

2 October 2019

MEPB/SJA/017710.00109/67315775.1

Overarching Grant Agreement

Dated

The Mayor and Burgesses of the London Borough of Southwark
(the Authority)

Leathermarket Community Benefit Society Limited
(Grant Recipient)

Contents

Clause		Page
1	Definitions	1
2	Principles of the provision of Funding	10
3	State Aid	11
4	Outputs	11
5	Grant Recipient's Obligations	12
6	Notifications, reporting and audit	12
7	Change in financial circumstances	13
8	Events of Default	13
9	Public relations and publicity	15
10	Reputation of the parties	15
11	Confidentiality and freedom of information	15
12	Data protection	18
13	Senior Officers	18
14	No agency, partnership or employment	19
15	Assignment and sub-contracting	19
16	No fettering of discretion/statutory powers	19
17	Dispute Resolution	19
18	Notices	21
19	Rights of third parties	21
20	Entire agreement	21
21	Severance	21
22	Waiver	21
23	Governing law	22
	Schedule 1 – Output Schedule	23
	Schedule 2 – Form of Project Grant Agreement	24

Overarching Grant Agreement

dated 2019

Parties

- (1) The Mayor and Burgesses of the London Borough of Southwark of 160 Tooley Street London SE1 2TZ (the Authority); and
- (2) Leathermarket Community Benefit Society Limited (registered society IP032294) whose registered office is at 26 Leathermarket Street, London SE1 3HN (the Grant Recipient)

Introduction

- (A) The Authority seeks to make funding available to facilitate the delivery of the the Leathermarket programme of new homes, detailed in the Authority Report to Cabinet relating to this programme.
- (B) The Grant Recipient has submitted proposals to the Authority in respect of the proposed construction and/or delivery of the Outputs and the Authority has agreed in principle to make funding available to enable the delivery of the Outputs.
- (C) It is a condition precedent to the Authority providing any Funding that the Grant Recipient enters into Project Grant Agreements
- (D) This Agreement sets out the overarching principles upon which Funding may be made available to the Grant Recipient and the Grant Recipient's role in securing the delivery of the Outputs. The Project Grant Agreements will set out the detailed terms and conditions upon which specific amounts of Funding will be advanced to the Grant Recipient by the Authority.

Agreed terms

1 Definitions

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

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

Associated Project Documents means each contract and all relevant construction documents entered into or to be entered into by the Authority in relation to a Project including but not limited to planning agreements, appointments of professionals and collateral warranties;

Authority Rent Levels means rents charged in accordance with the Guidance on Rents for Social Housing (May 2014) and the Direction on the Rent Standard (April 2015) or such replacement guidance or direction or legislation

Availability Period means the period from the date of this Agreement until 31 December 2026;

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

Commercially Sensitive Information: means information of a commercially sensitive nature relating to the Grant Recipient, its intellectual property rights or its business or any information which the Grant Recipient has indicated to the Authority that, if disclosed by the Authority, would cause the Grant Recipient significant commercial disadvantage or material financial loss;

Committed means, in relation to any amount of the Grant that has been paid to the Grant Recipient, expended or required to be paid to a third party pursuant to a contractual arrangement in connection with the Project but shall not include any amount that is a Prohibited Cost (as defined in the Project Grant Agreement to which the expenditure relates) or is related to a Prohibited Act and **Commit** and **Commitment** shall be construed accordingly;

Confidential Information means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Agreement, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:
 - i the business, affairs, customers, suppliers or plans of the disclosing party; or
 - ii the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (b) any information developed by the parties in the course of carrying out this Agreement;
- (c) Personal Data; and
- (d) any Commercially Sensitive Information;

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

Contractor means each contractor or other party (however described) engaged by the Grant Recipient (or on behalf of the Grant Recipient) or collaborating with the Grant Recipient in or for the delivery of Works or other Outputs;

Contracts mean the contracts to be entered into by the Grant Recipient with Contractors for or in relation to the Works related to the Outputs;

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

DPA means the Data Protection Act 2018 as amended or updated from time to time;

Employers Requirements means the requirements set out in the Authority Employer's Requirements document (which shall be inclusive of a requirement that any Contractor is appointed through a procurement process) to be agreed between the parties in a Project-specific form and annexed to each Project Grant Agreement;

Event of Default means any of the events set out at clause 8;

Extension Event means any of the following:

- (a) exceptionally adverse weather conditions;
- (b) delay in payment by the Authority of any sum properly payable to the Grant Recipient under this Agreement or any Project Grant Agreement;
- (c) delay for a reasonable period due to unforeseen or unknown site conditions;
- (d) delay in relation to any decisions to be taken by the Authority whether under this Agreement, a Project Grant Agreement, in its capacity as the local planning authority or otherwise;
- (e) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power or prerogative which directly affects the execution of the Works by substantially impacting on the price of goods or materials or substantially restricting the availability or use of labour which is essential to the proper carrying out of the Works or materially preventing the Grant Recipient from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of the Works;
- (f) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (g) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot or civil commotion;
- (h) failure by any statutory undertaker, utility company or other like body to carry out works or provide services which the Grant Recipient has taken all reasonable steps open to it to procure and expedite;
- (i) any failure or major shortage of power, fuel or transport;
- (j) any blockade or embargo;
- (k) any (i) official or unofficial strike; (ii) lockout; (iii) go-slow; or (iv) other dispute; generally affecting the house building industry or a significant sector of it to a material extent;

unless any of the events arises (directly or indirectly) as a result of any wilful default or wilful act or negligent act of the Grant Recipient or any Contractor;

GDPR means the General Data Protection Regulation ((EU) 2016/679);

GLA means the Greater London Authority;

GLA Grant Agreement means the Local Authority Grant Agreement dated 7 February 2019 made between (1) GLA and (2) the Authority;

Good Industry Practice means in relation to a Professional, a Contractor or a subcontractor that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced professional or contractor engaged in the same type of undertaking as that of the Professional, Contractor or subcontractor (as the case may be);

Grant Recipient's Senior Officer means the person notified as such to the Authority by the Grant Recipient;

Information Commissioner has the meaning set out in Part 5 of the DPA;

Information Legislation: means the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004, the Aarhus Convention and Local Audit and Accountability Act 2014 and all applicable laws and regulations relating to Requests for Information and any subordinate legislation from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

Insolvency Event means the occurrence of any of the following in relation to the Grant Recipient:

- (a) it is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness;
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - i the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation on terms previously approved by the Authority;
 - ii a composition, compromise, assignment or arrangement with any creditor;
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by the Authority, receiver, administrative receiver, administrator, compulsory manager or other similar officer;
 - iv enforcement of any Security over any assets of the Grant Recipient;
 - v any analogous procedure or step is taken in any jurisdiction; or

- vi any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Grant Recipient;

Legislation means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

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

- (a) materially impair the ability of the Grant Recipient to perform and comply with its obligations under any Project Document;
- (b) have a severe adverse effect on the business, assets or financial condition of the Grant Recipient; or
- (c) materially impair the validity or enforceability of, or the effectiveness or ranking of, any Project Document or any other security granted or purporting to be granted pursuant to any Project Document or the rights or remedies of the Authority under any Project Document;

Material Failure means a failure on the part of the Grant Recipient (which is not merely trivial or technical in nature) to deliver or procure the delivery of any Output (in whole or in part) in accordance with the timescales set out in the Output Schedule;

Milestone means in relation to each Project a "Milestone" as defined in the relevant Project Grant Agreement;

Milestone Date means the date set out in each Project Grant Agreement by which the relevant Milestone must have been achieved (as the same may be revised by the Authority in accordance with clauses 4.2 or 4.6) otherwise an Event of Default will occur;

Milestone Failure means a failure by the Grant Recipient or any Contractor (as relevant) to achieve any Milestone by the relevant Milestone Date;

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

Output means:

- a) the social housing units (to be let on secure tenancies in accordance with Part IV of the Housing Act 1985 at Authority Rent Levels) in the number specified in the "No. of Units" column of the Output Schedule; or
- b) the other units as identified in the "Other" column of the Output Schedule,

in either case to be delivered by the Grant Recipient in accordance with a Project Grant Agreement on the corresponding Project Site specified in the "Project Site" column of the Output Schedule;

Output Schedule means the schedule setting out the Outputs at Schedule 1 to this Agreement;

Personal Data: shall have the same meaning as set out in the GDPR;

Professional means any architect, surveyor and any other consultant or advisor with a design or supervisory responsibility for the Works appointed or engaged by the Grant Recipient or a Contractor in connection with the Works;

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of LBS any gift or consideration of any kind as an inducement or reward:
 - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of a Project Document or Associated Project Document; or
 - ii for showing or not showing favour or disfavour to any person in relation to a Project Document or Associated Project Document;
- (b) entering into a Project Document or Associated Project Document in connection with which commission has been paid or has been agreed to be paid by the Grant Recipient or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed to the Authority;
- (c) committing any offence:
 - i under legislation creating offences in respect of fraudulent acts;
 - ii at common law in respect of fraudulent acts in relation to this Agreement; or
 - iii under the Bribery Act 2010; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority;

Project means a scheme to deliver one of the Outputs;

Project Document means any of the following documents:

- (a) this Agreement;
- (b) a Project Grant Agreement;
- (c) any other document designated as such by the Grant Recipient and the Authority;
and
- (d) any document entered into, pursuant to, or which amends or varies any document referred to in paragraphs (a) to (c) (inclusive) above;

Project Funding means funding made or to be made available by the Authority to the Grant Recipient for the purposes of funding a Project in accordance with the terms of the relevant Project Grant Agreement;

Project Grant Agreement means an agreement in the form specified in Schedule 2 in relation to a Project (with any necessary Project specific changes) entered into between the Authority and the Grant Recipient pursuant to which funding is made available to the Grant Recipient to secure the relevant Output (as specified within the relevant Project Grant Agreement);

Project Site means any of the sites identified in the "Project Site" column of the Output Schedule upon which an Output is to be delivered;

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

Remediation Plan means a plan (satisfactory in form and substance to the Authority) to remedy and/or mitigate the effects of (as may be the case) and Event of Default, the failure to deliver a Milestone or Output (as applicable) and to be submitted by the Grant Recipient pursuant to clause 4.3.5 or clause 8.2.1;

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

Representative means in relation to a party any affiliate, partner, director, officer, employees, agent, counsel, accountant, consultant, potential financing source and advisor provided that any such person or entity shall only be deemed to be a Representative to the extent they have received Confidential Information from or on behalf that Party;

Request for Information shall have the same meaning as set out in the Information Legislation;

Required Standards means the Employer's Requirements, Good Industry Practice, all Consents and Legislation;

Review Meeting means a meeting of the type described in clause 6.2 or clause 6.3;

Senior Authority Officer means the person notified as such by the Authority to the Grant Recipient;

SGEI Decision means the European Commission's Decision on Services of General Economic Interest dated 20 December 2011 (2012/21/EU) and any re-enactment of the same in United Kingdom law or otherwise;

SGEI Information means such information about the Grant, the expenditure of the Grant, and such other information as the Authority may reasonably request;

State aid means (as the case may be):

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

Termination Date means the earlier of:

- (a) the date on which this Agreement is terminated in accordance with the terms of this Agreement; and
- (b) the date four (4) years after the achievement of the Total Outputs;

Total Outputs means the Outputs for all Projects set out in the Output Schedule (as the same may be amended from time to time in accordance with the terms of this Agreement);

Waiver Condition means provision of satisfactory evidence by the Grant Recipient to the Authority that the relevant Prohibited Act was committed by:

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

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

Working Day means a Monday, Tuesday, Wednesday, Thursday or Friday but excluding any day which is a public holiday;

Works means all the works (including design, infrastructure works and all other works necessary) to deliver the Projects and Outputs to the Required Standards.

1.2 Interpretation

1.2.1 The masculine includes the feminine and vice versa.

1.2.2 The singular includes the plural and vice versa.

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

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

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

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

1.2.7 Headings are for convenience of reference only.

1.2.8 A party means a party to this Agreement.

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

1.2.10 In any case where the consent or approval of the Authority (or any officer of the Authority) is required or a notice is to be given by or to the Authority, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified to the other parties from time to time. Any consent, approval or refusal to consent or approve should be issued within a reasonable timeframe.

1.2.11 An obligation to do anything includes an obligation to procure its being done.

1.2.12 Any restriction includes an obligation not to permit infringement of the restriction.

1.2.13 The term Project Site includes each and every part of it and any estate or interest in it.

- 1.2.14 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
 - 1.2.15 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
 - 1.2.16 No review comment or approval by the Authority under the provisions of this Agreement shall operate to exclude or limit the Grant Recipient's obligations or liabilities under this Agreement save where the Authority have confirmed the said review comment or approval in writing.
 - 1.2.17 The Grant Recipient shall be responsible as against the Authority for the acts or omissions of any Contractor or Professional as if they were the acts or omissions of the Grant Recipient.
 - 1.2.18 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority shall, unless otherwise expressly stated in this Agreement or agreed in writing by the Authority, relieve the Grant Recipient of any of its obligations under any Project Grant Agreement or any Associated Project Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the Authority in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.3 Save where a contrary intention is shown or where an express discretion is given by this Agreement, the Authority will act in a commercially reasonable manner in deciding whether to give any consent, agreement, determination or approval or express its satisfaction and whether to give any such consent, agreement, determination or approval or express its satisfaction subject to restrictions, terms or conditions unless in each case to do so would fetter its statutory powers, rights or obligations.

2 Principles of the provision of Funding

- 2.1 The Authority (in the exercise of its powers) has agreed in principle (subject to the terms of this Agreement and each Project Grant Agreement) during the Availability Period to make available the Project Funding.
- 2.2 The parties acknowledge and agree that the provision of any Project Funding in relation to each Project by the Authority is subject to:
 - 2.2.1 due diligence (including financial and legal due diligence) having been carried out by the Authority and the results of which being satisfactory to the Authority;
 - 2.2.2 the Authority being satisfied that any such funding would not constitute a State aid;
 - 2.2.3 an Authority representative being retained as an observer on the board of the Grant Recipient for the duration of this Agreement;

- 2.2.4 a Project Grant Agreement having first been concluded between the Authority and the Grant Recipient; and
- 2.2.5 the terms of the relevant Project Grant Agreement that has been entered into.
- 2.3 The parties further acknowledge and agree that the entering into any Project Grant Agreement by the parties is conditional upon the Authority first confirming in writing that it considers that it has sufficient funds available to meet the likely reasonable costs required to deliver the relevant Project.
- 2.4 The Grant Recipient shall cooperate with and assist the Authority in:
 - 2.4.1 satisfying Clauses 2.2.1– 2.2.3; and
 - 2.4.2 ensuring that while administering grant payments, such payments do not constitute overcompensation having regard to the relevant State aid rules.

3 **State Aid**

The Grant Recipient is entrusted by the Authority to develop homes to achieve the Outputs. The intention is that funding provided by means of the Project Grant Agreements conforms with the requirements of the SGEI Decision.

4 **Outputs**

- 4.1 The Grant Recipient acknowledges that the Authority (subject to clause 2 and each Project Grant Agreement) seeks to fund the delivery of the Total Outputs on the understanding that the Grant Recipient shall seek to deliver the Total Outputs.
- 4.2 If and to the extent that any variation is agreed in relation to a Project Grant Agreement which has the effect or ought to have the effect of varying the Total Outputs or the Outputs for any Project Site, the parties must vary the terms of this Agreement to give effect to the variation of the Project Grant Agreement's terms.
- 4.3 In the event of a Material Failure the Authority shall be entitled to do any one or more of the following:
 - 4.3.1 terminate this Agreement in its entirety where the failure has a Material Adverse Effect;
 - 4.3.2 terminate the Project Grant Agreement the performance or non-performance of which contributed to the Material Failure;
 - 4.3.3 cancel any undrawn payment due under the relevant Project Grant Agreement;
 - 4.3.4 recover any **sums which are not Committed** paid to the Grant Recipient pursuant to the relevant Project Grant Agreement; and/or
 - 4.3.5 require the Grant Recipient to prepare a Remediation Plan and submit the plan to the Authority for its approval within ten (10) Business Days of the Authority's request.

4.4 Termination of any Project Grant Agreement by the Authority will entitle the Authority to exercise the rights set out in clause 4.3 (except clause 4.3.2).

4.5 If a Milestone Failure occurs or is in the opinion of the Authority likely to occur (having regard to the information supplied pursuant to clauses 6 or 7) and such Milestone Failure is not (in the reasonable opinion of the Authority) the result of an Extension Event, the Authority shall be entitled in its absolute discretion (but not be obliged) to:

- (a) exercise the rights described under clause 8; or
- (b) agree a revised Milestone and/or Milestone Date with the Grant Recipient in which case any relevant condition of this Agreement shall apply mutatis mutandis to the revised Milestone and/or Milestone Date.

4.6 Where any Milestone Failure occurs or is in the opinion of the Authority likely to occur (having regard to the information supplied pursuant to clauses 6 or 7) and the Authority determines that such failure is the result of an Extension Event the Authority shall extend the relevant Milestone Date by such reasonable period as it considers appropriate to take account of the delay caused or likely to be caused by the Extension Event.

5 **Grant Recipient's Obligations**

5.1 The Grant Recipient must:

- 5.1.1 allow the Authority (or, procure permission for the Authority) to visit any Project Sites at reasonable times and on reasonable notice for the purposes of monitoring the Grant Recipient's progress in delivering the Project;
- 5.1.2 ensure that there is no breach of the GLA Grant Agreement or the Employers Requirements and not make any changes to the Employers Requirements without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed);
- 5.1.3 not permit construction to commence development on any Project Site without providing a signed and completed copy of the relevant Contract to the Authority and evidencing "Start on Site" as defined in the GLA Grant Agreement; and
- 5.1.4 where the Grant Recipient has submitted a Remediation Plan and that plan has been approved by the Authority, implement the Remediation Plan in accordance with its terms.

6 **Notifications, reporting and audit**

6.1 The Grant Recipient shall notify the Authority:

- 6.1.1 immediately upon any change (whether actual or proposed) required to the Outputs other than any change permitted under this Agreement;
- 6.1.2 immediately upon becoming aware of any event which:
 - (a) has or might have a Material Adverse Effect on the Grant Recipient; or

- (b) prejudices or might prejudice the Grant Recipient's ability to deliver any of the Outputs in accordance with the Output Schedule; or
- (c) constitutes or might constitute a Milestone Failure; or
- (d) prejudices or might prejudice the Grant Recipient's ability to deliver any Works; or
- (e) has resulted in or might give rise to the making of a Report or Direction;

6.1.3 as soon as reasonably practicable on becoming aware of any claim brought against the Grant Recipient arising out of or relating to the activities of the Grant Recipient and/or the Project Funding or pursuant to any Associated Project Document;

6.1.4 immediately upon there being a proposed material change to any Associated Project Document;

6.1.5 immediately upon the occurrence of an Event of Default.

6.2 The Authority and the Grant Recipient shall attend a Review Meeting within ten (10) Business Days of each Quarter Date (or within such longer period as the Authority may at its absolute discretion agree) to discuss (but without limitation) progress in achieving the Outputs and such other matters in relation to the performance of this Agreement as are notified by either party to the other in writing at least five (5) Business Days prior to the date of the Review Meeting.

6.3 The Authority or the Grant Recipient may also call a Review Meeting at any time outside of the quarterly cycle provided that the party requesting the meeting gives reasonable prior written notice to the other of such meeting.

6.4 Nothing in this clause 6 shall prevent the Authority from requesting (whether on behalf of itself or any Government office) at any other time information from the Grant Recipient in respect of the delivery of the Outputs or such other matters relating to the performance of this Agreement and the Grant Recipient shall promptly respond to any such request.

6.5 The Grant Recipient shall, as and when requested by the Authority, make available to the Authority on an Open Book basis and in a timely manner where required in connection with this Agreement or the Associated Project Documents a copy of each of: all data, materials, documents and accounts of any nature created (including the SGEI Information), acquired or brought into existence in any manner whatsoever by or on behalf of the Grant Recipient (including by its officers, employees, agents or consultants) for the purposes of the Associated Project Documents.

7 **Change in financial circumstances**

The Grant Recipient shall notify the Authority immediately where there is or has been any material withdrawal or reduction of any funding or income in relation to the Project available to the Grant Recipient.

8 **Events of Default**

8.1 An Event of Default occurs where:

- 8.1.1 An Insolvency Event has occurred in relation to the Grant Recipient;
 - 8.1.2 a Milestone Failure has occurred or is in the reasonable opinion of the Authority likely to occur (having regard to the information supplied pursuant to clauses 6 or 7) and such Milestone Failure is not the direct result of a Extension Event;
 - 8.1.3 the Grant Recipient fails to perform and/or observe any obligation or restriction on it under any Project Grant Agreement or Associated Project Document (to which it is a party) such that delivery of the relevant Outputs in the opinion of the Authority is unlikely to be achieved and/or a Project Grant Agreement is terminated;
 - 8.1.4 the Grant Recipient fails to comply with clauses 6.1.3, 6.1.4 and/or 7;
 - 8.1.5 the Authority believes that any information or change notified to it pursuant to clauses 6 and/or 7 or which it otherwise becomes aware of has or might have a Material Adverse Effect;
 - 8.1.6 the Grant Recipient or where applicable any Contractor, subcontractor, employee, officer or agent commits any Prohibited Act (in respect of which the Waiver Condition has not been satisfied) or a Report or Direction is made;
 - 8.1.7 the Grant Recipient or where applicable any Contractor, subcontractor, employee, officer or agent commits any act which has the effect of putting the Authority in breach of the GLA Grant Agreement or in material breach of the Employer Requirements; or
 - 8.1.8 there has been an act/omission on the part of the Grant Recipient or of any of its Contractors that in the Authority's opinion harms or has the potential to harm the reputation of the Authority, the GLA or the Mayor of London or to bring them into disrepute.
- 8.2 Where an Event of Default has occurred the Authority may by notice to the Grant Recipient:
- 8.2.1 require the Grant Recipient to prepare a Remediation Plan to remedy and/or mitigate the effects of the Event of Default and submit such plan to the Authority within ten (10) Business Days of such request for approval;
 - 8.2.2 reduce or cancel the then applicable Project Funding for any Project Site; and/or
 - 8.2.3 subject to 8.3.3 terminate this Agreement.
- 8.3 In relation to the exercise by the Authority of its rights under clause 8.2:
- 8.3.1 such exercise will be without prejudice to any other right of action or remedy of the Authority (including any claim for damage) in respect of the Event of Default; and
 - 8.3.2 if the Authority exercises its rights under clause 8.2.1, the Grant Recipient will, after notice from the Authority, remedy the Event of Default to the Authority's

satisfaction within such period as prescribed in the relevant Remediation Plan and subject to such conditions as the Authority may determine; and

- 8.3.3 where an Event of Default occurs under any of clauses 8.1.2, 8.1.3 or 8.1.5 the Authority will take the steps set out in clauses 8.2.1 and/or 8.2.2 to afford the Grant Recipient the opportunity to prepare a Remediation Plan to remedy and/or mitigate the effects of the Event of Default and submit such plan to the Authority within ten (10) Business Days of the date of the request from the Authority to prepare such a plan.

9 Public relations and publicity

- 9.1 The Grant Recipient will ensure that the Authority's requirements from time to time in relation to public relations and publicity for capital projects (including site signage) as notified to the Grant Recipient from time to time are observed and implemented in respect of the Outputs.
- 9.2 Save as permitted in any relevant Project Grant Agreement, the Grant Recipient will not and will procure that no Contractor, officer, employee or agent will communicate with any representative of any press, television, radio or other communications media on any matter concerning the Project Documents and/or the Outputs without the Authority's prior written consent.
- 9.3 The Authority will have the right to approve any announcement in relation to the Projects, the Project Documents and/or the Outputs before it is made. 9.4 The Grant Recipient grants the Authority a non-exclusive, royalty free licence (to the extent that it can grant such a licence) to use any photographs, records, images, articles or illustrations in relation to the Projects undertaken by or for the Grant Recipient for use in any publicity or advertising, whether published alone or in conjunction with any other person.

10 Reputation of the parties

- 10.1 The Grant Recipient will not, and will use all reasonable endeavours to procure that all Contractors, officers, employees or agents will not knowingly do or omit to do anything in relation to the Project Documents, the Associated Project Documents and/or the Outputs or in the course of their other activities that may bring the standing of the Authority into disrepute or attract adverse publicity for the Authority.
- 10.2 No party will publish any statement, orally or in writing, relating to the other party which might damage that other party's reputation or that of any of its officers or employees.

11 Confidentiality and freedom of information

11.1 Confidentiality

- 11.1.1 Subject to clause 11.1.2, each party shall keep the other party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this Agreement; or

- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.1.

11.1.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential Information:

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Information Legislation;
- (d) which is in or enters the public domain other than through any disclosure prohibited by this Agreement;
- (e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
- (f) which is disclosed by the Authority on a confidential basis to any central government or regulatory body.

11.1.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this Agreement, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 11.1.3.

11.1.4 The provisions of this clause 11 shall survive for a period of twelve (12) years from the Termination Date.

11.2 **Freedom of information**

11.2.1 The Grant Recipient acknowledges that the Authority is subject to the requirements of the Information Legislation. The Grant Recipient shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the Information Legislation;

- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two Working Days of receipt;
 - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 11.2.2 The Grant Recipient acknowledges that the Authority may be required under the Information Legislation to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Grant Recipient. The Authority shall take reasonable steps to notify the Grant Recipient of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the Information Legislation.
- 11.2.3 Notwithstanding any other term of this Agreement, the Grant Recipient consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the Information Legislation
- 11.2.4 The Authority shall, prior to publication, consult with the Grant Recipient on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Grant Recipient shall assist and co-operate with the Authority to enable the Authority to publish this Agreement.
- 11.2.5 The Grant Recipient shall ensure that all Information acquired or produced in the course of this Agreement or relating to this Agreement is safely retained and available for disclosure during the Availability Period and for six (6) years afterwards and shall permit the Authority, its internal auditors and the District Auditor to inspect such records as requested from time to time. In default of compliance, the Authority may recover possession of such materials and the Grant Recipient shall permit the Authority or its approved agents to enter for those purposes any premises of the Grant Recipient where any such materials may be held.
- 11.2.6 Where the Authority requires any Information from the Grant Recipient relating to any potential or actual claim by a third party against the Authority, the Grant Recipient shall ensure that any Information requested by the Authority is supplied to the Authority in sufficient time to enable the Authority to comply with any relevant procedural rules.

12 **Data Protection**

- 12.1 The Grant Recipient warrants and represents that it has obtained all necessary registrations, notifications and consents required by the DPA to process Personal Data (as defined in the DPA) for the purposes of performing its obligations under the Project Documents.
- 12.2 The Grant Recipient undertakes that to the extent that the Grant Recipient and/or any of its employees receives, has access to and/or is required to process Personal Data on behalf of the Authority (the **Authority's Personal Data**) for the purpose of performing its obligations under the Project Documents or the Associated Project Documents it will at all times comply with the provisions of the DPA for the time being in force, including without limitation the Data Protection Principles set out in Schedule 1 of the DPA.
- 12.3 The Grant Recipient agrees to comply at all times with the DPA and to use all reasonable efforts to assist the Authority to comply with such obligations as are imposed on the Authority by the DPA and not to perform its obligations under the Project Documents or the Associated Project Documents in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.
- 12.4 The Grant Recipient will indemnify the Authority against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Authority as a result of the Grant Recipient's destruction of and/or damage to any of the Authority's Personal Data processed by the Grant Recipient, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this clause 12 by the Grant Recipient, its employees, agents or Contractors.
- 12.5 The Grant Recipient undertakes to include obligations no less onerous than those set out in this clause 12, in all contractual arrangements with Associated Persons and/or with agents engaged by the Grant Recipient in performing its obligations under the Project Documents.

13 **Senior Officers**

13.1 **Authority of the Grant Recipient's Senior Officer**

The Grant Recipient represents to the Authority that the Grant Recipient's Senior Officer has full authority to act on its behalf for all purposes under the Project Documents. The Authority is entitled to treat any act of the Grant Recipient's Senior Officer in connection with the Project Documents as being expressly authorised by the Grant Recipient (save where the Grant Recipient has notified the Authority that such authority has been revoked) and the Authority will not be required to determine whether any express authority has in fact been given. The Grant Recipient's Senior Officer may authorise any of their subordinates to exercise their powers under the Project Documents by notice to the Authority.

13.2 **Authority of Senior Authority Officer**

The Authority represents to the Grant Recipient that the Senior Authority Officer has full authority to act on its behalf for all purposes under the Project Documents. The Grant Recipient is entitled to treat any act of the Senior Authority Officer in connection with the Project Documents as being expressly authorised by the Authority (save where the

Authority has notified the Grant Recipient that such authority has been revoked) and the Grant Recipient will not be required to determine whether any express authority has in fact been given. The Senior Authority Officer may authorise any of their subordinates to exercise any of their powers under any Project Document.

14 **No agency, partnership or employment**

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

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

14.3 The Grant Recipient will not say or do anything which may pledge the credit of or otherwise bind the Authority or that may lead any other person to believe that the Grant Recipient is acting as the Authority.

15 **Assignment and sub-contracting**

15.1 The Authority will be entitled to transfer or assign all or part of this Agreement.

15.2 The Grant Recipient will not be entitled to transfer or assign all or part of this Agreement without the prior written consent of the Authority.

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

Nothing contained in or carried out pursuant to any Project Document and no consents given by the Authority or the Grant Recipient will unlawfully prejudice the Authority's rights, powers, duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments, orders or regulations.

17 **Dispute Resolution**

17.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this clause 17.

17.1.1 In the event that the Grant Recipient or the Authority consider that a Dispute exists, such party will serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute.

17.1.2 Senior representatives of the parties (the **Senior Representatives**) will meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of receipt of a Notice of Dispute and use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this clause 17. Any unanimous resolution of the Senior Representatives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.

- 17.1.3 If the Dispute remains unresolved after ten (10) Business Days following referral to the Senior Representatives, such Dispute shall at the request of either Party be referred to a mediator for mediation.
- 17.1.4 If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party shall within fourteen (14) days from the date of the request to appoint a mediator or within fourteen (14) days of notice to either Party that he or she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (**CEDR**) to appoint a mediator.
- 17.1.5 The Parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure (the **Model Procedure**). The cost of such mediation shall be split equally between the Parties or as otherwise determined by the Parties during the mediation process.
- 17.1.6 The mediation will be conducted on a without prejudice basis and in strict confidence.
- 17.1.7 If a Dispute is settled through mediation, the terms of the settlement will be recorded in writing in a legally binding form signed by a duly authorised representative of each of the Parties. If a settlement is reached while proceedings are pending, the Parties acknowledge that an appropriate application must be made to the courts to render the terms of the settlement as a consent order or award.
- 17.1.8 If, within twenty eight (28) calendar days of the mediator being appointed, the mediation has not resulted in the settlement of the Dispute being reached, then the mediation procedure shall, unless otherwise agreed, be terminated.
- 17.1.9 If either Party withdraws from the mediation at any time, the mediation procedure will be terminated and either Party will be free to request that the Dispute be referred for arbitration under the Arbitration Act 1990.
- 17.2 If the Parties cannot agree on the identity of the arbitrator to settle the Dispute within fourteen (14) days after the request that the Dispute be referred for arbitration the arbitrator shall be appointed at either Party's request by the President of the Law Society of England and Wales. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be borne by the Parties in such proportions as determined by the arbitrator.
- 17.3 The award by the arbitrator shall be final and binding on the parties and judgment rendered on the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be.
- 17.4 In the event that the Dispute or complaint is not capable of being resolved through this mediation procedure then it shall be subject to the jurisdiction of the courts of England and Wales.
- 17.5 Nothing in this Clause 17 shall affect either Party's right, where appropriate, to apply to any court of competent jurisdiction seeking:

- (a) an injunction, specific performance or similar court order to enforce the obligations of the other party; or any interim or provisional relief that may be necessary to protect the rights or property of that party pending resolution of the Dispute in accordance with this Clause.

18 **Notices**

18.1 Any notice to be given hereunder shall be in writing addressed to Senior Authority Officer or to Grant Recipient's Senior Officer (as applicable) and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by a recorded delivery service addressed in the case of any party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

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

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

18.2.2 if delivered by a recorded delivery service, three (3) Business Days after delivery including the date of postage

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

19 **Rights of third parties**

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

20 **Entire agreement**

20.1 This Agreement and the conditions herein contained together with the schedules constitute the entire agreement between the parties in relation to its subject matter and may only be varied or modified by written agreement of the Grant Recipient and the Authority.

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

21 **Severance**

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

22 **Waiver**

22.1 The failure of any party at any one time to enforce any provision of this Agreement in no way affects its right thereafter to require complete performance by the other party, nor may

the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself. The rights and remedies contained in this Agreement are cumulative and not exclusive of each other nor of rights or remedies provided by law.

23 **Governing law**

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

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

Schedule 1 – Output Schedule

Project Site	No. of Units	Other	Start	Finish
LeatherMarket - Joseph Lancaster	40		June-19	October -21
LeatherMarket - Elim Estate sites (Ballcourt, Garges and Triangle site)	46	Office Provision Community Space	March 2021	March 2023
LeatherMarket - Cluny estate (Garages and infill)	8		October 2021	March 2023
Decima Street	2		October 2021	March 2023
LeatherMarket - Lawson estate	7		December 2021	October 2023
LeatherMarket - Whites Grounds estate	4		October 2021	March 2023
LeatherMarket - Falmouth Road	14		Decemer 2021	October 2023
LeatherMarket - JMB Office site	40		June 2023	Decembe 2024

Schedule 2 – Form of Project Grant Agreement

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

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
THE MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF SOUTHWARK)
in the presence of:)

Authorised Officer

Executed as a deed by)
Leathermarket Community Benefit)
Society LIMITED)
acting by a director in the presence of:)

.....
Signature of director

.....
Signature of witness

.....
Name (in BLOCK CAPITALS)

Address.....

.....