedules.
- (e) Unless the context otherwise requires, a reference to a person includes a reference to a government, state, state agency, corporation, body corporate, association or partnership.
- (f) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- (g) This agreement shall be binding on, and enure to the benefit of, the Parties to this agreement and their respective successors and permitted assigns and references to any Party shall include that Party's successors and permitted assigns.

- (h) A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision and to the same as amended or as re-enacted from time to time with or without modification.
- (i) Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- (j) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (k) Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- (l) Failure by either Party (and/or any member of the HDV Group) at any time to enforce any provision of this agreement shall not be construed as a waiver of such entitlement and shall not affect the validity of this agreement or any part or parts hereof or the right of the relevant Party (and/or any member of the HDV Group) as applicable to enforce any provision in accordance with its terms. The rights and/or remedies of either Party (and/or any member of the HDV Group) may only be waived by formal written waiver which is signed by a duly authorised representative of the entity waiving its rights and which makes express and unequivocal reference to the waiver being made pursuant to this Clause 1.2(l) of the agreement. No waiver of any breach of the agreement shall constitute a waiver of any subsequent breach of the agreement.
- (m) This agreement may be executed in counterparts which will together form a single binding agreement.
- (n) Nothing contained in this agreement shall be construed as creating a partnership or a contract of employment between the Parties.

## 2. **FRAMEWORK**

- 2.1 In relation to each Phase, if all members of the Independent Verification Team and the Development Solicitor support the adoption of a Procurement Recommendation in its entirety pursuant to and in accordance with Clause 18.8.7 of the Members Agreement and such Procurement Recommendation recommends that the Contractor is given the opportunity to seek the award of any Vertical Works Contracts and/or Horizontal Works Contracts, then subject to Clauses 2.6, 2.7, 2.9, 2.10, 2.11, 13, 16, 17 and 18, the Contractor shall have the right to be given the opportunity to seek the award of those Vertical Works Contracts and/or Horizontal Works Contracts (as applicable) on the basis provided for in that Procurement Recommendation and in accordance with the terms of this agreement.
- 2.2 If at the end of the Bid Process relating to a Vertical Works Contract or a Horizontal Works Contract for a Phase (as applicable), the [DevLLP Board] approves the award of the relevant contract to the Contractor, the Contractor shall and HDV shall (or shall procure that the relevant HDV Party shall) duly execute the relevant contract as a deed in the form and on the terms approved by the [DevLLP Board] and the Contractor shall do so within 15 Business Days of receipt of the engrossed final agreed form of contract or within such other period as the Parties may agree.
- 2.3 In the event that the Contractor is given the opportunity to seek the award of a Vertical Works Contract in accordance with an entitlement under this agreement but the Contractor makes the decision by written notice to HDV or to the Development Manager not to seek the award of such Vertical Works Contract then the quantum of the Vertical

Build to be constructed under that Vertical Works Contract shall be included in the calculation of Bid Vertical Build.

- 2.4 In the event that the Contractor is not given the opportunity to seek the award of a Vertical Works Contract in accordance with an entitlement under this agreement or is given the opportunity to seek the award of a Vertical Works Contract in accordance with an entitlement under this agreement but the Contractor is not awarded such Vertical Works Contract, in each case, in any (as applicable) of the following circumstances:
- (a) where there has been a failure on the part of the Contractor to comply with any of its obligations under Clauses 2 or 3 or 5 or 18 in the course of the Bid Process for such Vertical Works Contract;
  - (b) where in the performance of the services under their respective Appointments any member of the Independent Verification Team, the Development Manager or the Development Solicitor is to provide a recommendation, verification, endorsement, approval or the like in relation to any matter for the purposes of the Bid Process for such Vertical Works Contract (including in relation to whether or not to award the relevant Vertical Works Contract to the Contractor at the conclusion of such Bid Process), any such person does not recommend, verify, endorse, approve or otherwise (as the case may be) that matter or proceeding with that Bid Process on the basis of such matter or, (if at the conclusion of the Bid Process), awarding the Vertical Works Contract to the Contractor on the basis of that matter;
  - (c) where, in the course of the relevant Bid Process for such Vertical Works Contract and/or at the conclusion of such Bid Process, there has been a suspension pursuant to Clause 18.3 of this agreement;
  - (d) **[Note: allowance to be made for KPI's]**

then in all such cases, the quantum of the Vertical Build to be constructed under such Vertical Works Contract (and in the case of clause 2.4(c), the quantum of Vertical Build to be constructed under any Vertical Works Contracts which HDV or the relevant HDV Party commences the procurement of or awards during any period of suspension pursuant to clause 18.3 of this agreement) shall be included in the calculation of Bid Vertical Build.

- 2.5 In the event that a Procurement Recommendation approved by the **[DevLLP Board]** pursuant to Clause 18.8.9 of the Members Agreement recommends that the Contractor shall be appointed under a PCSA in respect of either a proposed Vertical Works Contract and/or a proposed Horizontal Works Contract, the Contractor shall and HDV shall (or shall procure that the relevant HDV Party shall) duly execute and deliver the relevant PCSA as a deed in the form and on the terms set out in such Procurement Recommendation so approved by the **[DevLLP Board]** and the Contractor shall do so within 15 Business Days of receipt of the engrossed final agreed form of PCSA or such other period as the Parties may agree.
- 2.6 The Contractor shall not have the right in any circumstances to be given the opportunity to seek the award of a Vertical Works Contract where at the commencement of the procurement of that Vertical Works Contract by HDV or the relevant HDV Party, the Bid Vertical Build at that time equals or exceeds the Vertical Build Cap unless the **[DevLLP Board]** specifically decides otherwise.
- 2.7 The Contractor agrees that:
- (a) the form and terms of the relevant Vertical Works Contract or Horizontal Works Contract (as applicable) for the purposes of a Bid Process will be those identified in the relevant Procurement Recommendation (which may be based on a Standard Form Construction Document with such amendments as are identified in such

Procurement Recommendation) as approved by the [DevLLP Board] pursuant to Clause 18.8.9 of the Members Agreement; and

- (b) any amendments to the forms and terms of the relevant Vertical Works Contract or Horizontal Works Contract (as applicable referred to in Clause 2.7(a)) proposed during a Bid Process shall require the approval of the [DevLLP Board].

2.8 The Contractor hereby acknowledges that the Independent Verification Team and the Development Solicitor and the Development Manager will be providing services to HDV and/or any member of the HDV Group in connection with the procurement of Development by HDV and or an HDV Party, including monitoring the Contractor's performance of its obligations pursuant to Clauses 2, 3, 4 and 5 and the performance of the Contractor against the KPIs and their respective reports, advice and recommendations will be taken into account by the [DevLLP Board] in reaching decisions regarding the procurement of Development. The Contractor shall:

- (a) provide to the Independent Verification Team and the Development Solicitor and the Development Manager all information and assistance reasonably required by any such person for the purposes of performance of such services;
- (b) co-operate with the Independent Verification Team and the Development Solicitor and the Development Manager in the performance of such services; and
- (c) keep the Independent Verification Team and the Development Solicitor and the Development Manager informed in a timely manner of any steps or other actions that the Contractor is planning to take pursuant to a Protocol and which may be relevant to the performance of such services by such person.

2.9 Notwithstanding any other provision of this agreement, neither HDV or any member of the HDV Group shall be responsible for or have any liability to the Contractor whether by way of indemnity or by reason of breach of contract, breach of statutory duty, in equity, in tort or under any other legal theory (including but not limited to negligence) for any act, omission or default (including any negligence) of the Independent Verification Team, the Development Solicitor and/or the Development Manager.

2.10 Notwithstanding any other provision of this agreement, the Contractor shall not have the right to be given the opportunity to seek the award of any Vertical Works Contracts or any Horizontal Works Contracts, unless and until HDV has engaged consultants as the Independent Cost Consultant, Independent Programme Auditor and the Development Solicitor to provide the relevant Services.

2.11 If:

- (a) a Procurement Recommendation approved by the [DevLLP Board] pursuant to Clause 18.8.9 of the Members Agreement recommends that a further consultant is engaged by HDV to provide specified services as part of the Independent Verification Team in connection with a Bid Process for any Vertical Works Contract and/or Horizontal Works Contract for the relevant Phase, or
- (b) upon approving a Procurement Recommendation pursuant to Clause 18.8.9 of the Members Agreement, HDV, acting reasonably, considers that it is appropriate for a further consultant to be engaged by HDV to provide services as part of the Independent Verification Team in connection with a Bid Process for any Vertical Works Contract and/or Horizontal Works Contract for the relevant Phase,

then the Contractor shall not have the right to be given the opportunity to seek the award of any such Vertical Works Contract or Horizontal Works Contract unless and until HDV has engaged consultants (who shall not be either a member of the PSP Group or Council Group) to perform the relevant services and references to the "Independent Verification

Team" in this agreement shall, following any such engagement, include the consultants so engaged for the purposes of the Bid Process for the relevant Phase.

### 3. **PROTOCOLS**

- 3.1 In any Bid Process, the Contractor shall comply with the provisions of that Protocol which the relevant Procurement Recommendation approved by the [DevLLP Board] pursuant to Clause 18.8.9 of the Members Agreement recommends for the relevant Vertical Works Contract or Horizontal Works Contract (as the case may be).
- 3.2 The Contractor acknowledges that, in the performance of their respective services under their respective Appointments, the Development Manager and/or the Independent Verification Team may recommend variations to a Protocol and/or the Contractor may propose variations to a Protocol which are required to be approved by the Independent Verification Team and the Development Manager and, in either case, if the same are approved by the [DevLLP Board] and notified to the Contractor in writing then from the date of such notification, such Protocol shall be so amended and read and construed accordingly.
- 3.3 [In any Bid Process, the Contractor shall perform its obligations under Clause 3.1 regularly and diligently and shall use [reasonable endeavours]<sup>1</sup> to do anything required of it under the provisions of the relevant Protocol in such time as shall allow the relevant Development Programme to be achieved.]

### 4. **KEY PERFORMANCE INDICATORS**

- 4.1 The Contractor shall achieve the KPIs.
- 4.2 The Contractor shall establish and operate a suitable procedure for monitoring, recording and reporting its achievement of the KPIs.
- 4.3 The Contractor shall report to HDV, the Development Manager and the Independent Verification Team in writing of its failure to achieve a KPI as soon as reasonably practicable after the occurrence thereof.
- 4.4 Without prejudice to any other rights or remedies of HDV, where the Contractor has failed to establish and operate a suitable procedure for monitoring, recording and reporting its achievement of the KPIs or has been found to be fraudulent in recording and reporting the same, HDV may by notice to the Contractor increase the level of monitoring of the Contractor, or (at HDV's option), of the Contractor's monitoring, recording and reporting of its achievement of the KPIs until such time as the Contractor shall have demonstrated to the reasonable satisfaction of HDV that it will perform (and is capable of performing) the monitoring, recording and reporting of its achievement of the KPIs.
- 4.5 The Contractor shall bear its own costs and shall reimburse all reasonable costs and expenses incurred by or on behalf of HDV and/or any member of the HDV Group in relation to such increased level of monitoring arising from the circumstances referred to in Clause 4.4.
- 4.6 On [specified day of each calendar month] the Contractor shall provide to HDV (with a copy to the Development Manager and the Independent Verification Team) a written record of the Contractor's performance against the KPIs during the preceding [month].
- 4.7 Without prejudice to the Contractor's reporting obligations, HDV may at any time request that the Contractor provides to it full details of its performance against the KPIs up to the date of the request.

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<sup>1</sup>The time in which LLC performs its relevant activities/obligations under the Protocols could be measured by reference to a KPI. As such, drafting in clause 3.3 may need to be adapted to deal with this.

5. **DEVELOPMENT MANAGER**

5.1 Without prejudice to the generality of Clause 2.8, the Contractor shall liaise with the Development Manager as representative of HDV in relation to this agreement.

5.2 HDV shall notify the Contractor of the extent and/or limits of the Development Manager's authority from time to time.

6. **TERM OF THIS AGREEMENT**

This agreement shall take effect from the date of this agreement and, subject to Clauses 16, 17 and 18.5, shall continue whilst the Members Agreement is subsisting.

7. **VARIATIONS**

Any amendments and variations to this agreement shall be binding only if in writing and signed by two of the statutory directors of each of the Parties.

8. **SEVERABILITY**

If any term of this agreement or the application thereof to any person or circumstances shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable the same shall be severed from the agreement and the remainder of this agreement shall continue in full force and effect to the extent permitted by law.

9. **NO WAIVER**

No enquiry, inspection, approval, sanction, comment, consent, acknowledgement, admission, review, decision or instruction at any time made or given by or on behalf of HDV and/or any member of the HDV Group, nor any failure to make or give the same, shall operate to exclude or limit or release or affect in any other way the Contractor's obligations or liabilities under this agreement.

10. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

10.1 Subject to Clause 10.2, a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

10.2 Where a provision includes references to a member of the HDV Group then such member of the HDV Group shall be entitled to rely on, have the benefit of and enforce such provision as well as any other provisions which give effect to the same.

11. **GOOD FAITH AND CONFIDENTIALITY**

11.1 Each Party shall at all times act with the utmost good faith to the other Party in respect of all matters arising under this agreement.

11.2 Each Party shall treat all information relating to this agreement and/or the Development as confidential, provided that either Party may disclose such information:

(a) to its professional advisers and shareholders, provided that the relevant Party shall have secured commitments as to confidentiality from such professional advisers and shareholders on terms equivalent to this Clause; or

(b) as required to be disclosed or announced by any law or order of a court of competent jurisdiction or the regulations of the London Stock Exchange, the Financial Services Authority, the Panel on Takeovers and Mergers, the Office of Fair Trading, the European Commission or by any equivalent laws or regulations of institutions or other equivalent authorities outside the United Kingdom.

- 11.3 The provisions of Clause 11.2 shall continue to apply after the term of this agreement has expired pursuant to Clause 6 and after any termination of this agreement save that each Party's obligations under Clause 11.2 shall cease to apply to any matter which is or comes into the public domain through no default on the part of either Party or any person for whom it is responsible.

12. **ASSIGNMENT**

Neither of the Parties shall assign or otherwise transfer all or any of its rights under, pursuant to or arising from this agreement nor sub-contract any of its obligations under, pursuant to or arising from this agreement in each case without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

13. **LIMIT ON LIABILITY**

- 13.1 HDV and any member of the HDV Group may only have liability to the Contractor whether by way of indemnity or by reason of breach of contract, breach of statutory duty, in equity, in tort or under any other legal theory (including but not limited to negligence) under, pursuant to or otherwise in connection with (including for any non-compliance with) Clause 2 of this agreement insofar as (and subject to Clauses 13.2 and 13.3) the Contractor is not given the opportunity to seek the award of a Vertical Works Contract or a Horizontal Works Contract in each case in accordance with an entitlement under this agreement (including by not proceeding with the Bid Process) or where the Contractor is given the opportunity to seek the award of a Vertical Works Contract or a Horizontal Works Contract in each case in accordance with an entitlement under this agreement but [DevLLP Board] does not approve the award of such Vertical Works Contract or Horizontal Works Contract to the Contractor at the end of the Bid Process, in each case, other than in any (as applicable) of the following circumstances:

- (a) where there has been a failure on the part of the Contractor to comply with any of its obligations under Clauses 2 or 3 or 5 or 18 in the course of the Bid Process for such Vertical Works Contract or Horizontal Works Contract, as the case may be;
- (b) where in the performance of the relevant services under their respective Appointments any member of the Independent Verification Team, the Development Manager or the Development Solicitor is to provide a recommendation, verification, endorsement, approval or the like in relation to any matter for the purposes of the Bid Process for such Vertical Works Contract or Horizontal Works Contract (including in relation to whether or not to award the relevant Vertical Works Contract or Horizontal Works Contract to the Contractor at the conclusion of such Bid Process), as the case may be, any such person has not recommended, verified, endorsed, approved or otherwise (as the case may be) that matter or that HDV or the relevant HDV Party proceed with that Bid Process on the basis of such matter or, (if at the conclusion of the Bid Process), that HDV or the relevant HDV Party award the relevant Vertical Works Contract or the Horizontal Works Contract to the Contractor on the basis of that matter; or
- (c) where, in the course of the relevant Bid Process for such Vertical Works Contract or Horizontal Works Contract and/or at the conclusion of relevant Bid Process for such Vertical Works Contract or Horizontal Works Contract (as the case may be), there has been a suspension pursuant to Clause 18.3 of this agreement;
- (d) **[Note: allowance to be made for KPI's]**

- 13.2 Without limiting Clause 13.1, HDV and any member of the HDV Group shall not have any liability to the Contractor whether by way of indemnity or by reason of breach of contract, breach of statutory duty, in equity, in tort or under any other legal theory (including but not limited to negligence) under, pursuant to or otherwise in connection with (including

for any non-compliance with) Clause 2 of this agreement if the Contractor is not given the opportunity to seek the award of a Vertical Works Contract in accordance with an entitlement under this agreement (including by not proceeding with the Bid Process) or where the Contractor is given the opportunity to seek the award of a Vertical Works Contract in accordance with an entitlement under this agreement but [DevLLP Board] does not approve the award of such Vertical Works Contract at the end of the Bid Process, unless:

- (a) at completion of Development of all the Development Sites pursuant to the Members Agreement and provided that this agreement has not been terminated prior thereto, the Bid Vertical Build and the Constructed Vertical Build, in each case, is less than 60% of the Total Vertical Build; or
- (b) prior to completion of Development of all the Development Sites pursuant to the Members Agreement, it becomes apparent (and provided that this agreement has not been terminated when it becomes so apparent) that the Bid Vertical Build and the Constructed Vertical Build, in each case, will be, at the completion of Development of all the Development Sites pursuant to the Members Agreement, less than 60% of the Total Vertical Build.

For the purposes of any calculation made pursuant to this Clause 13.2, the quantum of Vertical Build to be constructed under any Vertical Works Contracts which HDV or the relevant HDV Party commences the procurement of or awards during any period of suspension pursuant to clause 18.3 of this agreement shall be included in the calculation of Bid Vertical Build and Constructed Vertical Build.

- 13.3 Without limiting Clause 13.1, HDV and any member of the HDV Group shall not have any liability to the Contractor whether by way of indemnity or by reason of breach of contract, breach of statutory duty, in equity, in tort or under any other legal theory (including but not limited to negligence) under, pursuant to or otherwise in connection with (including for any non-compliance with) Clause 2 of this agreement if the Contractor is not given the opportunity to seek the award of a Horizontal Works Contract in accordance with an entitlement under this agreement (including by not proceeding with the Bid Process) or where the Contractor is given the opportunity to seek the award of a Horizontal Works Contract in accordance with an entitlement under this agreement but [DevLLP Board] does not approve the award of such Horizontal Works Contract at the end of the Bid Process, unless the Contractor has already been awarded a Vertical Works Contract in respect of the same Phase to which that Horizontal Works Contract relates at that time when HDV or the relevant HDV Party commences procurement of such Horizontal Works Contract or such award is not approved, as the case may be (but provided always that:
- (a) this agreement has not terminated prior to the commencement of procurement of such Horizontal Works Contract or prior to the decision whether or not to award the same; and/or
  - (b) there is not a suspension pursuant to clause 18.3 of this agreement at the time of commencement of procurement of such Horizontal Works Contract or at the time of the [DevLLP Board] making the decision whether or not to award the same; and/or
  - (c) the relevant aforementioned Vertical Works Contract has not been terminated at the time of commencement of procurement of such Horizontal Works Contract or at the time of the [DevLLP Board] making the decision whether or not to award the same).

#### 14. NOTICES

- 14.1 All notices to be given under or pursuant to this agreement shall be in writing and shall be delivered by pre-paid first class post or by hand to the Party due to receive such notice at

its registered office from time to time (or to such other address as may from time to time have been notified in writing to the other Party in accordance with this Clause).

14.2 Subject to Clause 14.3, any notice shall be deemed to have been served:

- (a) if delivered by hand, when left at the address referred to in Clause 14.1; or
- (b) if sent by pre-paid first class post, two days after posting it.

14.3 If a notice is given or deemed given on a day which is not a Business Day or after 5:00pm on a Business Day, it shall be deemed to have been served on the next Business Day.

## 15. **DISPUTES**

15.1 This agreement and any non-contractual obligations arising out of or in relation to it shall be governed by and construed in accordance with the laws of England.

15.2 Notwithstanding any other provision of this agreement, if a dispute or difference arises under or in connection with this agreement, either Party may give notice of its intention to refer such dispute or difference to adjudication at any time and the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 shall apply where either Party wishes to refer such a dispute or difference to adjudication. The adjudicator shall be such person as agreed between the Parties in accordance with the provisions of the aforementioned legislation or where the Parties cannot agree the adjudicator, the adjudicator shall be the person appointed by the Adjudicator Nominating Body in accordance with the provisions of the aforementioned legislation.

15.3 Subject to Clause 15.2, any dispute or difference arising out of or under or in connection with this agreement shall be referred to the exclusive jurisdiction of the English courts, provided that either Party may bring proceedings in any other court or jurisdiction for the purposes of the enforcement or execution of any judgment or settlement agreement.

## 16. **NON-COMPLIANCE OF THE CONTRACTOR**

16.1 If:

- (a) during a Bid Process, the Contractor fails to comply with Clause 2.8 or Clause 3; and/or
- (b) in relation to a Phase, the Contractor fails to execute and deliver a Vertical Works Contract or a Horizontal Works Contract in accordance with the requirements of Clause 2.2; and/or
- (c) in relation to a Phase, the Contractor fails to execute and deliver a PCSA in accordance with the requirements of Clause 2.45,

then HDV shall give notice to the Contractor of the relevant non-compliance and the Contractor shall remedy the relevant non-compliance within a reasonable period. If the Contractor fails to remedy the relevant non-compliance within such reasonable period, then the Contractor shall not have the right to be given the opportunity to seek the award of any Vertical Works Contracts or Horizontal Works Contracts for the relevant Phase.

16.2 In the event of Material Breach, HDV may (without prejudice to any other right or remedy available to it) terminate this agreement on written notice to the Contractor.

17. **TERMINATION**

Without affecting any other right or remedy available to it, either Party may terminate this agreement with immediate effect by giving written notice to the other Party if:

- 17.1 the other Party is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- 17.2 the other Party enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- 17.3 a notice is given, a resolution is passed, or an order is made, for or in connection with the insolvent winding up of that other Party;
- 17.4 a winding-up petition is presented in respect of that other Party which is not withdrawn or dismissed within 10 Business Days of the date of presentation;
- 17.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party;
- 17.6 the holder of a qualifying floating charge over the assets of that other Party (being a company) has appointed an administrative receiver;
- 17.7 a receiver is appointed over all or any of the assets of the other Party;
- 17.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 10 Business Days;
- 17.9 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 17.1 to Clause 17.8 (inclusive); or
- 17.10 the other Party suspends or ceases carrying on all or a substantial part of its business.

18. **ANTI-BRIBERY**

- 18.1 The Contractor warrants that in the procurement and/or negotiations preceding this agreement it has at all times behaved in a manner which is ethical, free of bribery, corruption or anti-competitive behaviour and has not committed any act or omission which causes or could cause it or HDV or any HDV Party or any member of the PSP Group or the Council Group to breach, or commit an offence under, any laws from time to time relating to anti-bribery and/or anti-corruption and/or anti competition (including without limitation the Bribery Act 2010) (the "**Corruption Laws**").
- 18.2 The Contractor shall, and shall procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this agreement shall:
  - (a) not commit any act or omission which causes or could cause it or HDV or any HDV Party or any member of the PSP Group or the Council Group to breach, or commit an offence under the Corruption Laws;

- (b) comply with HDV's and/or the relevant HDV Party's (as applicable) anti-bribery and corruption policy as updated from time to time;
- (c) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with this agreement and the steps it has taken and is taking to comply with this Clause 18, and permit HDV to inspect those records as required; and
- (d) promptly notify HDV of:
  - (i) any request or demand for any financial or other advantage received by it; and
  - (ii) any financial or other advantage it gives or intends to give whether directly or indirectly in connection with this agreement; and
  - (iii) promptly notify HDV of any breach of this Clause 18.

18.3 Where HDV has a suspicion, or is informed by the Contractor, that there has been a breach by the Contractor (or by its officers, employees, agents, sub-contractors or any other persons who perform services for or on behalf of it in connection with this agreement) of the Corruption Laws, it may immediately in writing suspend both Parties' obligations under this agreement pending the outcome of an investigation into the suspected breach. This right is without prejudice to HDV's right to terminate this agreement under clause 18.5.

18.4 For the purposes of such an investigation the Contractor agrees to respond promptly to HDV's enquiries, cooperate with any investigation and allow HDV to audit books, records, and any other relevant documentation. This is without prejudice to HDV's right to inspect in Clause 18.2(c).

18.5 Without prejudice to any other right or remedy available to it, HDV may terminate this agreement immediately by giving written notice to that effect to the Contractor if the Contractor is in breach of this Clause 18.

**IN WITNESS** whereof this agreement has been executed as a deed on the date first above written

Executed as a deed by [**HDV**] acting by a )  
director and its secretary/two directors: )

Director

Director/Secretary

Executed as a deed by [**LENLEASE** )  
**CONSTRUCTION**] acting by a director )  
and its secretary/two directors: )  
)

Director

Director/Secretary

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## SCHEDULE 1

### D&B Protocol

#### 1. DEFINITIONS

1.1 In this Schedule 1, unless the context otherwise requires, the following terms shall have the following meanings: -

<b>"Borough"</b>	means the geographical area of the London Borough of Haringey from time to time;
<b>"Contract Placement Report"</b>	a recommendation report in relation to the engagement of a sub-contractor;
<b>"Cost Plan"</b>	means, in relation to a Vertical Works Contract or Horizontal Works Contract (as applicable), the document produced by the relevant Quantity Surveyor used to create and control the estimated costs during the design and construction phase of the construction works to be delivered by the D&B Contractor pursuant to the relevant Vertical Works Contract or Horizontal Works Contract (as applicable);
<b>"Council"</b>	has the meaning given to such term in the Members Agreement;
<b>"Design Release Schedule"</b>	means a programme indicating the dates on which design information for each package of work is to be released from the relevant design team to enable timely procurement of the construction works which the D&B Contractor will be delivering pursuant to the relevant Vertical Works Contract or Horizontal Works Contract (as applicable);
<b>"DM"</b>	the Development Manager;
<b>"Expression of Interest" or "EOI"</b>	in relation to each of the packages of work for the works which the D&B Contractor will be delivering pursuant to the relevant Vertical Works Contract or Horizontal Works Contract (as applicable), communication to the market requesting their interest in undertaking such package of work;
<b>"Global Minimum Requirements"</b>	the document setting out the Lendlease Health and Safety and Wellbeing standards;
<b>"HDV Objectives"</b>	shall have the meaning given to such term in the Members Agreement;
<b>"Preliminaries"</b>	the contractor's cost of administering a project and providing general plant, site staff, facilities, and site based services and other items not included for in oh&p <sup>2</sup> ;

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<sup>2</sup> This needs to tie in to the payment mechanism in the pro forma construction management agreement which, at the moment, only reflects payment of a fee.

<b>“Pre-Qualification Document”</b>	means a document setting out a series of questions for potential tenderers to answer regarding, amongst other things, their level of experience, capacity and financial standing;
<b>“Procurement Policy”</b>	means the procurement policy set out in Schedule 4 of the Members Agreement;
<b>“Quantity Surveyor”</b>	means, in relation to a Vertical Works Contract or Horizontal Works Contract (as applicable), the consultant employed by the relevant HDV Party to, amongst other things, calculate the expected amount and cost of materials and labour needed for the construction works to be delivered pursuant to the relevant Vertical Works Contract or Horizontal Works Contract (as applicable);
<b>“Tender Enquiry Document”</b>	means a document setting out the scope and project particulars to enable the contracting market to prepare and submit a commercial proposal for the relevant package of work;
<b>“Tender Event Schedule”</b>	means, in relation to a Vertical Works Contract or Horizontal Works Contract (as applicable), a document used to monitor and manage the production of design and other tender information during the tender process of the construction works to be delivered by the D&B Contractor pursuant to the relevant Vertical Works Contract or Horizontal Works Contract (as applicable);

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Any references in this Schedule 1 to the "D&B Contractor" shall be to the Contractor.

For the avoidance of doubt, the activities detailed in this Schedule 1 are not necessarily sequential in nature unless the context requires (save that the D&B Contractor acknowledges that the activity in paragraph 20 shall always be the final step in the process). In performing each activity in this Schedule 1, it may be necessary for the D&B Contractor to repeat other activities and/or update documents previously submitted to the DM and/or the Independent Verification Team and/or the Development Solicitor. Where this is necessary, the D&B Contractor shall repeat such activities and/or update and re-issue such previously issued document(s) in accordance with the requirements of this Schedule 1.

The D&B Contractor shall, in undertaking each of the activities and its obligations pursuant to this Schedule 1 (and without limitation of any other matter referred to in this Schedule 1):

- seek to enable local contractors (and in particular small and medium sized enterprises (SMEs)) to have a chance of securing new business with the HDV Group;
- where possible, seek to procure or procure the use of contractors, suppliers and labour based within the Borough, with a particular emphasis on creation of job opportunities for individuals from minority and hard to reach groups within the Borough (as set out in the Council's Economic Development and Growth Strategy);
- comply with the Employment Skills Policy and measure the capability of any potential tenderer to comply with the same; and
- seek to embed a sustainable procurement is into the procurement cycle in order to achieve environmental, social and economic benefits consistent with the HDV's Objectives.

**[Note: Employment-related drafting to be included once developed in paragraph 9, of Part A of Schedule 4 of the Members Agreement]**

### **RIBA Stage 3 (or RIBA stage as directed)**

#### **1. Develop Programme, Methodology and Logistics plan**

The D&B Contractor shall prepare the construction programme, methodology and logistics plan for the construction works to be delivered by the D&B Contractor pursuant to the relevant Horizontal Works Contract or Vertical Works Contract (as applicable). The D&B Contractor shall present the plan to the DM, the Independent Verification Team and the Development Solicitor with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

The D&B Contractor undertakes that the construction programme, methodology and logistics plan which it prepares will contain (but not limited to):

- routes of access and egress,
- site establishment positions,
- lay down areas
- plant and equipment locations (for example: craneage) and
- commencement dates, durations, predecessor and successor activities for construction activities

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this in an open book manner with the Independent Programme Auditor.

## **2. Form of Contract with D&B Contractor**

Without prejudice to Clause 2.7, the D&B Contractor acknowledges and agrees that the contract documents for the relevant Vertical Works Contract or Horizontal Works Contract (as applicable) will be prepared and assembled, as applicable, and proposed by the DM pursuant to the relevant Procurement Recommendation approved by the [DevLLP Board] pursuant to Clause 18.8.9 of the Members Agreement initially.

Without prejudice to Clause 2.7, the D&B Contractor shall advise the DM, the Independent Verification Team and the Development Solicitor of any contractual queries that it considers require addressing prior to appointment or amendments requested for such contract documents for the relevant Horizontal Works Contract or Vertical Works Contract (as applicable). These queries or amendments will be supported with sufficient evidence and explanation (including reasons for any amendments being requested) to enable a review to be undertaken by them in accordance with their respective Appointments.

In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

## **3. D&B Contractor's Preliminaries and Overhead and Profit**

The D&B Contractor shall prepare the proposed Preliminaries and Preliminaries break down for the relevant Horizontal Works Contract or Vertical Works Contract (as applicable). The D&B Contractor shall present the proposed Preliminaries and Preliminaries break down to the DM, the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

The D&B Contractor undertakes that the breakdown detail which it prepares will address the following categories of cost, where relevant, (but not limited to):

- salaries (management & supervision per category including personnel time and personnel rate build ups)
- site establishment (offices, telephones, infrastructure, etc)
- multi user plant (Plant utilization, fuel consumption and operators)
- protection,
- safety,
- scaffolding and other temporary works

Without prejudice to Clause 2.8, the D&B Contractor shall do this in an open book manner with the Independent Cost Consultant.

The D&B Contractor shall prepare its proposed overhead and profit (oh&p) percentage for the relevant Horizontal Works Contract or Vertical Works Contract (as applicable).

The D&B Contractor shall present the proposed oh&p percentage to the DM, the Independent Verification Team and the Development Solicitor with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

Without prejudice to Clause 2.8, the D&B Contractor shall do this in an open book manner with the Independent Cost Consultant.

#### **4. Finalisation of Sub-Contractor Packages**

The D&B Contractor shall convert the overall scope of works to be delivered by the D&B Contractor pursuant to the relevant Horizontal Works Contract or Vertical Works Contract (as applicable), into packages of work. The information which the D&B Contractor shall utilise to create the packages of work will be (but not limited to):

- the Cost Plan
- the relevant project design documentation
- any other relevant information relating to the relevant construction works.

The D&B Contractor shall present the proposed packages of work to the DM, the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this in an open book manner with the Independent Cost Consultant and the Independent Programme Auditor.

#### **5. Prepare Tender Event Schedule**

The D&B Contractor shall prepare the Tender Event Schedule in relation to the construction works which the D&B Contractor will be delivering pursuant to the relevant Horizontal Works Contract or Vertical Works Contract (as applicable). Without limiting clause 3.3 of the Agreement, the D&B Contractor shall prepare the relevant Tender Event Schedule having regard to the overall programme constraints of the relevant Development Programme.

The D&B Contractor undertakes that the Tender Event Schedule which it prepares will contain (but not limited to):

- the list and breakdown of the proposed packages of work
- required dates for design release for each package of work
- required dates for issue and receipt of the tender for each package of work
- required date for placing of package orders
- decision making timescales
- mobilisation of the sub-contractors

The D&B Contractor shall prepare a Design Release Schedule in relation to the construction works which the D&B Contractor will be delivering pursuant to the relevant Horizontal Works Contract or Vertical Works Contract (as applicable). The D&B Contractor shall prepare the Design Release Schedule having regard to the constraints of the relevant Tender Event Schedule. The D&B Contractor agrees and acknowledges that the DM shall issue the relevant Design Release Schedule to the design team for the works to be delivered pursuant to the relevant Horizontal Works Contract or Vertical Works Contract (as applicable).

The D&B Contractor shall present the Tender Event Schedule and the Design Release Schedule to the DM, the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the

event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this in an open book manner with the Independent Cost Consultant and Independent Programme Auditor.

## **6. Prepare Pre-Qualification Document**

The D&B Contractor shall prepare the Pre-Qualification Document(s) for tendering the packages of the construction works which the D&B Contractor will be delivering pursuant to the relevant Vertical Works Contract or Horizontal Works Contract (as applicable).

The D&B Contractor undertakes that the Pre-Qualification Document(s) which it prepares will allow the D&B Contractor to assess the following in relation to potential tenderers (without limitation):

- sufficiently robust financial standing;
- necessary expertise, capability and capacity to undertake the works (including, where and insofar as relevant, design of the works or relevant part thereof) and ability to demonstrate that the relevant potential tenderer has successfully delivered projects of a similar scope, size, nature and complexity and programme to the project being delivered pursuant to the relevant Vertical Works Contract or Horizontal Works Contract (as applicable);
- satisfactory health and safety record, as judged against health and safety records of contractors generally appointed on projects of a similar size, scope nature and complexity and ability to demonstrate that the relevant potential tenderer can comply with the Global Minimum Requirements;
- a relevant demonstrable track record;
- has had no formal legal proceedings issued against it in relation to the provision of works similar to the current works being procured in the period of eighteen (18) months prior to the date of proposal;
- has had no convictions for criminal offences including (but not limited to) bribery, corruption, conspiracy, terrorism, fraud or money laundering nor been the subject of a binding legal decision that found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved);
- has sufficient available resource (including experienced supervisors) to be able to perform the works in accordance with any proposed programme for the same; and
- that the relevant potential tenderer (and its associated sub-contractors of all tiers) pays the London living wage to its workforce.

The D&B Contractor shall present the Pre-Qualification Document(s) to the DM, the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this in an open book manner with the Independent Cost Consultant and the Independent Programme Auditor.

## **7. Issue Pre-Qualification Documents**

In relation to each of the packages of work for the works which the D&B Contractor will be delivering pursuant to the relevant Vertical Works Contract or Horizontal Works Contract (as applicable), the D&B Contractor shall issue an Expression of Interest (EOI) on the following platforms:

- appropriate trade press;
- the Council's own procurement web pages; and
- the Haringey Chamber of Commerce.

The D&B Contractor may also issue the EOI to any appropriate preferred suppliers of the D&B Contractor and any list of Council-approved contractors.

After receipt of all of the responses to the EOI by the D&B Contractor, the D&B Contractor shall assess such responses and prepare the list of proposed sub-contractors to issue the Pre-Qualification Document to. The D&B Contractor shall present such list to the DM, the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly. The D&B Contractor shall issue the Pre-Qualification Document(s) to the proposed sub-contractors including return instructions.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this in an open book manner with the Independent Cost Consultant and the Independent Programme Auditor.

## **8. Prepare Tender List**

Once the D&B Contractor receives all of the pre-qualification responses from the contracting market, the D&B Contractor shall undertake a robust evaluation exercise of the responses.

On completion of the evaluation exercise, the D&B Contractor shall prepare a list of, where possible, at least 6 tenderers for each package of work. The D&B Contractor shall present the list to the DM, the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence (including, where a list of at least 6 tenderers is not possible, the reason for the same) to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this in an open book manner with the Independent Cost Consultant and the Independent Programme Auditor.

The D&B Contractor reserves the right to exclude a tenderer from the process should information become available during the tender process, that would have disqualified such tenderer from the pre-qualification process and the D&B Contractor acknowledges that this right may only be exercised with the agreement of the DM, the Independent Verification Team and the Development Solicitor in accordance with the requirements of their respective Appointments.

## **9. Prepare Tender Enquiry Document**

The D&B Contractor shall prepare a Tender Enquiry Document for each package of work.

The D&B Contractor undertakes that each Tender Enquiry Document which it prepares will include (but not limited to):

- tender information, instructions and return requirements;
- contract terms and conditions;
- financial information and pricing schedules;
- technical information, scopes, programmes, method statements, risk assessments, specifications and drawings;
- separate CD: quality management procedures;
- separate CD: safety, health & welfare requirements;
- separate CD: incident and injury free policy and requirements;
- separate CD: sustainability and environmental requirements;
- separate CD: industrial relations requirements.

The D&B Contractor undertakes that the specifications, quality standards and/or performance requirements in each Tender Enquiry Document which it prepares will be written in such a way as to be sufficiently robust, whilst not being so explicit that the information provided negates a tenderer's expertise and stifles their innovation in delivery within the context of the selected contracting structure for the relevant works. The D&B Contractor undertakes that each Tender Enquiry Document which it prepares will:

- state the technical requirements clearly, concisely, logically and unambiguously, including any requirements for quality;
- contain enough information for potential contractors to decide and provide unqualified costs and pricing information for the construction works they will offer, which will include but not be limited to the proposed form of construction contract, collateral warranties and required forms of performance security;
- be consistent with the terms of the evaluation criteria and methodology (as detailed in paragraph 14 of this Schedule 1 below);
- provide equal opportunities to all contractors to offer a solution that satisfies the needs of the HDV Group;
- contain requirements at a level of detail as is reasonably appropriate to the selected contracting strategy for those works (including as appropriate any terms and conditions of contract and ancillary documents) and will not contain features which directly or indirectly discriminate in favour of or against any contractor, product or source; and
- ensure compliance with the HDV Group's legal obligations.

The D&B Contractor shall review the information for adequacy as part of its quality assurance process.

The D&B Contractor shall present each Tender Enquiry Document to the DM, the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this process in an open book manner with the Independent Cost Consultant and the Independent Programme Auditor.

## **10. Issue to Tender to Market**

The D&B Contractor shall issue the Tender Enquiry Document for the relevant package of work to the proposed tenderers. The D&B Contractor shall do this either in electronic form or in hardcopy or both as directed by the DM.

## **11. Conduct Mid-Tender Interviews**

The D&B Contractor shall conduct mid-tender interviews with each of the tenderers for a package of work. In the event the tenderers request further information or clarifications, the D&B Contractor shall respond accordingly.

The D&B Contractor agrees and acknowledges that the DM, any member of the Independent Verification Team and/or the Development Solicitor may attend such mid-tender interviews in the performance of their respective services in their respective Appointments.

Regardless of whether or not the DM, the members of the Independent Verification Team or the Development Solicitor attend the relevant mid-tender interviews, for each such interview the D&B Contractor shall record any clarifications made by the D&B Contractor and/or the tenderers and any decisions taken by the D&B Contractor in such interviews. The D&B Contractor shall ensure that such records are documented in the Contract Placement Report prepared pursuant to paragraph 16 of this Schedule 1.

## **12. Receive and Open Tenders**

The D&B Contractor shall ensure that the tender returns remain sealed and confidential until such time as the DM directs that they can be opened. The D&B Contractor shall arrange and coordinate the tender opening meeting and shall invite the DM, the Independent Cost Consultant, the Independent Programme Auditor and the Development Solicitor (as is required by their respective Appointments) and any other persons which the DM may direct.

In the presence of the required persons referred to above, the D&B Contractor shall open the tender returns.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this process in an open book manner with the Independent Cost Consultant and the Independent Programme Auditor.

## **13. Produce Tender Opening Forms**

The D&B Contractor shall prepare a form of tender opening form in order to record the results of the tender opening for each tender return. The D&B Contractor undertakes that the form of tender opening form which it prepares will contain the following (but not limited to):

- The responding tenderer's name;
- the commercial offer;
- adherence, or not, to the programme;
- major exclusions;
- any other relevant information.

The D&B Contractor shall complete a tender opening form for each tender return and record the results of the tender opening for each tender return within such form. The D&B Contractor shall sign each tender opening form and send a copy of the same to the DM, the

Independent Cost Consultant, the Independent Programme Auditor and the Development Solicitor as is required in accordance with their respective Appointments.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this process in an open book manner with the Independent Cost Consultant and the Independent Programme Auditor.

#### **14. Undertake Evaluation Process**

The D&B Contractor shall review the tender returns and raise queries as necessary with each of the tendering organisations. The D&B Contractor shall invite the tenderers for interviews where appropriate in order to assist in evaluating the respective submissions.

The D&B Contractor agrees and acknowledges that the DM, any member of the Independent Verification Team and/or the Development Solicitor may attend such interviews in the performance of their respective services in their respective Appointments.

Regardless of whether or not the DM, the members of the Independent Verification Team or the Development Solicitor attend the relevant interviews, for each such interview the D&B Contractor shall record any clarifications made by the D&B Contractor and/or the tenderers and any decisions taken by the D&B Contractor in such interviews. The D&B Contractor shall ensure that such records are documented in the Contract Placement Report prepared pursuant to paragraph 16 of this Schedule 1.

The D&B Contractor shall evaluate each of the tender returns taking into account the following factors (without limitation):

- Technical & Programme
- Team proposal
- Approach to Safety
- Similar experience
- Methodology
- Approach to Design Management
- Quality
- Factory availability (where applicable)
- Preliminaries costs
- Overhead and Profit
- Target cost per sq ft / sample rates

Where appropriate the D&B Contractor shall further take into consideration the following criteria from the Procurement Policy in evaluating each of the tender returns:

- bids will be evaluated on a price/ non-price assessment based upon a range of weightings of (this information is contained in the exempt part of the report) price and (this information is contained in the exempt part of the report) non-price.
- where lump sum, percentage based and/or cost share threshold prices are to be submitted as appropriate to the selected contracting strategy, price evaluation will be based on the lump sum, percentage and/or threshold prices submitted; and
- otherwise, price evaluation shall be based on a qualitative assessment of the bidder's delivery proposals for cost management, capability and relevant experience of cost management including a clear demonstration of how that capability and experience will be applied for the benefit of the HDV Group.
- experience of similar commissions and a clear demonstration how such experience will be applied for the benefit of the HDV Group;

- references from a minimum of three previous clients;
- innovation contained within proposed works;
- any proposed modifications to any proposed terms and conditions;
- delivery proposal setting out their suitability and 'added value' in undertaking the works;  
and
- deliverability of proposed works.

Following the evaluation process, the D&B Contractor shall propose a reduction of the number of tenderers for the relevant package of works to 3 (or any other number as the D&B Contractor considers appropriate). The D&B Contractor shall present the list to the DM, the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

The D&B Contractor shall inform the unsuccessful tenderers of their status and shall offer feedback to such tenderers on the tender process.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this process in an open book manner with the Independent Cost Consultant and the Independent Programme Auditor.

## **15. Conduct Post Tender Interviews**

The D&B Contractor shall conduct post tender interviews with each of the remaining tenderers. The D&B Contractor shall assess and discuss, with each tenderer, the remaining assumptions and exclusions (if applicable) in the relevant tenderer's tender return and provide further information and clarity to allow the relevant tenderer to remove the remaining assumptions and exclusions. The D&B Contractor shall formally record these discussions and decisions and present such records to the DM, the members of the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly. The D&B Contractor shall ensure that such records are documented in the Contract Placement Report prepared pursuant to paragraph 16 of this Schedule 1.

The D&B Contractor agrees and acknowledges that the DM, any member of the Independent Verification Team and/or the Development Solicitor may attend such interviews in the performance of their respective services in their respective Appointments.

The D&B Contractor shall request a revised formal offer from the relevant tenderer confirming, if any, the impact on the commercial offer of the relevant tenderer.

The D&B Contractor shall conduct an evaluation exercise on the revised offers. The D&B Contractor may reduce the number of tenderers to 2 (if applicable). The D&B Contractor shall present the list to the DM, the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence (including, where the list of tenderers is reduced to 2, the reason for the same) to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

The D&B Contractor shall request the remaining tenderers to submit a best and final offer.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this process in an open book manner with the Independent Cost Consultant and the Independent Programme Auditor.

## **16. Produce Contract Placement Report**

The D&B Contractor shall evaluate the final tender returns and prepare a Contract Placement Report (CPR). The D&B Contractor shall ensure that the CPR details the tender process and presents a recommendation of which organisation the D&B Contractor recommends be engaged to deliver the works package.

The D&B Contractor undertakes that the CPR which it prepares will contain the following information (but not limited to):

- the process undertaken is in accordance with this Schedule 1;
- the commercial offer is in line with the budget or, if not, is justified appropriately;
- the programme for the works package is in line with the Development Programme or if not is justified appropriately;
- the proposed sub-contract on which the relevant sub-contractor is proposed to be engaged (including any amendments proposed to any form of collateral warranty or third party rights contained within the same and including a comparison of the proposed sub-contract against any version previously submitted in accordance with this Schedule 1 to the Independent Verification Team, DM and the Development Solicitor);
- adherence to health and safety requirements.

The D&B Contractor shall present the CPR to the DM, the Independent Verification Team and the Development Solicitor with sufficient detail and with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this in an open book manner with the Independent Verification Team and the Development Solicitor.

The D&B Contractor shall inform the unsuccessful tenderers of their status and shall offer feedback to such bidders on the tender process.

## **17. Process Repeat**

The D&B Contractor shall repeat the process detailed in paragraphs 3 to 16 (inclusive) of this Schedule 1 until no less than (this information is contained in the exempt part of the report) of the overall budgeted contract sum for the relevant Vertical Works Contract or Horizontal Works Contract (as applicable) is ascertained by being so tendered.

## **18. Balance of Construction Contract Price Sum**

The D&B Contractor shall prepare its proposal for the balance of the contract price sum in addition to the amounts referred to in paragraph 17 of this Schedule 1.

The D&B Contractor shall present such proposal to the DM, the Independent Verification Team and the Development Solicitor with sufficient supporting information and evidence to allow a

robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

The balance of the construction contract price sum is expected to include (but not limited to)

- scope and cost estimates for orders not tendered or placed
- market escalation assessment and provision
- design fees post novation of novated design consultants
- a D&B Contractor's risk assessment and D&B Contractor's contingency (% & amount)

Without prejudice to Clause 2.8, the D&B Contractor shall undertake this in an open book manner with the Independent Cost Consultant.

## **19. Final Contract with D&B Contractor**

Without prejudice to Clause 2.7, the D&B Contractor shall advise the DM, the Independent Verification Team and the Development Solicitor of any final contractual queries that it considers require addressing prior to appointment or final amendments requested for the contract documents for the relevant Horizontal Works Contract or Vertical Works Contract (as applicable). These queries or amendments will be supported with sufficient evidence and explanation (including reasons for any amendments being requested) to enable a review to be undertaken by them in accordance with their respective Appointments.

In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

## **20. Finalise Contractor's Proposal**

Finally, the D&B Contractor shall prepare and present to the DM, the Independent Verification Team and the Development Solicitor the D&B Contractor's full final proposal (to include and be aligned with those matters addressed in paragraphs 1 to 19 (inclusive) above) as to the relevant Vertical Works Contract or Horizontal Works Contract (as applicable) that is to be referred to the [DevLLP Board] to seek approval of the award of the same to the D&B Contractor pursuant to Clause 18.8.13 of the Members Agreement, together with the sufficient supporting information and evidence to allow a robust evaluation to take place by the DM, the Independent Verification Team and the Development Solicitor in accordance with their respective Appointments.

In the event queries are raised or further clarification is required the D&B Contractor shall respond accordingly.

## SCHEDULE 2

### CM Protocol

#### 2. DEFINITIONS

2.1 In this this Schedule 2, unless the context otherwise requires, the following terms shall have the following meanings: -

<b>"DM"</b>	the Development Manager;
<b>"CM Fees"</b>	the amounts that it is proposed will be payable to the Contractor under a Horizontal Works Contract or Vertical Works Contract (as applicable) that will be submitted for approval pursuant to paragraph 2 of the CM Protocol in consideration of the performance of the Contractor's obligations, in the event such Horizontal Works Contract or Vertical Works Contract (as applicable) is awarded to the Contractor at the end of a Bid Process;
<b>"Preliminaries"</b>	the contractor's cost of administering a project and providing general plant, site staff, facilities, and site based services and other items not included for in oh&p <sup>3</sup> ;

Any references in this Schedule 2 to the "CM" or to the "Construction Manager" shall be to the Contractor.

For the avoidance of doubt, the activities detailed in this Schedule 2 are not necessarily sequential in nature unless the context requires (save that the CM acknowledges that the activity in paragraph 4 shall always be the final step in the process). In performing each activity in this Schedule 2, it may be necessary for the CM to repeat other activities and/or update documents previously submitted to the DM and/or the Independent Verification Team and/or the Development Solicitor. Where this is necessary, the CM shall repeat such activities and/or update and re-issue such previously issued document(s) in accordance with the requirements of this Schedule 2.

#### **RIBA Stage 3 (or alternative RIBA stage as directed)**

##### **1. Develop Programme, Methodology and Logistics plan**

The CM shall prepare the construction programme, methodology and logistics plan for construction works to be managed by the CM pursuant to the relevant Horizontal Works Contract or Vertical Works Contract (as applicable). The CM shall present the plan to the DM, the Independent Verification Team and the Development Solicitor with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required the CM shall respond accordingly.

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<sup>3</sup> This needs to tie in to the payment mechanism in the pro forma construction management agreement which, at the moment, only reflects payment of a fee.

The CM undertakes that the construction programme, methodology and logistics plan which it prepares will contain (but not be limited to):

- routes of access and egress,
- site establishment positions,
- lay down areas
- plant and equipment locations (for example: cranes)
- commencement dates, durations, predecessor and successor activities for construction activities.

Without prejudice to Clause 2.8, the CM shall undertake this in an open book manner with the Independent Programme Auditor.

## **2. Construction Manager Payment**

The CM shall prepare and provide details of the relevant elements of the CM Fees proposed for the relevant Horizontal Works Contract or Vertical Works Contract (as applicable) including:

- insofar as this comprises any lump sum payment, details of the amount of that payment or basis of calculation and, insofar as applicable, a break down of that payment against individual items or costs to which it relates;
- details of any rates upon which any payments are to be based;
- details of any percentages upon which any payments are to be based and of what those percentages are to be applied to;
- details of any other elements of the CM Fees that are determined on any other basis whatsoever, together with details of the basis of determination.

The CM shall present the same to the DM, the Independent Verification Team and the Development Solicitor in sufficient detail and with sufficient supporting information and evidence to allow a robust evaluation to take place by them in accordance with their respective Appointments. In the event queries are raised or further clarification is required, the CM shall respond accordingly.

The CM undertakes that the breakdown detail which it prepares will address the following categories of cost, where relevant (dependent on the scope of service), (but not limited to):

- salaries (management & supervision per category including personnel time and personnel rate build ups)
- site establishment (offices, telephones, infrastructure, etc)
- multi user plant (Plant utilization, fuel consumption and operators)
- protection,
- safety,
- scaffolding and other temporary works

Without prejudice to Clause 2.8, the CM shall do this in an open book manner with the Independent Cost Consultant.

## **3. Form of Contract with Construction Manager**

Without prejudice to Clause 2.7, the CM acknowledges and agrees that the contract documents for the relevant Vertical Works Contract or Horizontal Works Contract (as applicable) will be prepared and assembled, as applicable, and proposed by the DM pursuant to the relevant Procurement Recommendation approved by the [DevLLP Board] pursuant to Clause 18.8.9 of the Members Agreement initially.

Without prejudice to Clause 2.7, the CM shall advise the DM, the Independent Verification Team and the Development Solicitor of any contractual queries that it considers require addressing prior to appointment or amendments requested for such contract documents for the relevant Horizontal Works Contract or Vertical Works Contract (as applicable). These queries or amendments will be supported with sufficient evidence and explanation (including reasons for any amendments being requested) to enable a review to be undertaken by them in accordance with their respective Appointments.

In the event queries are raised or further clarification is required the CM shall respond accordingly.

#### **4. Finalise Contractors Proposal**

Finally, the CM shall prepare and present to the DM, the Independent Verification Team and the Development Solicitor the CM's full final proposal (to include and be aligned with those matters addressed in paragraphs 1 to 3 (inclusive) above) as to the relevant Vertical Works Contract or Horizontal Works Contract (as applicable) that is to be referred to the [DevLLP Board] to seek approval of the award of the same to the CM pursuant to Clause 18.8.13 of the Members Agreement, together with the sufficient supporting information and evidence to allow a robust evaluation to take place by the DM, the Independent Verification Team and the Development Solicitor in accordance with their respective Appointments.

In the event queries are raised or further clarification is required the CM shall respond accordingly.

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**SCHEDULE 3**

**General KPIs and Headings in respect of Project Specific KPIs**

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**SCHEDULE 4**  
**Form of D&B Contract**

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**SCHEDULE 5**

**Form of Construction Management Agreement**

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**DRAFT KPI PRINCIPLES PAPER:**

**(this information is contained in the exempt part of the report)**

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