

Appendix 2

- The key terms of the contract to be entered into are:
- The Council will give the LLP vacant possession of the Waterloo Site for the purpose of carrying out the works contained in the Building Contract (the “**Works**”). For the duration of the Works, the LLP shall have exclusive possession of the Waterloo Site, and will be able to share possession with their subcontractors and the **Professional Team**.
- It is the Council's responsibility to ensure that all consents required for the Works are obtained and copies given to the LLP to enable the Works to be carried out. This includes all consents, licences, permission, and requirements whether statutory or otherwise (this differs from the main Development Agreement where it is the LLP's responsibility to obtain all consents).
- The Works must be carried out in a good and workmanlike manner, with good materials, in accordance with all consents, and all statutory requirements and relevant codes. The LLP must also ensure that no materials or substances are used which are not approved or recommended by current British Standards of Code of Practice.
- Before commencement of the Works the LLP will enter into the Building Contract, and the Professional Team shall be appointed making sure that the appointments are with reputable professionals with the correct experience and skills. The LLP may not vary the Building Contract or waive any rights or entitlements within the Building Contract or appointment without good cause.
- Each member of the Professional Team must maintain professional indemnity insurance cover with a limit of not less than £5,000,000 for each and every claim for a period of not less than 12 years after practical completion of the Works. The Building Contractor must maintain professional indemnity insurance of not less than £10,000,000 for any one claim or a series of claims arising out of one single incident and in the aggregate for a period of not less than 12 years after practical completion of the Works. The LLP shall maintain public liability insurance for the duration of the Works for not less than £10,000,000 in respect of any one claim. In the event of any loss or damage to the Works by an insured risk the LLP shall procure that their reinstatement and replacement is in accordance with the Building Contract, and any insurance proceeds must be paid towards such reinstatement. Any deficiencies in the insurance monies shall be made up from the LLP's own funds.
- Before commencing any part of the Works the Building Contractor shall provide to the Council a collateral warranty in a form to be approved by the Council (acting reasonably), and as soon as reasonably possible (and always prior to practical completion of the Works) that every member of the Professional Team; and any piling subcontractor provide a collateral warranty in a form to be approved by the Council (acting reasonably).

- At all times during the Works the LLP is required to comply with all current health and safety legislation and CDM Regulations.
- The LLP is required to use all reasonable endeavours to procure that the Works are deemed complete pursuant to the Building Contract (“**Practical Completion**”) before an agreed date, such date to be agreed by the parties (the “**Completion Date**”). The Completion Date can be extended if such an extension is permitted under the Building Contract, and for such a period as is fair and reasonable in the event that the Works are likely to be or have been delayed by reason of an act, impediment and/or default of the Council. Any anticipated delay must be notified to the Council promptly, the LLP must give the Council details of what has caused the delay, and then use reasonable endeavours to prevent the occurrence of the delay and mitigate and reduce the effect of the delay.
- The LLP must notify the Council of the date of Practical Completion, and send a copy of the Certificate of Practical Completion to the Council within 5 working days. In respect of the Works the LLP must enforce the liability provisions in the Build Contract and procure that all snagging items on the snagging list are completed and made good as soon as reasonably practicable.
- The LLP is required to keep the Council regularly (at least once every two months) informed of: material measures and all steps reached; the general progress of the Works, any material problems, and any site meeting and permit the Council to attend (having given at least 5 working days’ notice).
- The Council’s requirements for the agreed scope of the Works is set out at Appendix 2 of the Agreement. The LLP may make alterations, amendments, omissions, additions or variations to this agreed scope (“**Variations**”), but only with the prior approval of the Council (such approval not to be unreasonably withheld or delayed). No material Variation shall be permitted which in the reasonable opinion of the Council affects the overall quality of the Works.
- The Council will fund the Works by paying an agreed amount set out in the Building Contract to the LLP (the “**Contract Sum**”). The LLP is responsible for paying the Contract Sum to the Building Contractor. The Council shall only pay the Contract Sum for the Works against an application for payment by the LLP. The process for this application is set out in clause 11 of the Agreement, and details service of the notice, and the Council’s responses to the application. If the Council fails to pay the sum due in respect of the application for payment by the final date it is due, the Council will be required to pay interest to the LLP calculated on a daily basis from the due date to the date of payment and such interest will be added to the Works Price to the extent that such interest is paid by the LLP to the Building Contractor. This is different to the Main Development Agreement as the LLP is responsible for paying the building contractor.
- Within a reasonable period of time after the date of Practical Completion, the LLP shall delivery to the Council an itemised final account for the Works showing in respect of the Building Contract: the Contract Sum, the cost of the Variations, all other adjustments to the Contract Sum including loss and/or

expenses allowed under the Building Contract; the total amount previously paid; and the balance outstanding. The due date for payment of the final account shall be [21] days from the later of the end of the Rectification Period (being 24 months from the date of Practical Completion); the date stated in the Notice of Completion of Making Good, and the final date for payment shall be [30] days thereafter.

- The Council will be entitled to terminate the Agreement with immediate effect by giving written notice to the LLP in the event of the LLP becoming insolvent or steps are taken in relation to insolvency, or if the LLP are in material breach of the Agreement and has failed to rectify the material breach within a reasonable time having been given written notice to do so. The employment of the LLP shall terminate with immediate effect upon any termination of the Building Contract for whatever reason save for if the LLP enters into a replacement building contract with the Building Contractor in respect of the Works in accordance with the Main Development Agreement, whereupon the LLP shall be released from any and all past and future duties under this Agreement in respect of the Works, and the Works shall form part of the works to be performed under the replacement building contract and all payments made under the Agreement shall be deemed to have been made on account of the contract sum set out in the replacement building contract.
- The employment of the LLP shall automatically terminate with immediate effect upon any termination of the Main Development Agreement.
- The LLP shall be entitled to terminate the employment of the Council under the Agreement with immediate effect by giving written notice to the Council in the event the Council is in material breach of the Agreement and has failed to rectify the material breach within a reasonable time having been given written notice to do so, or any failure by the Council to pay by the final date for payment any amount due to the LLP.
- If a dispute arises under the Agreement which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation. In the event that the matter is referred to mediation, the parties agree to the participation of the Building Contract to the extent the dispute or difference is similar or the same as a matter arising under the Building Contract. The parties shall be entitled to refer any dispute or difference to adjudication in accordance with The Scheme for Construction Contracts (England and Wales) Regulations 1998.