

2 October 2019

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## Project Grant Agreement

# Joseph Lancaster Nursery Site

### Dated

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

**Leathermarket Community Benefit Society Limited**  
(Grant Recipient)

Dentons UK and Middle East LLP  
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# Project Grant Agreement

Dated February 2020

## Between

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

## Recitals

- A The Authority seeks to fund the development of the "Output" as identified in the Inception Report.
- B The Parties have entered into the Overarching Agreement identifying the sites and the number of housing units to be delivered on each site and setting out the overarching terms on which funding will be available.
- C It is a condition precedent to the Authority making funding available for the development of each site that the Parties enter into project grant agreement.
- D This Agreement has been entered into in order to make grant funding available for the Project in accordance with the terms of this Agreement.
- E The Authority acknowledges that the Grant Recipient has formed the Development Subsidiary to facilitate the Development in a cost-effective manner.

## It is agreed:

### 1 Definitions and interpretation

- 1.1 In this Grant Agreement the following words or phrases have the following meaning ascribed to them:

**Affiliate** means, in relation to any legal entity which is part of a group of entities under common control by virtue of shareholding, membership and/or board representation, any other entity within the same group of entities including in relation to the Grant Recipient the Development Subsidiary

**Approval** means approved in writing and **Approve** and **Approved** shall be construed accordingly;

**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);

**Authority's Senior Officer** means the Strategic Director of Housing and Modernisation for the time being or such other person as may be notified by the Authority to the Grant Recipient

and who in any case has full authority to act on behalf of the Authority for all purposes in connection with this Agreement;

**Building Contract** means the building contract entered into or proposed to be entered into by the Grant Recipient and/or the Development Subsidiary and a building contractor for the construction of the Development in accordance with the Planning Permission which shall include step-in rights in favour of the Authority to enable the Authority to enforce the provisions of the building contract against the appointed building contractor and perform any of the obligations imposed on the Grant Recipient and/or the Development Subsidiary in the event that either the Grant Recipient and/or the Development Subsidiary fails or is unable to perform its obligations under or enforce the provisions of the building contract;

**Building Contractor** means the building contractor who has entered into the Building Contract with the Grant Recipient and/or the Development Subsidiary;

**Building Contract Milestone** means (prior to commencing the Construction stage):

- (a) the Approval by the Authority of:
  - (i) the Building Contract;
  - (ii) a report submitted by the Grant Recipient to the Authority demonstrating to the Authority's satisfaction that detailed design of the Development to reflect completion of RIBA Stage 4 Technical Design has been completed
  - (iii) supporting materials including a construction programme and details of any retention(s) monies;
  - (iv) evidence of the Grant Recipient's compliance with Authority procurement requirements (including provision of appropriate public liability insurance);
  - (v) evidence that warranties to the Authority's satisfaction have been or will be obtained from the appointed Building Contractor in favour of each of the Grant Recipient and the Authority;
  - (vi) the Schedule of Costs; and
  - (vii) an updated risk assessment in connection with the Project;
- (b) confirmation in writing by the Authority that it has sufficient funds available to meet the Delivery Stage Allocation Amount (as specified in the relevant Approved Schedule of Costs) for the Construction Stage;

**Claim Form** means a claim form in the form set out at Appendix 1 to include:

- (a) details of the Delivery Stage and the particular costs in the Schedule of Costs to which the Claim Form relates;
- (b) an explanation of the need for each instalment claimed;
- (c) details of how much of each of the Project Specific Allocation Amount and the Delivery Stage Allocation Amount has been paid to the Grant Recipient to date;

- (d) such other evidence as is necessary to demonstrate that sufficient progress with the Project has been made; and
- (e) confirmation that all Grant instalments paid to the Grant Recipient prior to the date of the relevant Claim Form are fully Committed;

**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 or is related to a Prohibited Act and **Commit** and **Commitment** shall be construed accordingly;

**Conditions of Grant** means the conditions set out at Clause 4;

**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;

**Construction Stage** means the stage of delivery of the Project comprising:

- (a) enabling works prior to commencement of construction;
- (b) the construction of the Development up to Practical Completion and making ready for occupation of the residential units within the Development; and
- (c) the defects period and any such further period as may be required for the Grant Recipient and/or the Development Subsidiary to remedy any defects in the Development arising during the defects period;

**Data Protection Legislation** means all applicable data protection legislation and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); any other directly applicable European Union regulation relating to privacy; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and the privacy of electronic communications;

**Delivery Stage** means any of the following:

- (a) the Feasibility Stage;
- (b) the Planning Stage;
- (c) the Detailed Design and Contract Procurement Stage;
- (d) the Construction Stage; and
- (e) the Final Payment Stage

**Delivery Stage Allocation Amount** means in relation to a Delivery Stage the maximum amount of the Grant which may subject to the provisions of this Agreement be available to fund that Delivery Stage as specified in the Feasibility Report Approved by the Authority or as otherwise Approved by the Authority;

**Design Guide** means the version of the London Housing Design Guide applicable at the submission by the Grant Recipient of the Planning Application;

**Detailed Design and Contract Procurement Stage** means the stage of delivery of the Project comprising:

- (a) the procurement and negotiation of and entering into a Building Contract; and
- (b) the preparation of detailed designs for the Development to reflect completion of RIBA Stage 4 Technical Design;

**Development** means the development to achieve the "Output" as specified in the Inception Report Approved by the Authority and as specified in the Feasibility Report Approved by the Authority;

**Development Client Cost** means any of the following costs which shall be identified in the Schedule of Costs:

- (a) staff costs and other internal costs of the Applicant;
- (b) statutory fees where these are not directly met by the Authority;
- (c) finance charges; and
- (d) administration costs

provided that such costs relate to the Project and collectively and over the whole course of the Project do not exceed four per cent (4%) of the Project Specific Allocation Amount;

**Development Subsidiary** means Leathermarket Community Housing Limited, a company registered in England with company number 11489083, registered at 26 Leathermarket Street, London SE1 3HN and which is wholly owned by the Grant Recipient

**Due to an Extension Event** means in the reasonable opinion of the Authority taking into account evidence provided by the Grant Recipient of the existence and nature of the Extension Event and the Extension Period that the failure to achieve a "Start on Site" as

defined in the GLA Agreement was caused by the occurrence of the Extension Event and not otherwise and that the Grant Recipient could not reasonably have avoided such failure;

**EIR** means the Environmental Information Regulations 2004 (as amended);

**Employers Requirements** means the requirements set out in the Authority's Employer's Requirements Document inclusive of requirement that any Building Contractor be appointed through a procurement process finalised and provided to the Grant Recipient following written approval of the pre-planning report by the Authority;

**Employers Requirements Document** means the document appended to this Agreement at Appendix 2;

**Extension Event** means any of the following events:

- (a) exceptionally adverse weather conditions;
- (b) delay in payment by the Authority of any sum properly payable to the Grant Recipient under the Overarching Agreement or this 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, the Overarching 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 or prerogative power 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 of the following events that generally affects the house building industry or a significant sector of it to a material extent:
  - (i) official or unofficial strike;
  - (ii) lockout;

- (iii) go-slow; or
- (iv) other dispute;

provided that none of the above events constitutes an Extension Event to the extent that it arises (directly or indirectly) as a result of any wilful default or wilful act or negligent act of the Grant Recipient or any Contractor and no Extension Event continues for longer than the Extension Period;

**Extension Period** means in the Authority's reasonable opinion (taking into account evidence provided by the Grant Recipient) the period commencing on the date on which the Extension Event commenced and ending on the date on which the Extension Event ends;

**Feasibility Report** means a report comprising:

- (a) details of the Site;
- (b) details of the Development;
- (c) the feasibility assessment including its results/conclusions in relation to the Development;
- (d) the Outline Costs;
- (e) the Programme;
- (f) details of likely key delivery partners; and
- (g) an assessment of risk in connection with the Project;

**Feasibility Report Milestone** means (prior to the Planning Stage):

- (a) the Approval by the Authority of the Feasibility Report; and
- (b) confirmation in writing by the Authority that it has sufficient funds available to meet the Delivery Stage Allocation Amount (as specified in the relevant Approved Schedule of Costs) for the Planning Stage;

**Feasibility Stage** means the stage of the delivery of the Project comprising the procurement by the Grant Recipient of a feasibility assessment of the Project and the preparation of the Feasibility Report;

**Final Payment Stage** means the stage of the delivery of the Project comprising the payment by the Grant Recipient of the Building Contract retention monies to the Building Contractor;

**FOIA** means the Freedom of Information Act 2000 (as amended);

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

**GLA** means the Greater London Authority;

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



**Grant** means the funding for the delivery of the Project which shall be available to the Grant Recipient in accordance with this Grant Agreement;

**Grant Period** means the period beginning on the date of the Inception Report Milestone and ending on the date 6 (six) years following the date of the Inception Report Milestone;

**Grant Recipient's Senior Officer** means the programme director for the time being or such other person as may be notified by the Grant Recipient to the Authority and who in any case has full authority to act on behalf of the Grant Recipient for all purposes in connection with this Agreement;

**Inception Report** means a report or statement prepared by or on behalf of the Grant Recipient identifying one of the "Outputs" as defined in the Overarching Agreement and proposing to deliver such "Output" and setting out the indicative overall costs of delivering such "Output" and a detailed breakdown of costs relating to the Feasibility Stage;

**Inception Report Milestone** means:

- (a) the Approval by the Authority of the Inception Report; and
- (b) confirmation in writing by the Authority that it has sufficient funds available to meet the costs of the Feasibility Stage as set out in the Inception Report Approved by the Authority;

**Information** has the meaning given under section 84 of FOIA;

**Information Legislation** the FOIA, the EIR, 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;

**Intellectual Property Rights** means any or all of the following in relation to the Project only: patents, trademarks, service marks, drawings, designs, registered designs, utility models, design right, copyright (including copyright in computer software), database right, inventions, trade secrets and other confidential information, technical information, know-how, business or trade names, rights to prevent passing off, and all other intellectual property rights and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including all applications and the right to apply for any of the foregoing rights;

**Material Breach** means a breach of this Grant Agreement, the Overarching Agreement (including an "Event of Default" as defined therein) or any other grant agreement pursuant to the Overarching Agreement and such breach has not been remedied to the satisfaction of the Authority within thirty (30) days beginning on the date on which the breach was first discovered;

**Milestone** means any of the following:

- (a) the Inception Report Milestone;
- (b) the Feasibility Report Milestone;
- (c) the Planning Milestone;

- (d) the Building Contract Milestone; or
- (e) the Retention Milestone;

**Milestone Date** means the target date for the achievement of a Milestone as specified in the Programme Approved by the Authority or such other date that is Approved by the Authority;

**Near Miss** means any incident, accident or emergency which did not result in injury, illness or damage but which had the potential to do so;

**Outline Costs** means the gross indicative costs of the Development and an estimate of the Development Client Costs

**Overarching Agreement** means the Agreement entered into between the Authority and the Grant Recipient dated 6 January 2020;

**Parties** means the Authority and the Grant Recipient and **Party** shall refer to either the Authority or the Grant Recipient;

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

**Planning Application** means the planning application for the Development to be in accordance with the details of the Development set out in the Feasibility Report Approved by the Authority;

**Planning Stage** means the stage of delivery of the Project comprising:

- (a) the preparation of the Planning Application;
- (b) the obtaining of Approval to the Planning Application from the Authority prior to its submission to the local planning authority;
- (c) the obtaining of Planning Permission; and
- (d) the obtaining of Approval from the Authority of the Planning Permission (in its capacity as Party to this Agreement and not as local planning authority);

**Planning Milestone** means:

- (a) the Approval by the Authority of the Planning Permission (in its capacity as Party to this Agreement and not as local planning authority);
- (b) the Approval by the Authority of the Schedule of Costs; and
- (c) confirmation in writing by the Authority that it has sufficient funds available to meet the Delivery Stage Allocation Amount (as specified in the relevant Approved Schedule of Costs) for the Detailed Design and Contract Procurement Stage;

**Planning Permission** means the planning permission granted pursuant to the Planning Application which shall be Approved by the Authority (in its capacity as Party to this Agreement and not as local planning authority);

**Practical Completion** means the issue of a certificate by architect, civil engineer, chartered surveyor or other appropriately qualified professional for the Development (as appropriate)

certifying that the Development and every part thereof is sufficiently complete to be put to use and **Practically Complete** shall be construed accordingly;

**Programme** means the programme for the Project as set out in the Feasibility Report Approved by the Authority comprising:

- (a) A timetable for the delivery of the project (including each of the Delivery Stages all the Milestone Dates and the submission of reports/information/materials for the purpose of achieving the Milestones), to be updated at each approved Milestone; and
- (b) the overall period within which the Project will be delivered;

**Prohibited Act** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function or activity in relation to obtaining this Agreement or performing any provision thereof or obtaining any other contract relating to this Agreement or with the Grant Recipient or performing any provision thereof;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing an offence (i) under the Bribery Act 2010 (ii) under legislation or common law concerning fraudulent acts (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

**Prohibited Cost** means any of the following costs:

- (a) staff costs and other internal costs of the Applicant;
- (b) statutory fees;
- (c) finance charges;
- (d) marketing costs;
- (e) recoverable VAT;
- (f) any costs of activities of a political or exclusively religious nature;
- (g) any costs of goods or services that the Grant Recipient has a statutory duty to provide;
- (h) contributions in kind;
- (i) depreciation, amortisation or impairment of fixed assets owned by the Grant Recipient;

- (j) interest payments (including service charge payments for finance leases);
- (k) gifts, other than promotional items with a value of no more than £10 a year to any one person;
- (l) any costs of entertaining which would be a taxable benefit to the person being entertained according to current UK tax regulations;
- (m) statutory fines, criminal fines or penalties;
- (n) liabilities incurred before the date of this Agreement unless agreed in writing by the Authority;
- (o) the costs of making good any damage to the Works caused by an insurable risk or the costs of making good any defects on the Works; or
- (p) any costs, expenses or payments which would not be costs which are eligible for compensation in accordance with the SGEI Decision,

provided that the costs identified at (a) to (d) above may constitute Development Client Costs;

**Project** means the delivery of the "Output" identified in the Inception Report and in accordance with this Agreement;

**Project Bank Account** means an ordinary bank account in the name of the Grant Recipient which is ring-fenced for use solely in connection with the funding of the Project;

**Project Specific Allocation Amount** means the maximum amount of the Grant which may subject to the provisions of this Agreement be available to fund the Project as set out in the Feasibility Report Approved by the Authority or as otherwise Approved by the Authority;

**Relevant Milestone** means in relation to each of the Delivery Stages in the left column of the Table 1 the corresponding Milestone shown in right column of Table 1;

**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 FOIA or any apparent request for Information under the FOIA, the EIR or the Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA;

**Retention Milestone** means:

- (a) the Approval by the Authority of
  - (i) a final report demonstrating that:
    - (A) the Development is Practically Complete;
    - (B) the defects period under the Building Contract has expired;
    - (C) any defects in the development have been remedied; and

- (D) the development (and the units) are ready for occupation;
- (E) The Authority has received copies relevant documentation in connection with the Development including:
  - 1) a completed H&S file;
  - 2) a Practical Completion certificate;
  - 3) a Secure By Design certificate;
  - 4) a NHBC/LABC certificate(s);
  - 5) a fire risk assessment of the Practically Complete Development (and any issues raised by this fire assessment are to be addressed by a new or amended fire risk assessment); and
  - 6) O&M manuals; and
- (ii) the Schedule of Costs; and
- (b) confirmation in writing by the Authority that it has sufficient funds available to meet the Delivery Stage Allocation Amount (as specified in the relevant Approved Schedule of Costs) for the Final Payment Stage;

**Schedule of Costs** means the schedule of costs which will be reasonably and properly incurred by the Grant Recipient in respect of the Project which the Grant Recipient shall keep up to date and as Approved by the Authority from time to time including:

- (a) the Project Specific Allocation Amount;
- (b) each Delivery Stage Allocation Amount;
- (c) a detailed breakdown of costs budgeted for each Delivery Stage;
- (d) any Development Client Costs; and
- (e) details of any third party funding to be used in connection with the Project including a description of the intended use of such funding,

provided that it shall not include any Prohibited Costs;

**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 Decision Overpayment** means the extent to which Grant exceeds the maximum amount of aid which may be provided without unlawful State aid arising in accordance with the SGEI Decision;

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

**Project Site** means the site identified in the Inception Report on which the Project will be delivered;

**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;

**Table 1** means the following table:

<b>Delivery Stage</b>	<b>Relevant Milestone</b>
Feasibility Stage	Inception Report Milestone
Planning Stage	Feasibility Report Milestone
Detailed Design and Contract Procurement Stage	Planning Milestone
Construction Stage	Building Contract Milestone
Final Payment Stage	Retention Milestone

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

- 1.2 Reference in this Agreement to a clause, paragraph or recital means a clause or paragraph of or recital to this Deed.
- 1.3 Headings in this Agreement are for ease of reference only and shall not affect construction or interpretation of any of the provisions of this Agreement.
- 1.4 In this Agreement where the context so admits:
  - (a) words importing one gender shall include all other genders; and
  - (b) words importing the singular shall include the plural and vice versa.
- 1.5 Any references to any particular statute or regulation (except for the Use Classes Order) include any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it.

## **2 Purpose of the Grant and entrustment**

- 2.1 The Grant shall be used by the Grant Recipient to fund the Project.
- 2.2 The Grant Recipient is entrusted by the Authority to deliver the Project. The intention of this Agreement is that it complies with the requirements of the SGEI Decision.

## **3 Payment of the Grant**

- 3.1 The Grant Recipient may submit a Claim Form for an instalment of the Grant to fund or part-fund a Delivery Stage.
- 3.2 The Grant instalment shall be payable by the Authority upon receiving a valid Claim Form subject to the Conditions of Grant.
- 3.3 No amount of the Grant in excess of the approved Project Specific Allocation Amount shall be available without the prior written agreement of the Authority.
- 3.4 In relation to a Delivery Stage, no amount of the Grant in excess of the relevant Delivery Stage Allocation Amount shall be available without the prior written agreement of the Authority.
- 3.5 Any Claim Form submitted outside the Grant Period shall be invalid.
- 3.6 Grant instalments shall be paid by the Authority into the Project Bank Account.
- 3.7 The Parties understand and agree that any Grant instalment paid by the Authority is not consideration for any supply for value added tax ("**VAT**") purposes whether by the Grant Recipient or otherwise.
- 3.8 Once the Authority has confirmed for the purpose of a Milestone that it has funds available to meet the relevant Delivery Stage Allocation Amount and the Grant Recipient has commenced the delivery of that Delivery Stage the Authority may not vary or deviate from the Delivery Stage Allocation Amount save:
  - (a) as provided for in Clauses 8, 9 and 10 of this Agreement; or
  - (b) where the Grant Recipient has consented to such variation or deviation.

## **4 Conditions of Grant**

The payment of any Grant instalment by the Authority to the Grant Recipient shall be subject to the following conditions:

- (a) Grant instalments shall only be payable:
  - (i) where the Authority has authority to use such funds for the Grant;
  - (ii) within the Grant Period;
  - (iii) where Grant instalments already paid to the Grant Recipient are Committed; and

- (iv) in so far as a representative of the Authority has been appointed as an observer to and maintains that position on the board of the Grant Recipient;
- (b) multiple Claim Forms may be submitted in relation to a single Delivery Stage subject to the Delivery Stage Allocation Amount and the Project Specific Allocation Amount and for the avoidance of doubt may be submitted in advance;
- (c) in relation to each Delivery Stage, no Grant instalment shall be payable to the Grant Recipient to fund that Delivery Stage unless the Relevant Milestone has already been achieved;
- (d) Claim Forms relating to the Construction Stage shall be submitted no more frequently than every three months;
- (e) Grant instalments in relation to the Construction Stage will be subject to
- (f) deductions reflecting any retention amount(s) pursuant to payment certificates under the Building Contract; and
- (g) the Grant Recipient demonstrating by reference to the construction programme Approved by the Authority that sufficient progress with the construction of the Development has been made;
- (h) Grant instalments shall not be payable unless:
  - (i) the Authority is otherwise satisfied that sufficient progress with the Project has been made;
  - (ii) the Authority is satisfied that such payment will be used for the proper expenditure in the delivery of the Project.

## **5 Use of the Grant**

### **5.1 The Grant Recipient shall:**

- (a) use the Grant to fund the Project in accordance with the Schedule of Costs and for no other purpose;
- (b) ensure that value for money and sound procurement practices are applied to all contracts entered into in connection with the Project;
- (c) use each Grant instalment to fund the Development Stage for which that Grant instalment was claimed and for no other purpose unless otherwise agreed in writing by the Authority;
- (d) not put the Authority in breach of any requirement of the GLA Grant Agreement;
- (e) not breach, or put the Authority in breach of, the Employers Requirements;
- (f) not permit a "Start on Site" as defined in the GLA Grant Agreement (where "Named Project" referred to in the GLA Grant Agreement means for the purposes of this Agreement the Project) without first providing a signed and completed copy of the Building Contract to the Authority;



- (g) Commit Grant monies in accordance with the Programme;
  - (h) ensure that the design and construction of Development follows the Design Guide;
  - (i) not hold any amount of the Grant otherwise than in in the Project Bank Account;
  - (j) not use the Grant to:
    - (i) make any payment to members of its governing body; or
    - (ii) meet, cover or pay for any revenue expenditure;
  - (k) not Commit or otherwise expend any amount of the Grant after the expiry of the Grant Period.
- 5.2 Where the Grant Recipient intends to apply to a third party for other funding for the Project, the Grant Recipient shall notify the Authority in advance of so applying and where such funding is obtained the Grant Recipient shall provide the Authority with details of the amount and purpose of that funding and shall as soon as reasonably practicable update the Schedule of Costs to make clear reference to such third party funding and to its intended use.
- 5.3 The Grant Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Authority is funding under this Agreement.
- 5.4 The Grant Recipient shall:
- (a) comply with, and shall procure that any Affiliate of the Grant Recipient (including the Development Subsidiary) and any contractors with or suppliers to the Grant Recipient shall comply with, the Employer's Requirements; and
  - (b) comply with the requirements of the Public Contracts Regulation 2015 (as amended, replaced or repealed) in so far as they are applicable to the Grant Recipient in connection with the procurement of any works, equipment, goods and services in relation to the Project and the Grant Recipient shall promptly provide the Authority or any government office any information which the Authority may request in order to satisfy itself that the Grant Recipient, its Affiliates, contractors or suppliers have done so where they are required to do so.
- 5.5 The Grant Recipient shall, and shall procure that any Affiliate of the Grant Recipient shall, ensure that all works, equipment, goods and services procured in relation to the Project represent good value for money. In determining how this requirement should be met, the Grant Recipient shall (and shall procure that its contractors shall) take account of public sector accountability and probity and shall document the decision making process.
- 5.6 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Recipient to deliver the Project must be managed and paid for by the Grant Recipient using the Grant or other resources of the Grant Recipient. There will be no additional funding available from the Authority for this purpose.
- 5.7 Should the Grant Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Authority as soon as possible so that, if possible, and without

creating any legal obligation, the Authority will have an opportunity to provide assistance in resolving the problem or to take action to protect the Authority and the Grant monies.

- 5.8 The Grant Recipient shall notify the Authority of any failure by the Grant Recipient to comply with this Agreement immediately upon becoming aware of such failure.

## **6 Accounts and Records**

- 6.1 All Grant monies paid to the Grant Recipient shall be shown in the Project Bank Account as a restricted fund and shall not be included under general funds.
- 6.2 The Grant Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 6.3 The Grant Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six (6) years following receipt of any Grant monies to which they relate. The Authority shall have the right to review, at the Authority's reasonable request, the Grant Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.
- 6.4 The Grant Recipient shall provide the Authority with a copy of its annual accounts within six months (or such lesser period as the Authority may reasonably require) of the end of the relevant financial year in respect of each year in which Grant instalments are paid.
- 6.5 The Grant Recipient shall comply with and facilitate the Authority's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and in relation to the Project the Authority.

## **7 Monitoring and Reporting**

- 7.1 The Grant Recipient shall closely monitor the delivery and success of the Project throughout the Grant Period to ensure that the Project is being delivered and that this Agreement is being adhered to.
- 7.2 The Grant Recipient shall consult the Authority on the Planning Application as the Planning Application is being prepared. Prior to submitting the Planning Application the Grant Recipient shall seek Approval of the Planning Application from the Authority.
- 7.3 The Grant Recipient shall provide the Authority with a financial report and an operational report on its use of the Grant within thirty (30) days following receipt of a written request to do so from the Authority and in such formats as the Authority may reasonably require.
- 7.4 The Grant Recipient shall provide to the Authority:
- (a) quarterly financial reports;
  - (b) together with each quarterly financial report, a risk register (which shall address the health and safety of the Grant Recipient's staff) and insurance review in the format provided by the Authority. The Grant Recipient shall, amongst others, address the health and safety of its staff in the risk register; and
  - (c) a record of all health and safety incidents, accidents and concerns including Near Misses arising in connection with the Project or the Development.

- 7.5 The Grant Recipient shall on request from the Authority provide the Authority with such further information, explanations and documents (including without limitation the SGEI Information) as the Authority may reasonably require in order for it to establish whether the Grant has been used properly in accordance with this Agreement.
- 7.6 The Grant Recipient shall upon five (5) Working Days' written notice from the Authority permit any person authorised by the Authority such reasonable access to its employees, agents, premises, facilities and records for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 7.7 The Grant Recipient shall permit any person authorised by the Authority for the purpose to visit the Grant Recipient once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, the Authority considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.
- 7.8 The Grant Recipient shall provide the Authority with a final report on completion of the Grant Period which shall confirm whether the Project has been successfully and properly completed.
- 7.9 The Grant Recipient shall provide the Authority with any additional information that the Authority may reasonably require to comply with any internal or external audit requirements.

## **8 Withholding and Suspending Payment of the Grant**

- 8.1 The Authority shall have discretion to withhold or suspend payment of any Grant instalment in any of the following circumstances:
- (a) the Grant Period has expired;
  - (b) the Grant Recipient has not submitted to the Authority a Claim Form in relation to the Feasibility Stage within a period of two (2) months beginning on the date of the Inception Milestone;
  - (c) the Grant Recipient has not achieved a "Start on Site" as defined in the GLA Grant Agreement (where "Named Project" referred to in the GLA Grant Agreement means for the purposes of this Agreement the Project) within a period of three (3) years beginning on the date of the Inception Milestone unless this is Due to an Extension Event in which case the Authority may not (subject to the other terms of this Agreement) withhold or suspend payment of a Grant instalment;
  - (d) a Relevant Milestone has not been achieved by the Milestone Date unless this is due to an Extension Event;
  - (e) the Authority considers that unsatisfactory progress with the Project has been made or that the Grant Recipient has been delivering the Project in a negligent manner or in a manner that, in the Authority's reasonable opinion, is likely to bring the Project or the Authority into disrepute;
  - (f) the Grant Recipient has received duplicate funding for the Project from a third party;
  - (g) the Grant Recipient has committed a material breach under or has not materially complied with the terms of this Agreement, the Overarching Agreement or any other grant agreement entered into pursuant to the Overarching Agreement;

- (h) the Grant Recipient has put the Authority in breach of the GLA Grant Agreement;
- (i) the Authority considers that the Grant Recipient has not obtained value for money in its expenditure of the Grant;
- (j) any Event of Default as defined in the Overarching Agreement has occurred;
- (k) the Grant Recipient or any member of the board of the Grant Recipient, or any employee or volunteer of the Grant Recipient has committed a Prohibited Act;
- (l) the Grant Recipient has received Grant monies but has not expended or Committed such Grant monies;
- (m) the Grant Recipient has used a Grant instalment:
  - (i) for a purpose other than the Project;
  - (ii) to fund a Delivery Stage other than the Delivery Stage for which that Grant instalment was Claimed without the prior written consent of the Authority; or other than in accordance with the Schedule of Costs;
- (n) the Grant Recipient provides the Authority with any materially misleading or inaccurate information;
- (o) any member of the board, employee or volunteer of the Grant Recipient has:
  - (i) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project; or
  - (ii) taken any action which, in the reasonable opinion of the Authority, bring or are likely to bring the Project or Authority into disrepute;
- (p) the Grant Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (q) an "Insolvency Event" as defined in the Overarching Agreement has arisen;
- (r) where the Grant instalment claimed is not needed to meet an identified cost in the Schedule of Costs;
- (s) the funding gives rise to an SGEI Decision Overpayment as determined by the Authority or otherwise constitutes unlawful State aid then the Authority shall be entitled to recover from the Grant Recipient the amount of such SGEI Decision Overpayment and/or unlawful State aid together with such interest as it is required by law to recover; or
- (t) the Grant Recipient fails in material respect to comply with the provisions of this Agreement.

8.2 Where Clause 8.1(c) applies the Grant Recipient shall procure that a "Start on Site" as defined in the GLA Grant Agreement (where "Named Project" referred to in the GLA Grant

Agreement means for the purposes of this Agreement the Project) is achieved as soon as reasonably practicable.

- 8.3 Where any failure to achieve a Milestone by the relevant Milestone Date occurs or is in the opinion of the Authority likely to occur 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.

## **9 Repayment of Grant**

- 9.1 The Authority may by notice require the Grant Recipient to repay (together with any interest) any amount of the Grant already paid to the Grant Recipient (but not any funds that are Committed) in any of the events identified in Clause 8 and the Grant Recipient shall pay the amount specified in such notice within fifteen (15) days upon receiving such notice.

- 9.2 Without prejudice to Clause 9.1, if on any of the following dates any Grant monies which have been paid to the Grant Recipient have not been Committed or otherwise expended by the Grant Recipient, the Grant Recipient shall, within fifteen (15) Working Days following any such date, unless the Authority provides written notification to the contrary, repay to the Authority any such Grant monies (together with any interest accrued):

- (a) the date of the expiry of 6 months beginning on the date of the Inception Milestone;
- (b) the date on which the period within which a Grant instalment is to be expended in accordance with the Claim Form for that Grant instalment expires save where the Parties have agreed that this can be expended in relation to a subsequent period;
- (c) the date on which the Grant Period expires;
- (d) the date on which this Agreement is terminated in accordance with Clause 10 of this Agreement;
- (e) the date on which any Grant monies are expended otherwise than in accordance with:
  - (i) the Project;
  - (ii) the Delivery Stage to which a Grant instalment related; or
  - (iii) the Schedule of Costs;
- (f) the date on which:
  - (i) the Grant Recipient ceases to operate for any reason, or passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
  - (ii) the Grant Recipient becomes insolvent, or is declared bankrupt, or is placed into receivership, administration or liquidation, or a petition is presented for its winding up, or it has entered into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;

- (g) the date on which Material Breach by the Grant Recipient arises;
- (h) the date on which an "Event of Default" as defined in the Overarching Agreement occurs;
- (i) the date on which the Authority notifies the Grant Recipient that it believes there has been an SGEI Decision Overpayment;
- (j) the date on which the Grant Recipient, any member of the board of the Grant Recipient, or any employee or volunteer of the Grant Recipient commits a Prohibited Act or the date on which the Grant Recipient first discovers the same; or
- (k) the date on which the Grant Recipient has received funding from a third party which duplicates Grant monies already paid by the Authority to the Grant Recipient.

## **10 Termination**

- 10.1 The Authority shall be entitled to terminate this Grant Agreement in accordance with the terms of the Overarching Agreement or upon the occurrence of any of the events identified in Clause 8 or Clause 9 of this Agreement.
- 10.2 Where the Agreement is terminated the Grant Recipient will have no claim under this Agreement for damages or otherwise by reason of such termination save for the recovery or retention of any sums which have been Committed.

## **11 Status of this Agreement**

- 11.1 This Agreement will come into effect upon the date at the head of this Agreement and will continue until it is terminated in accordance with Clause 10.

## **12 Access to the Project Site**

The Authority shall grant a development licence over the Project Site for the purpose of completing the Development.

## **13 Status of the Parties**

- 13.1 This Agreement is personal to each of the Parties.
- 13.2 No party may assign the benefit of burden of its interest under this Agreement except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 13.3 If the Grant Recipient is part of a Group it will use all reasonable endeavours to ensure that other entities within that Group adhere to the terms and spirit of this Agreement in so far as it relates to them.
- 13.4 Except as mentioned in this clause no one other than the Parties shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

## **14 Acknowledgement and Publicity**

- 14.1 Subject to the remainder of this Clause 14, the Parties shall agree to observe and follow a communication strategy to be agreed with between the Parties acting reasonably.

- 14.2 Neither party shall publish any press release or other formal communication concerning the Project without the prior written agreement of the other Party, save that:
- (a) either the Grant Recipient or Leathermarket JMB may communicate concerning the Project with residents in the area management by Leathermarket JMB or pursuant to their existing contractual or governance obligations;
  - (b) information relating to the Project or to the funding of the Project shall be displayed on construction site hoarding provided that this is agreed in writing by the Authority.
- 14.3 The Grant Recipient shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Authority as the source of the Grant.
- 14.4 The Grant Recipient shall comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in its promotional and fundraising activities relating to the Project.

## 15 Observance of Statutory Requirements

The Grant Recipient shall comply with all statutory and other provisions to be observed and performed in connection with the Project. This includes those relating to employment of staff, payment of salaries and wages (such as income tax and National Insurance contributions), premises and health and safety legislation. and (without prejudice to the generality of the foregoing) in particular:

- (a) the Equality Act 2010 (and insofar as they remain in force the Race Relations Act 1976 (as amended), the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995, the Disability Discrimination Act 2005) and all relevant codes of practice issued by the Equality and Human Rights Commission or comparable body;
- (b) the Health and Safety at Work Act 1974 in order to protect the health and safety of personnel and those of the Authority and all other people and to adopt safe methods of work; and
- (c) the Modern Slavery Act 2015 and any other applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force.

## 16 London Living Wage

- 16.1 For the purposes of this clause:

**Relevant Staff:** shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged in connection with the Project for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year;

**Equivalent Hourly Wage:** shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related

applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act);

**the London Living Wage:** shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the GLA or any successor body with responsibility for setting this figure,

16.2 The Grant Recipient shall:

- (a) ensure that all Relevant Staff employed or engaged by it are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (b) ensure that all Relevant Staff employed or engaged by its subcontractors pay an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (c) provide to the Authority such information concerning the London Living Wage and the performance of its obligations under this clause 16 as the Authority may reasonably require and within the deadlines reasonably imposed by the Authority; and
- (d) co-operate with and provide all reasonable assistance to the Authority in monitoring the effects of the London Living Wage including without limitation assisting the Authority in conducting surveys and assembling data in respect of the affect of payment of London Living Wage to Relevant Staff.

16.3 Nothing in this Agreement is intended to create any employment relationship between the Authority and the Grant Recipient or any of the Grant Recipient's employees or authorised representatives who are entitled to act on behalf of the Grant Recipient.

## **17 Insurance and Indemnity**

17.1 The Grant Recipient shall indemnify and hold harmless the Authority, its employees, agents, officers or sub-contractors in respect of all claims, demands, actions, costs, expenses, losses, liabilities arising from acts or omissions of the Grant Recipient in relation to the Project or the non-fulfilment of obligations on the part of the Grant Recipient under this Agreement, the Overarching Agreement or its other obligations to third parties.

17.2 The Grant Recipient shall immediately notify the Authority and the Grant Recipient's insurers of any event that may give rise to a claim, demand, proceedings, damages, costs or charge whatsoever arising out of this Agreement in relation to the Project.

17.3 The Authority does not accept any liability whatsoever to the Grant Recipient for any costs, claims, damages or losses incurred as a result of any breach by the Grant Recipient of this Agreement or of any relevant statutory or other requirement in relation to the Project.

## **18 Intellectual Property Rights**

18.1 The Authority and the Grant Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Authority or the Grant Recipient before the date of this Agreement or developed by either Party following the date of this Agreement shall remain the property of that party.

18.2 Where the Authority has provided the Grant Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo),



the Grant Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Funder.

- 18.3 To the extent that it is reasonably able to do so the Grant Recipient hereby grants to the Authority an irrevocable, world-wide, royalty-free transferable non-exclusive right and licence (with freedom to sub-licence) to use and exploit all the Grant Recipient's Intellectual Property Rights developed in relation to the Project.
- 18.4 Notwithstanding termination of this Agreement for whatsoever reason the Grant Recipient shall at its expense do and execute, and shall seek to ensure that its employees and sub-contractors engaged in the performance of the Project do and execute, any further thing or document as may be required by the Authority to give effect to Clause 18.1.
- 18.5 The Grant Recipient warrants:
- (a) that it shall use its reasonable endeavours to ensure that the Intellectual Property Rights will not infringe the rights of any third party and that no third party has threatened or so far as it is aware is currently threatening proceedings in respect of such infringement; and
  - (b) that it is able to undertake the Project without breaching any obligations it may owe to any third party now, or as far as it is at present aware, in the future and hereby undertakes to carry out the Project without knowingly breaching any such obligations and further undertakes not to assume any obligations to any third party which would be inconsistent with such undertaking. Without limitation, the Grant Recipient warrants that it shall use reasonable endeavours to seek to acquire all rights in any Intellectual Property Rights obtained or developed by any third party contractors in the course of or in connection with the Project or shall be duly allowed to licence the same as contemplated under this Agreement.
- 18.6 The Grant Recipient shall indemnify and hold the Authority harmless (and keep indemnified and hold harmless notwithstanding termination of this Agreement) against any and all loss or damage (including without limitation any economic loss or other loss of profits, business or goodwill or any consequential loss) suffered by the Authority as a result of the Grant Recipient's breach of any or all of the warranties in Clause 18.5.

## **19 Confidentiality**

- 19.1 Subject to clause 19.2, 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 19.1.
- 19.2 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.

19.3 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,

and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 19.3.

19.4 The provisions of this clause 19 shall survive for a period of twelve (12) years from the termination of this Agreement.

## **20 Information Requests**

20.1 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.

- 20.2 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.
- 20.3 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.
- 20.4 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.
- 20.5 The Grant Recipient shall ensure that all Information acquired or produced in the course of the agreement or relating to the agreement is safely retained and available for disclosure during until this Agreement is terminated 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.
- 20.6 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.

## **21 Data Protection**

Both Parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with the Agreement.

## **22 Anti-Discrimination**

- 22.1 The Grant Recipient shall:
- (a) perform all its obligations under this Agreement in accordance with the Equality Act 2010 and with all regulations and codes of practice made under the same;
  - (b) comply with other requirements and instructions which the Authority reasonably requires in connection with any equality obligations imposed on the Authority in so far as they relate to the Project under applicable law relating to equality; and
  - (c) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination.

22.2 The Grant Recipient shall take all reasonable steps to secure the observance of Clause 22.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

## **23 Human Rights**

23.1 The Grant Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).

23.2 The Grant Recipient shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

## **24 Dispute Resolution**

24.1 If either Party ("the Complainant") wishes to raise a dispute concerning the other Party arising out of or in connection with this Agreement (a "Dispute") then the Complainant will notify the other Party in writing, setting out the grounds for the complaint ("a Notice of Dispute").

24.2 Following the receipt of a Notice of Dispute the Parties will use their reasonable endeavours to resolve the Dispute within twenty eight (28) days.

24.3 If the Dispute or complaint cannot be resolved in accordance with Clause 24.2, then the matter will be referred to the relevant senior officer of the Authority and the nominated representative of the Grant Recipient and those persons shall use their reasonable endeavours to meet within 14 days of the matter being referred to them in accordance with this Clause and to resolve the Dispute.

24.4 Any Dispute not resolved through negotiation under Clauses 24.2 and 24.3 of this Agreement shall at the request of either Party within 14 days of the meeting in clause 24.3 be referred to a mediator for mediation.

24.5 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 14 (fourteen) days from the date of the request to appoint a mediator or within 14 (fourteen) 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.

24.6 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.

24.7 The mediation will be conducted on a without prejudice basis and in strict confidence.

24.8 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.

- 24.9 If, within 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.
- 24.10 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.
- 24.11 If the Parties cannot agree on the identity of the arbitrator to settle the Dispute within 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.
- 24.12 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.
- 24.13 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.
- 24.14 Nothing in this Clause 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,
  - (b) 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.

## **25 No Partnership or Agency**

This Agreement shall not create any partnership or joint venture between the Grant Recipient and the Authority, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

## **26 Severability**

If any part of this Agreement becomes invalid, illegal or unenforceable and such is so fundamental as to prevent the accomplishment of the purpose of this Agreement the Parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this Agreement. In the event of failure to agree, then the Parties shall invoke the dispute procedure set out in Clause 24 of this Agreement. The obligations of the Parties under any invalid, illegal or unenforceable provision of this Agreement shall be suspended during such negotiations and procedures.

## **27 Notices**

- 27.1 A notice given to a Party under or in connection with this Agreement:

- (a) shall be in writing and in English;
- (b) shall be signed by or on behalf of the Party giving it;
- (c) shall be sent
  - (i) where the Authority is the recipient of the notice, for the attention of the Authority's Senior Officer at 160 Tooley Street London SE1 2TZ, or such other address or person as the Authority may notify to the Grant Recipient in accordance with the provisions of this clause 27; and
  - (ii) where the Grant Recipient is the recipient of the notice, for the attention of the Grant Recipient's Senior Officer at 26 Leathermarket Street, London SE1 3HN or such other address or person as the Grant Recipient may notify to the Authority in accordance with the provisions of this clause 27;
- (d) shall be:
  - (i) delivered by hand; or
  - (ii) sent by pre-paid first class post, recorded delivery or special delivery; or
  - (iii) sent by e-mail to an e-mail address notified by the relevant Party to the other Party for such purpose; and
- (e) is deemed received as set out in clause 27.2.

27.2 Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause have been satisfied):

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address; or
- (b) if sent by pre-paid first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting; or
- (c) if sent by e-mail, one hour after the notice was sent.

## **28 Variations**

Any variations to this Agreement shall be agreed by the Parties in writing.

## **29 Governing Law and Jurisdiction**

29.1 This Agreement is to be governed by and construed in accordance with the law of England and Wales.

29.2 Subject to the dispute procedure set out in Clause 24 the Parties agree to submit to the exclusive jurisdiction of the English Courts.

**EXECUTED AS A DEED** with the seal of the Mayor and Burgesses of the London Borough of Southwark, in the presence of:

**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.....

.....

## **Appendix 1**

### **Claim Form**



## **Appendix 2**

### **Authority Employer's Requirements**